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REPORT

# Use of the Charter of Fundamental Rights by National Data Protection Authorities and the EDPS

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**CharterClick!** (“Don’t knock on the wrong door: CharterClick! A user-friendly tool to detect violations falling within the scope of the EU Charter of Fundamental Rights”)

Use of the Charter of Fundamental Rights by National Data Protection Authorities and the EDPS

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# THE CHARTERCLICK PROJECT

*“Don’t knock on the wrong door: CharterClick!”* (hereinafter [CharterClick!](http://52.58.51.113), new website at <http://52.58.51.113><sup>1</sup>) is a two year project (February 2015 - January 2017) co-financed by the European Commission under the “Fundamental Rights and Citizenship Programme 2013”. The primary outcome consists in setting up an on-line, freely accessible platform with a set of tools aimed to provide assistance in understanding whether and how reliance on the EU Charter of Fundamental Rights (hereinafter [EU Charter](#)) can be of help in a specific case. The toolkit will target victims of fundamental rights violations, their representatives, national judges and national human rights bodies (NHRBs), including data protection supervisory authorities.

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<sup>1</sup> Please note that this address is temporary, and that it may therefore change.



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## LIST OF ABBREVIATIONS

Charter	Charter of Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union
DPAs	Data Protection Authorities
EDPS	European Data Protection Supervisor
GDPR	General Data Protection Regulation
NDPAs	National Data Protection Authorities
NHRBs	National Human Rights Bodies



# EXECUTIVE SUMMARY

This report maps the use of the Charter by 14 + 1 National Data Protection Authorities (hereafter NDPAs)<sup>2</sup> and the EDPS,<sup>3</sup> who responded to the second round of the CharterClick! Questionnaire. This is a crucial period to study the use of the Charter by DPAs, since they are preparing the enforcement of the substantive overhaul of the data protection legal framework. This report focuses on the most significant results.

Responses to the questionnaire confirm the **divergence in tasks and powers of NDPAs across Europe**, but also show how **all NDPAs play the role of quasi-judicial authorities**.

Importantly, both quantitative and qualitative data show that **NDPAs do not avail themselves of the Charter as widely as they could**. Rather, NDPAs use it as an instrument among other fundamental rights related instruments, often to support auxiliary arguments. Significantly, most NDPAs do not keep statistics concerning their use of the Charter.

One reason for the ‘underuse’ of the Charter may be the **hurdles entailed by its use**. A second reason may relate to the **limited training initiatives on the use of the Charter**, geared either to the staff of the NDPAs or to specific entities that may avail themselves of the Charter. A third, and perhaps more convincing reason in the light of the qualitative information provided by NDPAs, is **the perceived value of the Charter**. The Charter’s auxiliary and supplementary role may be tied to the perception that the Charter: affords a level of protection equivalent to that of national sources; it has ‘reduced’ precedence vis-à-vis national sources which define NDPAs’ mandate; and is generally not used by courts.

<sup>2</sup> The Swedish NDPA took part in a previous version of the questionnaire, and its answers are included here whenever they are comparable.

<sup>3</sup> Note that the responses provided by the EDPS reflect its greater proximity to Union law, as well as the fact that the Charter represents the instrument of fundamental rights of reference for the EDPS.

Qualitative data does not sanction the irrelevance of the Charter, but rather the fact that **NDPAs rely on the Charter instrumentally** (as they do for other laws), on the basis of its usefulness, accessibility and knowledge. In their day-to-day practice, NDPAs do not seem to adhere to the theory of sources, but rather they follow a pragmatic approach dictated by their restricted mandate. This seems to challenge the formal primacy of the Charter.

**NDPAs are divided as to the import of the changes to be brought about by the General Data Protection Regulation** (hereafter GDPR), and Directive 2016/680. While 60% of the respondents anticipate that their mandate will change, the remaining 40% are equally split between uncertainty and the belief that nothing will change.

Conversely, **more than half of the respondents believe the Charter will not play a greater role after the entry into force of the GDPR and Directive 2016/68** (despite its clear centrality in both instruments).

The conclusions to this report offer some **recommendations as to the added value of the Charter**, particularly in the context of a new regulatory environment that aims at homogeneity, rather than harmonization, across the Union (e.g. with reference to the new instrument of joint operations).

The discussion of these results by the NDPAs community may benefit from a number of **recommendations** that come **from the experience of the CharterClick! Project**, namely to: i) conduct training on the Charter; ii) make use of tools that support decision-makers in clarifying the scope of application of the Charter, such as the CharterClick! Toolkit; iii) experiment in introducing the Charter, as courts and other authorities will follow; iv) keep statistics on the use of the Charter in the various activities; v) and discuss the results with colleagues.



# 1. INTRODUCTION

This report illustrates a selection of the results of the CharterClick! Project Questionnaire on the use of the Charter of Fundamental Rights by National Data Protection Authorities (hereafter NDPAs) and the EDPS in their day-to-day activities.

The questionnaire was circulated at the end of September 2016, and responses were collected up until January 2017. This is a crucial period to study the use of the Charter by (N)DPAs, since authorities are preparing the enforcement of the General Data Protection Regulation (hereafter GDPR)<sup>4</sup> and the Directive 2016/680,<sup>5</sup> which represent the first, important, steps of the complete overhaul of the data protection legal framework. Both texts testify to the double significance that the Charter should already have for NDPAs. First, the protection of personal data has the status of a fundamental right (independent from the right to respect for private and family life) in the Charter. Secondly, the Charter enjoys primacy in the hierarchy of sources of Union law. Hence, NDPAs should interpret the national applicable law falling within the scope of EU law (enforcement of primarily Directives 1995/46 and 2002/58), and the impending GDPR and Directive, in the light of both the Charter, and the related case law of the Court of Justice of the European Union (hereafter CJEU).<sup>6</sup>

The questionnaire principally sought to understand the extent to which NDPAs avail themselves of the Charter (thus also recognizing its primacy), any reasons why the Charter might be underused, and whether the impending reform was seen as capable of producing any changes in the use of the Charter. This report focuses on those results that are relevant to goals just expounded.

To this effect, after an illustration of the respondents and their role *vis-à-vis* fundamental rights (**Section 2**), the report provides an overview of the extent to which NDPAs and the EDPS use the Charter in the discharge of their tasks, and tentative explanations as to such an approach (Section 3). Section 4 is devoted to the ways in which NDPAs and the EDPS see the role of the Charter in the context of the upcoming data protection reform. The concluding section features reflections on the added value of the Charter in the context of the implementation of the data protection reform, and suggestions as to how to advance its use. The complete questionnaire can be found in the Annex 2, whereas Annex 1 contains a methodological note.

