Basic information

2005/2169(INI) INI - Own-initiative procedure	Procedure completed
Compliance with the Charter of Fundamental Rights in Commission legislative proposals: methodology for systematic and rigorous monitoring **Subject** 1.10 Fundamental rights in the EU, Charter	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	VOGGENHUBER Johannes (Verts/ALE)	12/07/2005

Committee for opinion	Rapporteur for opinion	Appointed
AFCO Constitutional Affairs	VENTRE Riccardo (PPE-DE)	17/11/2005

European Commission

Commission DG	Commissioner
Legal Service	BARROSO José Manuel

Key events

Date	Event	Reference	Summary
27/04/2005	Non-legislative basic document published	COM(2005)0172	Summary
29/09/2005	Committee referral announced in Parliament		
01/02/2007	Vote in committee		Summary
12/02/2007	Committee report tabled for plenary	A6-0034/2007	
14/03/2007	Debate in Parliament		
15/03/2007	Decision by Parliament	T6-0078/2007	Summary
15/03/2007	Results of vote in Parliament		
15/03/2007	End of procedure in Parliament		

Technical information	
Procedure reference	2005/2169(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Initiative
Legal basis	Rules of Procedure EP 55
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/6/30190

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE378.675	18/10/2006	
Committee opinion	AFCO	PE371.720	23/11/2006	
Amendments tabled in committee		PE382.240	08/12/2006	
Committee report tabled for plenary, single reading		A6-0034/2007	12/02/2007	
Text adopted by Parliament, single reading		T6-0078/2007	15/03/2007	Summary

European Commission

Document type	Reference	Date	Summary
Non-legislative basic document	COM(2005)0172	27/04/2005	Summary
Follow-up document	COM(2009)0205	29/04/2009	Summary

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	PT_PARLIAMENT	COM(2009)0205	15/09/2009	

Compliance with the Charter of Fundamental Rights in Commission legislative proposals: methodology for systematic and rigorous monitoring

2005/2169(INI) - 29/04/2009 - Follow-up document

This Communication aims to assess the practical operation of the methodology for a systematic and rigorous monitoring of compliance with the Charter of fundamental rights.

In presenting the 2005 Communication on a methodology for systematic and rigorous monitoring of compliance with the Charter of Fundamental Rights, the Commission underlined its determination to "lock in a culture of Fundamental Rights in EU legislation". By setting up the methodology, designed to ensure that Commission departments **check systematically** and thoroughly that all the fundamental rights concerned have been respected in all draft proposals, the 2005 Communication enshrined the practical means by which intentions would be matched by concrete performance.

The Commission undertook to prepare an appraisal of the internal monitoring in 2007. This is the purpose of the present report, the elaboration of which was delayed in order to take into account two new elements: the coming into being of the Fundamental Rights Agency and the 2009 revision of the Commission's Impact Assessment Guidelines.

Main lessons learned: experience over the years since the adoption of the 2005 Communication has demonstrated that fundamental rights issues can arise in many disparate areas. A few examples can be mentioned to show the diversity of topics. It is, however, the ever growing importance, in terms of legislative activity, of the area of **Justice, Freedom and Security** (this area includes the fight against criminality and , in particular, terrorism, immigration, asylum, and border control) which has, inevitably, brought into sharp focus that the Community and Union are increasingly touching on areas which, very directly, raise fundamental rights issues. Many of the above issues were reflected in the "asylum package", with the proposal amending the Reception Conditions Directive. The most sensitive issues raised in terms of respect for fundamental rights were those of the detention of asylum seekers, the right to an effective remedy and the rights of the child.

The experience of the asylum package demonstrates that the methodology to monitor the respect of fundamental rights implies not only a procedural element but also a substantive element. The methodology is not an end in itself. Respect for fundamental rights is not simply a mechanism or a procedural obligation; it is a substantive obligation.

Stock-taking: experience over the years since the adoption of the 2005 Communication has demonstrated that the Commission has had to make difficult judgments of necessity and proportionality and that the methodology has had to confront delicate questions as to whether the solutions arrived at meet the required standards. The Commission believes that **the standards of necessity and proportionality have been met in its proposals**; its commitment to a culture of fundamental rights respect is real and of substance.

The report also assesses the improvement of the method used by the Commission to improve the taking into account of fundamental rights: in particular, the establishment of new Impact Assessment Guidelines and greater attention paid to this area in the recitals of the proposals.

The report highlights the setting up of the Agency for Fundamental Rights, which aims to support, and indeed reinforce, the Commission’s methodology. The reports and surveys of the Agency could be used as input in the preparation of Commission initiatives and actions. The Agency should also be invited to participate in the consultation process which is normally launched for new possible initiatives.

Moreover, the Communication stated that, as a last resort, the Commission would reserve the right to bring **annulment proceedings** against an act which it considered incompatible with fundamental rights. To try to avoid this happening, the Commission states that it will use all means at its disposal to ensure respect for fundamental rights but it draws the attention of the **co-legislators** to their responsibilities in this matter. However, as a last resort, the Commission is ready to contemplate an annulment action.

In conclusion, experience since 2005 has shown that the methodology is well conceived as regards the objective sought but that its practical application needs to be reinforced. The elements outlined in this report, the revision of the Impact Assessment Guidelines, the better targeting of recitals and the harnessing of the Agency, all have their role to play in the better application of the methodology. However, perhaps the most important element which needs to be worked upon is the **human element**. The fundamental rights reflex has to be promoted in the services of the Commission where proposals and initiatives are created and a "**fundamental rights culture**" fostered from the earliest stages of the conception of a Commission proposal. Lastly, the commitment to the respect for fundamental rights must be a common goal of all the Institutions involved in the legislative process.