4 Regulation 2016/679/EU of the European parliament and of the Council of 27 april 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing directive 95/46/EC (general data protection regulation), OJ L119/1.

5 Directive 2016/680/EU of the European parliament and of the Council of 27 april 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing council framework decision 2008/977/JHA, OJ L 119/89.

6 The case law of the CJEU, in fact, expounds the remit of the Charter (as well as secondary sources), sometimes in a way that directly concerns the activities of NDPAS, as in the case of *Schrems* (Judgment of 6 October 2015 in *Schrems*, C-362/14, EU:C:2015:650). At times the interpretation of the CJEU also expands the understanding of the right to personal data beyond the limits of current applicable law, as is the case of the right to be forgotten recognized in *Google Spain*

(Judgment of 13 May 2014 in *Google Spain and Google*, C-131/12, EU:C:2014:317).



## 2. DPAS VIS-À-VIS FUNDAMENTAL RIGHTS

This section contains a description of the respondents, the remit of their mandate, and their potential role *vis-à-vis* all fundamental rights. It is based on part I of the questionnaire.

### 2.1 Respondents

The questionnaire was completed by 14 NDPAs: Austria, Cyprus, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Malta, Romania, Slovakia and Slovenia. In addition, the EDPS filled in the questionnaire. It is important to stress that the mandate of the EDPS, which is defined by Regulation 45/2001,<sup>7</sup> is different from that of NDPAs, and that the Charter of Fundamental Rights represents the human rights instrument of reference for the EDPS. This report also includes responses by the Swedish NDPA, when comparable (see *infra*, Annex 1).

### 2.2 Remit of NDPAs

The responding authorities vary in composition, nature, and as to the remit of their mandate (Q 4.1, Sweden included, 100%= 16). While all authorities oversee the protection of personal data, more than half of them also deal with the right to respect for private and family life enshrined in Article 7 of the Charter,<sup>8</sup> and a quarter is tasked with freedom of information.

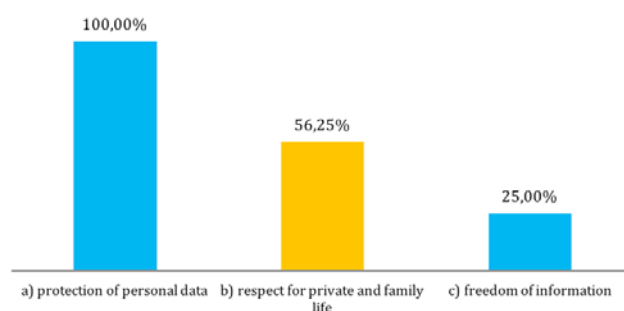


Figure 1 Q 4.1 Please, specify which of the following fundamental rights listed in the Charter are within your remit

Countries whose remit extends beyond Article 8 of the Charter are reported in Table 1 below.

Q. 4.1 Fundamental rights within remit	Austria	Estonia	Finland	Hungary	Italy	Lithuania	Malta	Romania	Slovenia	EDPS	Sweden
b) Respect for private life		x	x	x	x	x	x	x		x	x
c) Freedom of information		x		x					x		
d) Other	x				x					x	

Table 1 Remit of DPAs beyond protection of personal data, by country

As for additional rights, Austria refers to “the source PIN Register Authority (Stammzahlenregisterbehörde)”, whereas Italy notes that, according to Article 2 of the Italian Privacy Code, “personal data must be processed by respecting data subjects’ rights, fundamental freedoms and dignity, particularly with regard to confidentiality, personal identity and the right to personal data protection”. The EDPS quotes Article 41(2) Regulation 45/2001: “With respect to the processing of personal data, the European Data Protection Supervisor shall be responsible for ensuring that the fundamental rights and freedoms of natural persons, and in particular their right to privacy, are respected by the Community institutions and bodies.”

<sup>7</sup> Regulation 45/2001/EC of the European parliament and of the Council of 18 december 2000 on the protection of individuals with regard to the processing of personal data by the community institutions and bodies and on the free movement of such data, OJ L 8.

<sup>8</sup> It should be recalled that the Directive 95/46, to be replaced by the GDPR, uses the expression “the right to privacy, with regard to automatic processing of personal data”, which has been the cause of much confusion in case law as well as academia. Directive 95/46/EC of the European parliament and of the Council of 24 october 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (data protection directive) OJ L 281.



## 2.3 DPAs as quasi-judicial authorities

The following three questions deal with the role of DPAs as quasi-judicial bodies, which is of immediate importance for fundamental rights.

First of all, the graph below (Q 4.2, Sweden excluded, 100% = 15), which concerns the tasks and powers within the respondents' mandate, confirms a well-known fact,<sup>9</sup> viz. NDPAs' powers are not fully harmonized, a fact bound to change after the entry into force of the GDPR (see *infra*, section 4).

Responses to items 'c' (complaints/claims processing), 'e' (processing operations), 'h' (mediation provider)<sup>10</sup>

and 'i' (issuing sanctions) can be said to show the extent to which NDPAs exercise quasi-judicial powers.<sup>11</sup>

The exercise of such quasi-judicial powers, which has the potential of affecting legitimate interests and competing, subjective rights, has to be duly motivated. Such requirement points to the need to anchor DPAs' motivation in solid foundations, a need that can (and should) be fulfilled by the Charter as interpreted by the CJEU. By means of anticipation, the Charter is not fully relied upon as a basis for NDPAs' quasi-judicial activities, as explained in section 3 (together with an illustration of the activities where the Charter is mostly used).

**Q 4.2 NDPAs mandate, by activity**

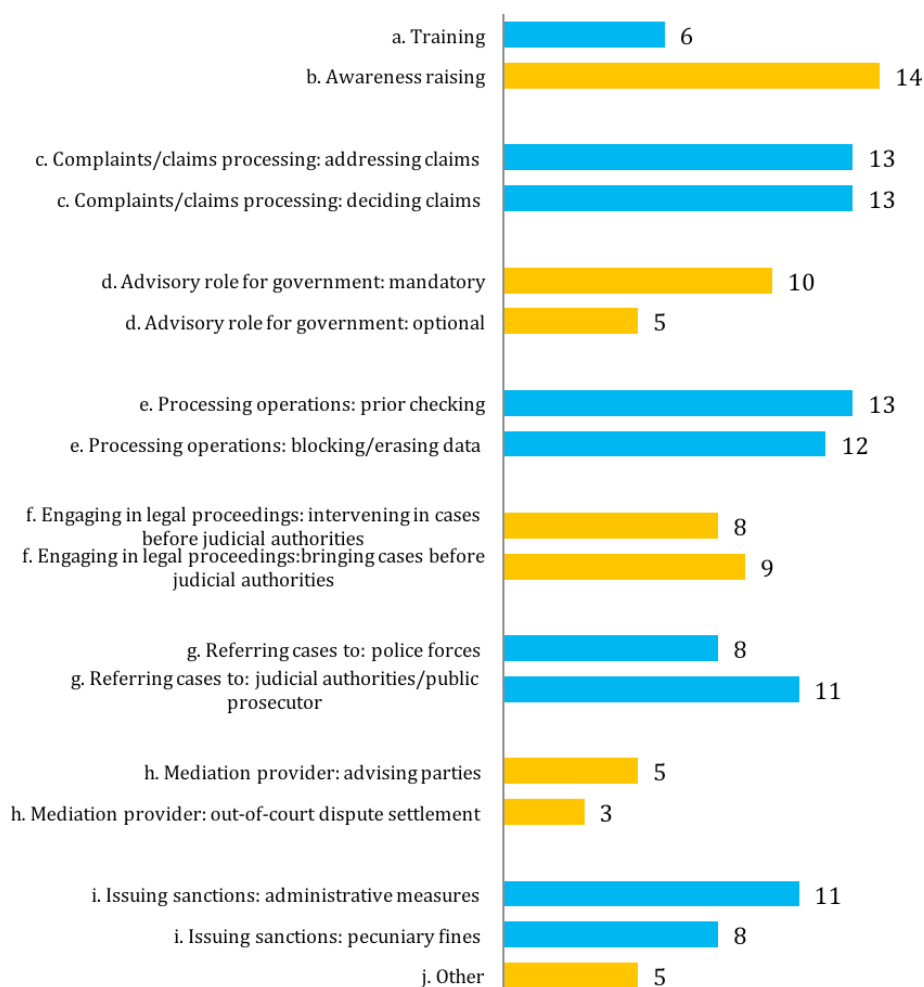


Figure 2 Q 4.2 Please, specify which of the following activities are included in your mandate (multiple replies possible)

<sup>9</sup> Fundamental Rights Agency, *Data protection in the european union: The role of national data protection authorities. Strengthening the fundamental rights architecture in the eu.* (Publications Office of the European Union, 2010).

<sup>10</sup> The EDPS clarified that the "function of mediation is not expressly written in our mandate. Article 47(a) foresees that we: 'give advice to data subjects in the exercise of their rights'. Article 46(d) provides that we give advice to controllers when being consulted. There are complaint cases in which we try to seek an amicable solution between the parties, but this depends very much on the circumstances of the case (ad hoc)."

<sup>11</sup> Among additional activities, NDPAs listed the following. Cyprus referred to investigation powers, Finland to inspections and international cooperation, Italy mentioned article 154 and the EDPS mentioned additional powers enshrined in Regulation 45/2001.



Secondly, such a quasi-judicial mandate is particularly important because all decisions taken by NDPAs on the basis of claims presented by individuals are subject to judicial review (Q 4.3, Sweden included, 100%= 16); half of the sample clarified that the review is carried out by courts.

During the CharterClick! workshop held in Florence in January 2017, the representative of the Hungarian NDPA seemed to confirm this reading.

### Q 4.3 Legal value of decisions issued by NDPAs

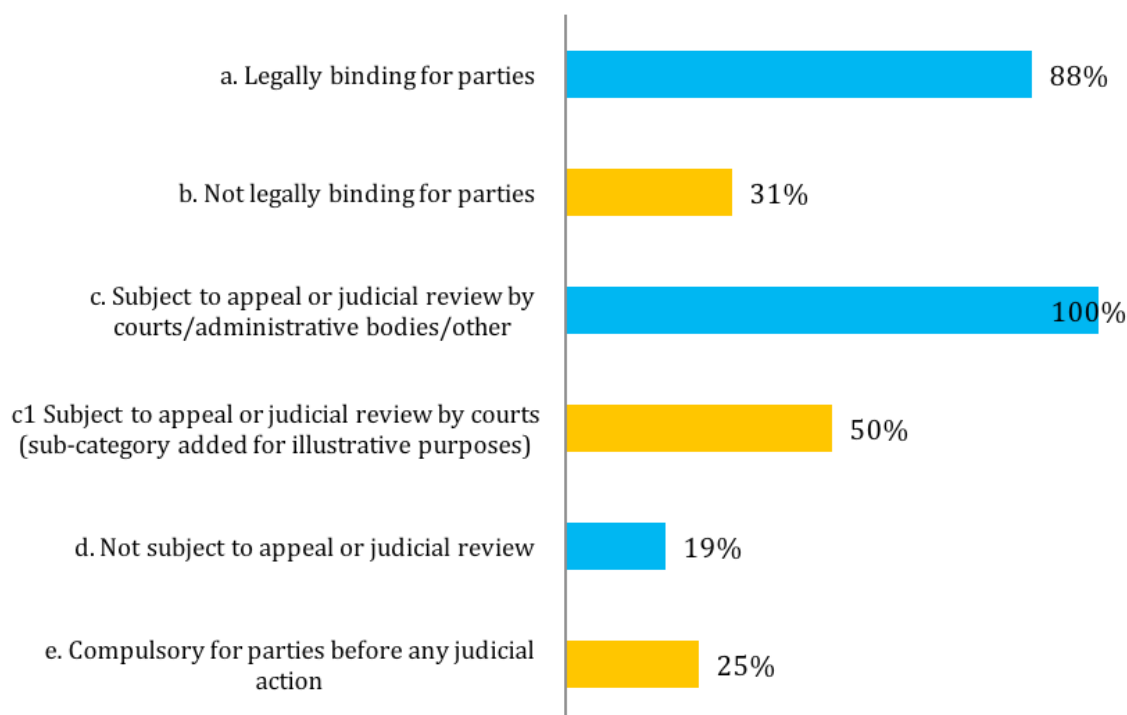


Figure 3 Q 4.3 If your mandate includes the processing of complaints/claims raised by individuals ((c) in question 4.2), could you specify the legal value of the decisions you may issue? (Multiple replies possible)

However, 20% of respondents also said that the decisions taken by the NDPAs are not subject to judicial review;<sup>12</sup> this may have to do with the type of decision (e.g. in case of recommendations, as pointed out by Austria) and the legal force of their decisions. In fact, the three countries that ticked option ‘d’, i.e. Austria, Greece and Hungary, also indicated that their decision can be both legally binding and not legally binding (items a and b). The additional details provided by respondents can explain the seeming incongruence. The Austrian NDPA clarified that the legal stringency of their decision depends on the addressee: a decision is binding when it concerns public sector parties, and if there has been a violation of the right to access one’s data. The Hungarian NDPA explained they follow two types of proceedings: one is a “soft” investigation procedure leading to recommendations; the other is an administrative procedure leading to “formal and legally binding but judicially applicable decision at the end”.