Compliance with the Charter of Fundamental Rights in Commission legislative proposals: methodology for systematic and rigorous monitoring

2005/2169(INI) - 27/04/2005 - Non-legislative basic document

PURPOSE : to set out a methodology for ensuring compliance with the Charter of Fundamental Rights in Commission legislative proposals.

CONTENT : The Charter was incorporated into the Treaty establishing a Constitution for Europe, signed on 29 October 2004. This document sets out a methodologyfor ensuring the Charter is properly implemented in Commission proposals, which methodology has a threefold objective:

-to allow Commission departments to check systematically and thoroughly that all the fundamental rights concerned have been respected in all draft proposals;

-to enable Members of the Commission, and the Group of Commissioners on Fundamental Rights, Anti-discrimination and Equal Opportunities in particular, to follow the results of the scrutiny and to promote a “fundamental rights culture”;

-to make the results of the Commission’s monitoring of fundamental rights more visible to other institutions and to the general public. The Commission should be seen to set an example, which will also give it credibility and authority in monitoring respect for fundamental rights in the activities of the two branches of the legislature.

The checks are already carried out when the lead department draws up the draft and, in particular, during the interdepartmental consultation where the Legal Service checks for compliance as an integral part of its verification of legality.

However, to further reinforce and systematise the practical aspects of scrutiny at the interdepartmental consultation stage, fundamental rights will be brought into even sharper focus in two key documents submitted together with the draft legislative proposal:

-the impact assessment, which should include as full and precise a picture as possible of the different impacts on individual rights

-the explanatory memorandum, which for certain legislative proposals should contain a section on the legal basis for compliance with fundamental rights.

The impact assessment provides the Commission, right from the start of the drafting process, with a complete picture of the various impacts which the process can have on the individuals and groups whose rights may be involved, depending on the different options envisaged.

On the other hand, an impact assessment cannot be used to contain the legal scrutiny, i.e. the legal definition of the impacts identified in the light of the provisions of the Charter and the European Convention on Human Rights, and the case-law. The legal scrutiny calls for specific expertise and should concern an advanced draft proposal. It should as far as possible be initiated within the lead department itself and then continued during the interdepartmental consultation procedure through the formal involvement of the Legal Service; it should if necessary be summarised in the explanatory memorandum, and thus be made publicly visible.

The lead department will also ensure that the Directorate-General for Justice, Freedom and Security is involved in the interdepartmental consultation when a proposal is liable to raise issues relating to fundamental rights, notably in the light of the impact assessment. Similarly, it will ensure that the relevant external relations Directorate-General is associated where a proposal might affect the fundamental rights of third-country nationals outside the Union.

The Legal Service will keep the Group of Commissioners regularly informed of significant cases where fundamental rights have been subject to internal monitoring. In very special cases where proposals require a careful balance between several opposing fundamental rights, the Group may also produce policy guidelines, within the margins for political discretion afforded by the provisions of the Charter.

Compliance with the Charter of Fundamental Rights in Commission legislative proposals: methodology for systematic and rigorous monitoring

2005/2169(INI) - 15/03/2007 - Text adopted by Parliament, single reading

The European Parliament adopted a resolution based on the own-initiative report drafted by Johannes **VOGGENHUBER** (Greens/EFA, AT) in response to the Commission communication on monitoring of compliance with the Charter of Fundamental Rights in the Commission's legislative proposals. The report was adopted by 485 votes in favour to 87 against with 29 abstentions. Parliament stressed the need to overcome the crisis in the constitutional process, to preserve the central achievements of the constitutional treaty, and to establish the Charter of Fundamental Rights as legally binding. It welcomed the Commission's proposals on the consolidation and improved transparency of the procedure on compliance with fundamental rights in its legislative proposals, and called on the Commission to make the monitoring process more transparent and to consult with relevant actors in civil society, particularly those potentially affected by the Commission proposal. The Commission's proposed 'systematic' monitoring made it absolutely necessary for every legislative proposal to be thoroughly checked and for the result to be substantiated.

Genuinely systematic and rigorous protection of fundamental rights called not only for scrutiny to identify any legal errors in weighing up the respective importance of the freedom of the individual and the requirements of the public interest, but also for political analysis on every occasion to ascertain which of the various solutions that weigh up these interests correctly produced the best balance between determination of the objective and restriction of fundamental rights (optimisation in terms of fundamental rights).

Parliament rejected the Commission's reservations on bringing annulment proceedings 'on the basis of case-by-case political scrutiny' and strongly emphasised the absolute priority of the protection of fundamental rights and freedoms over all political considerations.

It pointed out that, even though general consultation procedures existed, independent external bodies which were specifically concerned with fundamental rights issues must be more extensively involved. The Commission must devise a specific arrangement for enabling such bodies to be consulted during the procedure for drafting legislative proposals which had an impact on fundamental rights. Parliament called on the Council to strengthen the systematic monitoring of fundamental rights also in areas covered by intergovernmental cooperation, to publish the results and likewise to secure the support of the Fundamental Rights Agency.

Member State parliaments, in particular in the fields of police and judicial cooperation and the common foreign and security policy, were requested to verify the compatibility of all decisions and measures with the Charter of Fundamental Rights, so that the indivisibility of fundamental rights is preserved and the systematic and thorough monitoring of fundamental rights in all the Union's policies could be ensured. The Council and the Commission should submit a yearly report on the fundamental rights policy of the Union to Parliament and the national parliaments, and engage in a systematic, open and permanent dialogue on the safeguarding of fundamental rights in the Union.

Lastly, Parliament called on the Commission and the Council to report to Parliament on the follow-up given to the reports by the network of national experts.