<sup>12</sup> Please note that this anomaly is possible due to the fact that respondents could provide multiple answers.

This may also explain the apparent incongruence between responses given in relation to items ‘a’ and ‘b’, whose sum would be expected to amount to 100%.<sup>13</sup> It may be that 88% of decisions taken by NDPAs are always legally binding<sup>14</sup> (88%) *vis-à-vis* a 12% of decisions (Germany and Ireland), which are never legally binding. In 1/5 of cases, the decision may or may not be legally binding, depending on the addressee. More information is needed to clarify this point.

Lastly, when they engage in legal proceedings (Q 4.4, Sweden included, 100%=16), NDPAs do so as either legal representatives, or in other roles (38% and 44% respectively).

<sup>13</sup> See footnote 12, above.

<sup>14</sup> Italy has clarified the following: “administrative sanctions are provided for failure to abide by the provisions either setting out necessary measures or laying down prohibitions by the Garante as per section 154(1), letters c) and d) of the DPCode (See Article 162.2-ter). Moreover, failure to comply with provisions issued by the Garante is in specific cases punished by a criminal sanction (See Article 170 of the DPCode)”.



#### Q 4.4 Role of NDPA in legal proceedings

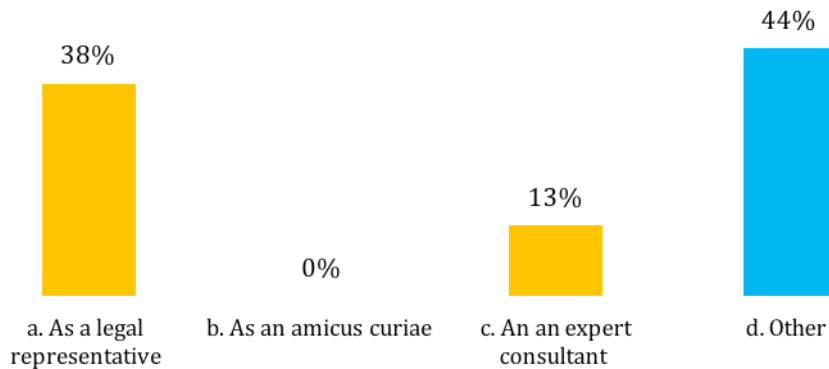


Figure 4 Q 4.4 If your mandate includes litigating cases before courts ((f) in question 4.2), could you describe the role you may have in front of courts?

Such additional roles include being a party in the proceedings, which is the case when the decisions of NDPA are appealed and seized before courts (e.g. Hungary, Ireland, Italy, Malta) as well as when they initiate proceedings (Ireland, Romania).<sup>15</sup> Hungary clarified it is involved in Freedom of Information procedures.

Only two NDPA (13%) declared they act as expert consultants (Finland and Hungary). Even though no authority chose item 'b', both Italy and the EDPS mentioned they might perform the role of '*amicus curiae*'. The EDPS, in particular, clarified that, "in its orders of 17 March 2005 in the so-called PNR-cases, the Court of Justice decided that the right of the EDPS to intervene extends to all matters concerning the processing of personal data. In practice, this means that the EDPS' right to intervene in court cases [...] extends to all matters affecting the protection of personal data, either on the EU level or in the Member States. In his interventions, the EDPS aims at clarifying the perspective of data protection. According to the order of the President in Case C-73/07, the right to intervene does not extend to preliminary rulings procedures (under Article 267 TFEU). However, in a few requests for preliminary rulings, the EDPS has been invited by the Court as expert to provide oral and/or written contributions (e.g. Data retention Directive case, Schrems case). Similarly the EDPS has been invited by the Court to provide contributions as expert in the request for an Opinion 1/15 (International agreement PNR Canada)."<sup>16</sup>

Note that there is a mismatch between the responses provided to Q 4.4 and to the earlier Q 4.2. While Cyprus said it has the power to engage in legal proceedings, it

did not clarify its role, whereas Estonia, which had not indicated any such powers, indicated it can act as a legal representative. Far from being a 'naming and shaming' exercise, this shows the need to delve further in the question of powers and the image that DPAs have of themselves, with a view to face the changes enshrined in the data protection reform package (see *infra*, section 4).

<sup>15</sup> The EDPS noted they "can be plaintiff or defendant in a court case, concerning our decisions."

<sup>16</sup> A description of the Court activities is available at: <https://secure.edps.europa.eu/EDPSWEB/edps/Consultation/Court>.



### 3. CURRENT USE OF THE CHARTER

This section sheds light on the way in which NDPAs and the EDPS use the Charter in the discharge of their tasks. It draws mainly on part II of the questionnaire, and on some items of parts III and IV.

#### 3.1 The Charter is a supporting instrument, in addition to other sources of fundamental rights

As anticipated in section 2, and despite the role of quasi-judicial authorities played by NDPAs, responses to Q 5 (Sweden excluded,<sup>17</sup> 100%=15) suggest that the Charter does not seem to be relied upon as the primary instrument

of reference for fundamental rights, but rather that it is used as a supporting document.

Most NDPAs use it as a legal basis or source, among others, to hear and decide cases. Half of the respondents use it as a source or ground when referring court cases to police or courts, and as a focus of recommendations. Only one third of respondents declared to use it as a legal source to hear/decide cases. Respondents, other than the EDPS, affirming that they use the Charter in such a way are Cyprus, Greece, Ireland and Lithuania. Cyprus noted that the choice of instrument varies according to the case at hand. Italy selected the option 'other' but did not qualify its answer, which calls for an analysis of the following question.

#### Q. 5 Role of Charter within NDPAs activities

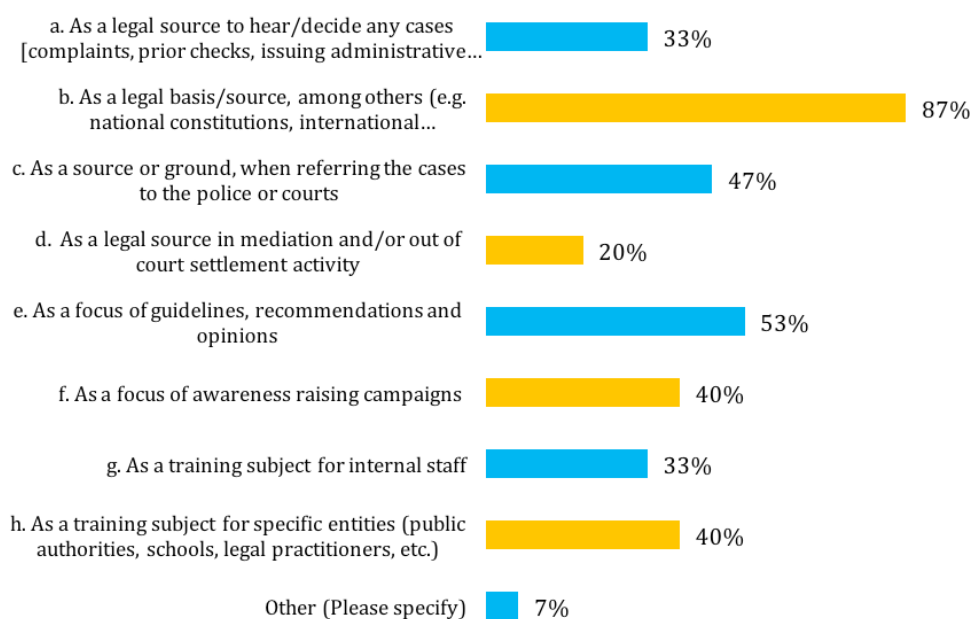


Figure 5 Q 5 Which role does the Charter play within your activities? (multiple answers possible)

<sup>17</sup> In the previous version of the questionnaire, which included different options, Sweden selected item b (the Charter is a legal basis among other).

According to the responses given to Q 5.1 (Sweden excluded, 100%=15), most NDPAs primarily rely on the Constitution (80%) and on statutory provisions (60%), then on instruments of the Council of Europe, such as the ECHR and Convention 108 (both chosen by 47% of respondents), and then on other sources of international law.

legislative initiatives (Q 8); and providing out-of-court dispute settlement (Q 9). The answers received do not indicate any variation of the use of the Charter in relation to the specific task or activity. It is important to note that answers clustered around Q 6-6.2 and 7, while later questions were mostly left blank. This is because NDPAs clarified in the early questions that the Charter is used as a supporting instrument, among others, or as an instrument for auxiliary arguments, irrespective of the activity at hand.

### Q. 5.1 Sources of human rights relied upon the most

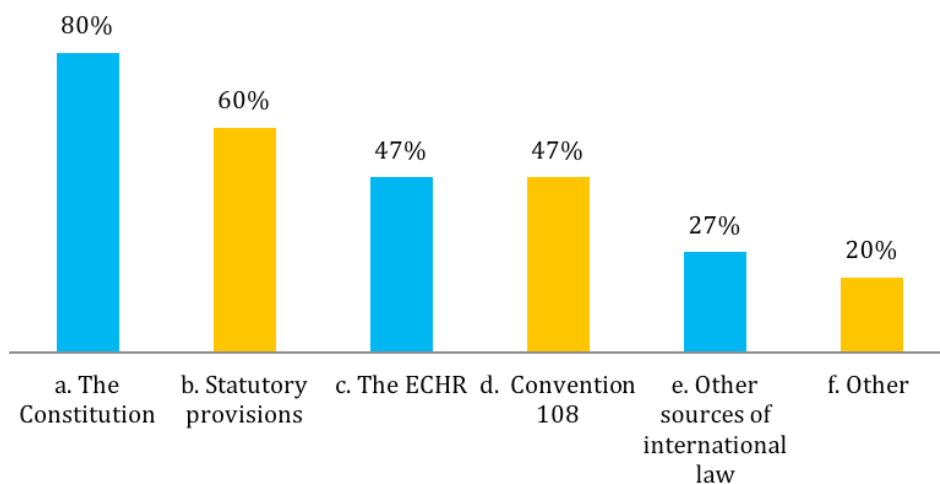


Figure 6 Q 5.1. If the Charter is not the human rights instrument of reference in your work, which other source of human rights do you rely upon the most?

Three NDPAs (Greece, Italy and Malta) indicated they use other instruments. The Greek NDA listed statutory provisions transposing Directives 95/46 and 2002/58 (e-Privacy) into national law, while Italy noted that all instruments mentioned in Q 5.1 could be used depending on the case at stake. The Italian NDA further specified that statutory provisions are more likely to be explicitly referred to, whereas sources bearing greater legal force are often implied. Malta noted that its preferred options (a, c and d) are used together with the Charter. Note that the EDPS did not (understandably) tick any of the items, but nevertheless added, “The Charter is the instrument of reference in our work. We also take into account the EU treaties, the European Convention on Human Rights and the case law of the ECtHR, Convention 108, and for HR-related cases the Staff Regulation of EU civil servants and other staff (statutory provisions governing employee’s rights in EU institutions and bodies).”

The outcome drawn on questions 5 and 5.1 is corroborated by qualitative information derived from the combined responses to questions 6 to 9 (Sweden always excluded). Those questions aimed to investigate whether NDPAs (and the EDPS) use the Charter differently in relation to their different role, and in particular when: dealing with complaints and claims (Q 6, 6.1, 6.2); engaging in legal proceedings (Q 7, 7.1, 7.2); commenting on government’s

For instance, in relation to Q 6 (number of cases heard/decided concerning the violation of the Charter), Slovenia explained that the provisions of the Charter and relating case law of the CJEU are used in cases they handle as a form of supportive argumentation, not the primary source of argumentation/decision.

When asked about the effects produced by the use of the Charter in cases dealt with (Q 6.2), Malta, Italy and Slovakia (with different reasons) noted that the use of the Charter did not affect the final result of the cases. Slovenia and Cyprus stressed that the Charter comes in the equation as an auxiliary argument. Slovenia further added that, as part of the auxiliary argumentation (within cases of video surveillance or employee monitoring, Q 7.3), they relied upon the reasoning of the CJEU in cases such as *Ryneš*, *Scarlet Extended* and *Digital Rights Ireland*. Only Ireland said that the Charter made a difference in some cases, when considering proportionality. The EDPS stands obviously out, in that, on the basis of the higher force of the Charter, it noted that all domestic sources must be assessed against the Charter, which would then act as a benchmark.

Also in relation to Q 7.1, which asked to provide an approximate indication of the number of court cases in which the EU Charter was relied upon either for the principal, or the auxiliary, argument, both Lithuania



and Malta stated that they use the Charter for auxiliary arguments, the former specifying it happened only once. Moreover, NDPAs were not able to address Q 7.3, which dealt with the role played by the Charter in court cases where it was principally relied upon. Answers provided to this question seem to clarify that, with the (clear) exception of the EDPS, no NDPA uses the Charter for primary argumentations.

The auxiliary role of the Charter may provide an explanation for, or at least be connected with, the lack of statistics on the use of the Charter resulting from answers to questions 6 to 9. For instance, when asked how many of the cases NDPAs deal with concern the violation of the Charter (Q 6), only Finland and Hungary provided figures. Ireland and Slovenia said explicitly they do not keep statistics to this effect, and the other respondents did not provide any indication. Similarly, in the context of Q 7, which explored the number of court cases concerning the violation of the Charter (i.e. a smaller category than claims/complaints by individuals), almost half of the NDPAs did not provide a response, while some referred again to the absence of statistics (Ireland).

Moreover, and on this basis, it is easy to explain why only a few NDPAs (Finland, Hungary, Ireland, Italy, Malta and the EDPS) were able to say who introduced the Charter in the case analysis they dealt with (Q 6.1). Quantification (Q 7.1) was as difficult for court cases as it was for generic cases. Austria mentioned one case in which the Charter was relied upon (but did not specify whether it was used for the principal or auxiliary arguments). Similarly, none of the respondents could provide examples of cases where the national court rejected their arguments on the basis of the Charter (Q 7.5). Moreover, few respondents offered information on the number of national laws concerning the Charter they commented upon as part of their advisory role to governments (Q 8), and none of the NDPAs was able to provide information as to cases of mediation and out-of-court dispute settlement (Q 9) that concerned an alleged violation of the Charter. During the CharterClick! Workshop held in January 2017 to discuss the results of the questionnaire, the representative of the Italian NDPA shared the example of an opinion on anti-corruption legislation that relies on the Charter.<sup>18</sup>

Actually, the absence of statistics as to the number of cases in which the Charter is used as a main or supporting argument to decide cases (or as the basis of arguments introduced in the court case analysis by parties in the proceedings, or else when the court upheld or rejected arguments on the basis of the Charter) may perhaps further reinforce the perception of its secondary character. Yet, it must be also pointed out that NDPAs seem to be dealing with a number of rights enshrined in different articles of the Charter (other than Articles 7, 8 & 11), e.g. Articles 13 (*Freedom of the arts and sciences*);

21 (*Non-discrimination*); 24 (*The rights of the child*); 41 (*Right to good administration*); 42 (*Right of access to documents*); 47 (*Right to an effective remedy and to a fair trial*); 48 (*Presumption of innocence and right of defence*); and 52 (*Scope of guaranteed rights*), as results from answers to Q. 10.

Such an outcome raises the question as to why NDPAs do not make a greater use of the Charter (irrespective of the legal obligation to give precedence to Union law). In the following, three options are explored: potential hurdles in using the Charter, the lack of appropriate training on the Charter and the perception of the added value of the Charter.<sup>19</sup>

## 3.2 Why is the Charter not the primary FR instrument of reference?

### 3.2.1 Explanation one: hurdles

Q. 12 (Sweden included, 100% = 16), which belongs in section III of the questionnaire, explores whether respondents experience difficulties in the practical use of the Charter. The question was completed by two thirds of respondents (62,5%), four of which ticked the option 'other'. Three of these (18,75% of the total), namely Italy, Lithuania and Malta, clarified that they do not encounter any issues in the practical use of the Charter as such. Considering that 37% of respondents left this question blank, it may be possible to argue that over half of the sample does not experience particular issues in the practical use of the Charter.

As a result, only 7 NDPAs (44%) expressed some forms of difficulty in the use of the Charter. Greece, Ireland, Romania and Slovakia said they experience problems in understanding the scope of application of the Charter, while Estonia, Ireland, Slovenia and Slovakia point to issues in coordinating the provisions of the Charter with other sources (note that two of them, Ireland and Slovakia, selected both option 'a' and 'b'). The other country who noted some difficulty by ticking item 'c' ('other'), Cyprus, pointed to the difficulty of balancing the right to privacy and personal data protection with other rights, such as freedom of expression.

<sup>18</sup> The text, in Italian only, can be found at <http://www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/4772830> (last accessed on February 22<sup>nd</sup>, 2017).

<sup>19</sup> Note that, in the case of other NHRBS, a major reason for the underuse of the Charter was the lack of human resources. This point was not explored in the current questionnaire, nor it came out in the workshop held in January 2017, yet it may be worth exploring the matter further. See the results concerning the first survey, elaborated by Dr. Moraru, at: <http://52.58.51.113/guidelines>.



## Q 12 Main difficulties in use of the EU Charter

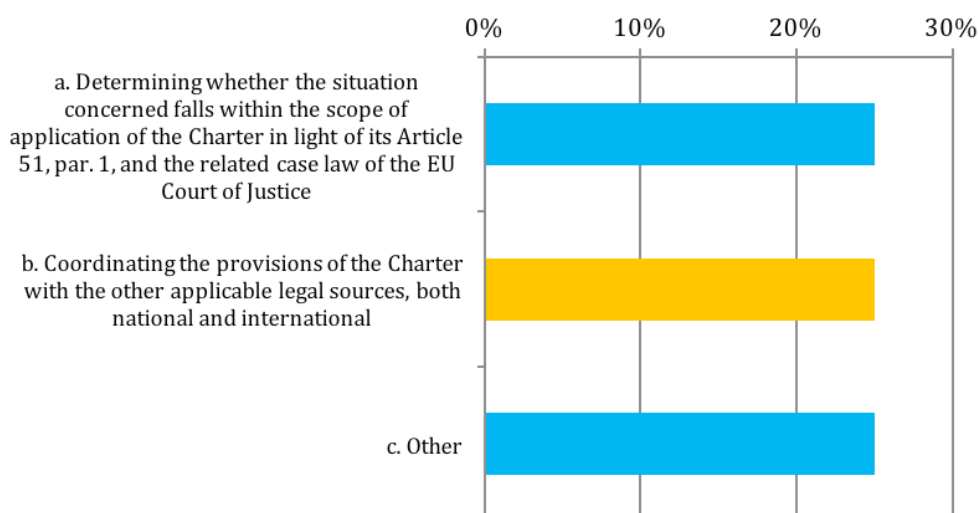


Figure 7 Q 12 Which are the main difficulties you experience in the practical use of the EU Charter?

All in all, hurdles in using the Charter may partly account for NDPAs' underuse of the Charter, but they do not seem to provide a satisfactory explanation.

### 3.2.2 Explanation two: absence of training

A second potential explanation as to why the Charter is not the main FR instrument relied upon by NDPAs may relate to training. While on the one hand 87,5% of NDPAs (with the exception of the EDPS and Sweden) conduct awareness-raising activities as part of their mandate (Q 4.2, item b, Sweden included for this item,<sup>20</sup> 100% =

16), on the other hand less than half of the respondents declared that training is part of their official tasks.

NDPAs who reported that their mandate includes training are Cyprus, Estonia, Finland, Germany, Hungary and Malta. The EDPS clarified that, despite training is not part of their mandate, they *de facto* train DPOs and data controllers (as well as with staff as data subjects). One third of responding NDPAs said that they use the Charter as a training subject for specific addressees, or for their internal staff (Q 5, items g and h, Sweden excluded, 100%=15).

## Q 4.2 (extract) Is training part of your activities?

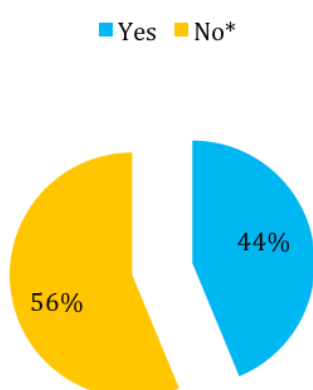


Figure 8 Q 4.2 (excerpt) Please, select which of the following activities are included in your mandate

<sup>20</sup> Such a choice requires a brief methodological explanation, since Sweden was not included in the analysis of Q 4.2 in Section 1 of this report, because of the mismatch between Q 4.2 in the first and second round of the questionnaire. However, both the first and second round feature items a (awareness raising) and b (training), placed in the same position, so that it can be assumed that Sweden's choice to tick item b (but not a) was not influenced by the following (and differing) items. The reason why Sweden is included has to do with the attempt to be as comprehensive as possible.

## Q 5 (extract) items g and h

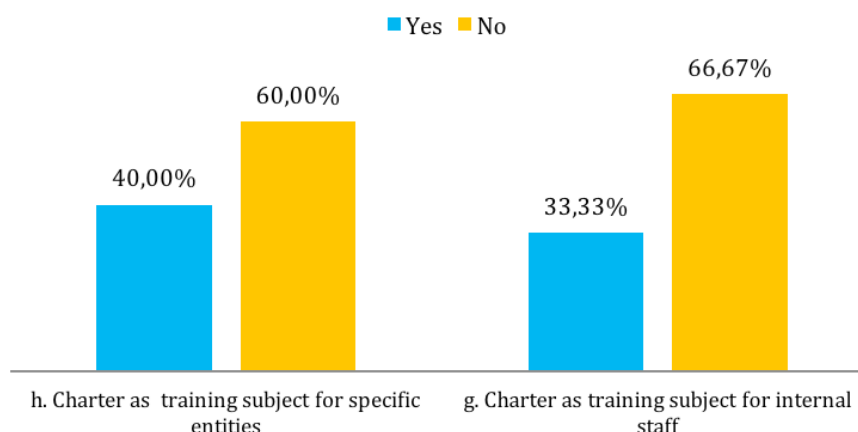


Figure 9 Q 5 (excerpt) Which role does the Charter play within your activities? (multiple answers possible)

The list of authorities that use the Charter for training purposes, which is provided in the table below, only partly overlaps with that of NDPA's whose mandate includes training (Estonia, Finland and Malta did not report to use the Charter as a training topic). Note, however, that the scope of the two questions (Q 4.2 and Q 5) is different.

Table 2. NDPA's that use the Charter for training activities

Q 5 Which role does the Charter play within your activities?	Cyprus	Germany	Hungary	Ireland	Romania	EDPS
g. As a training subject for internal staff	X	X		X	X	X*
h. As a training subject for specific entities	X	X	X	X	X	X**

As for specific training activities that concern the Charter (Questions 18 and 19), NDPA's that provided answers include both those whose mandate encompasses training, and those whose mandate does not encompass training. This may suggest it is difficult to distinguish between training and awareness-raising activities (the latter performed by all DPAs apart from Sweden and the EDPS) when it comes to the Charter. In any case, qualitative data shows a scarcity of training activities, which may both result from the absence of documentation on this point, in that NDPA's may not keep statistics (as seen above), as well as the absence of a specific mandate to train (particularly on the Charter).

While the fact that only 1/3 of the interviewees trains its own internal staff on the Charter may influence its use, nevertheless it cannot be inferred that the limited

training activities concerning the Charter conducted by NDPA's is the cause of its limited use. The next section thus addresses additional explanations as to why the Charter is not the primary FR instrument of reference.

### 3.2.3 Explanation three: perceived added value of the Charter

Although one of the underlying hypotheses of the questionnaire was that there might have been a link between the way how NDPA's use the Charter as described by Questions 6 to 9, and the breadth of their powers as results from Q 4.2, the information obtained did nevertheless not suggest any connection between the breadth of NDPA's powers and the use of the Charter.

However, answers to section II of the questionnaire were far from inconclusive: the qualitative data offered by NDPA's and the EDPS in the replies to Questions 6 to 9 (see Annex 2) shed light on a number of very interesting motivations concerning the perceived value of the Charter. Such motivations may provide the strongest explanation as to why the Charter is not relied upon as the primary fundamental rights instrument.

First, NDPA's point to the fact that the Charter substantially overlaps with national instruments, so that, whenever the latter are applied, the Charter is also indirectly applied. In relation to Q 6 (as to the number of cases heard/decided that concerned the violation of the Charter), the Austrian DPA clarified that, since the guarantees provided by Article 8 of the Charter are equivalent to those enshrined in the Austrian Constitution, and the Austrian Data Protection Act 2000, all violations of the right to data protection constitute *de facto* violations of Article 8. In the case of Q 6.2 (consequences of the use of the Charter in cases heard/decided), Malta and Italy noted that the

\* In that context, the EDPS stated they "have regular 'case law meetings' with all staff to update on the case law of CJEU and ECtHR where role of Charter is also discussed."

\*\* Moreover, the EDPS "include where relevant references to Charter" in their training to "EU institutions and bodies, or more generally when speaking to the public at conferences." While they "have not done specific training on the Charter as such" they "would mention references to the Charter in the specific context at stake."





use of the Charter did not affect the final result of the case they analysed, mostly because of the consistency and overlap between national instruments and the Charter. With reference to the same question, the Slovak DPA clarified that the Charter could not change the result of the case analysis, since the domestic sources provide a greater level of protection than the Charter.

Secondly, many NDPAs stressed that their mandate is based on statutory law transposing Union law (e.g. Directive 95/46 and Directive 2002/58), and as a result, their activities and motivations must be primarily based on statutory law. In relation to Q 6, Slovenia and Malta explained that the cases they are authorised to handle concern suspected breaches of the national statutory provisions transposing Union law. Hungary explained that in the case analysis (Q 6.2) neither the NDPA nor other stakeholders (e.g. courts) refer specifically to the EU Charter, but rather to the Privacy Act. Also in relation to Q 7 (court cases followed concerning an alleged violation of the application of the EU Charter), some referred again to the fact that cases concern statutory law only (Malta, Slovenia).

Thirdly, NDPAs' limited use of the Charter seems to suggest they have not been encouraged to use it, because national Courts themselves have not been making wide use of the Charter. The Italian DPA argued that references could increase in the near future, particularly as the DPA itself included references to the Charter in several defences they prepared in the course of 2016 (Q 7). The EDPS provided a list of cases where the Charter played a fundamental role.<sup>21</sup> Moreover, only one NDPA was able to mention a court case where the national court upheld its arguments based on the Charter (Q 7.4 on court case where the national court upheld NDPAs' arguments based on the Charter)<sup>22</sup>. As noted earlier, none of the NDPAs could provide examples of cases where the national court rejected their arguments on the basis of the Charter (Q 7.5 on court cases where the national court did not follow NDPAs' arguments based on the Charter).

In sum, it seems that the underuse of the Charter is not linked to that fact that it competes with other instruments, but rather as a result of an instrumental approach to existing instruments, whose reliance depends on their usefulness, accessibility/knowledge, and perceived added value. In their day-to-day practice, NDPAs do not seem to adhere to the theory of sources, but rather they follow a pragmatic approach dictated by their restricted mandate. While this scenario could be easily explained for the time being (e.g. because the applicable Union law does not refer to the Charter)<sup>23</sup>, there are reasons to believe that the situation may change with the entry into force of the GDPR/Police Directive.

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21 These are: "Opinion 1/15 on EU-Canada PNR agreement; Case C-362/14 (Schrems v Data Protection Commissioner); Case C-615/13P (Client Earth and Pan Europe v EFSA); Case C-288/12 (Commission v. Hungary); joint preliminary references C-293/12 and C-594/12 Digital Rights Ireland and Others; Case C-614/10 (Commission v. Austria); to Charter by EDPS in Case F-46/09 (V v. EP); reference to Charter by EDPS in case F-35/08 (Pachtitis vs. Commission and EPSO); reference to Charter by EDPS in case-194/04 (Bavarian Lager vs. Commission)."

22 This was Italy, who mentioned the case of Tribunal of Milan, n. 9941/2006, Mondadori vs Cattaneo.

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23 It should also be recalled that the Court's use of the Charter in the interpretation of applicable law has at times been disappointing, for instance when it comes to clarifying the role of the 'essence', and the distinction between article 7 and 8 of the Charter. This point, which was not explored in the questionnaire, was however raised several times in the context of the workshop held in January 2017 with NDPAs to discuss the results of the questionnaire. Participants seemed to agree on the need to receive more precise instructions on the difference between the two rights from the Court.



## 4. PERCEIVED FUTURE ROLE OF THE CHARTER

To this effect, NDPAs were asked a number of questions concerning the future regulatory scenario. A first set of questions concerns an evolution of their mandate (vis-à-vis their current mandate illustrated in Q 4.2, *supra*, section 2) and internal procedures. As for the former, NDPAs are unsure whether the entry into force of the GDPR will have an impact on their mandate (Q 4.2.1). More than 50% of respondents<sup>24</sup> (Austria, Cyprus, Finland, Germany, Hungary, Ireland, Italy, Malta and Slovakia) indicated that their powers would be modified. The EDPS noted that it would depend on the content of the instrument repealing Regulation 45/2001. Lithuania, Romania and Slovenia said there would not be changes. Estonia declared to be unable to answer yet, while Greece stated that their mandate would not change, even though there would be some changes.

Q 5.2 Will mandate change with GDPR?

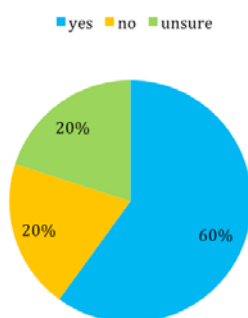


Figure 10 Q 5.2 Is the remit of your mandate bound to change after the entry into force of the General Data Protection Regulation?

For what concerns NDPAs' procedures, Q 4.3.2 asked whether NDPAs could foresee changes in the examination process following the introduction of Directive 680/2016, which will approximate legislation in the area of personal data processing for police and judicial purposes. Countries that believe the examination process will not

change include Cyprus, Germany, Malta and Romania. Hungary and Slovenia only expect minor changes. The other NDPAs were unable to respond, either because the matter is under consideration, or because it will depend on the content of the national instrument transposing the Directive. The EDPS also provided a cautious answer, noting however their new role in supervising the activities of Europol.

Such answers may be surprising in the light of the changes contained in the GDPR, particularly in chapter 6 (equal mandate for all NDPAs, in line with articles 57 and 58), chapter 7 (article 63 on joint operations) and chapter 8 (articles 82 and 83 on right to compensation and sanctions). Yet, such answers are in line with the fact that almost half of the respondents (47%) said that the Charter would not play a different role after the entry into force of the GDPR and Directive 680/2016 (Q 5.2, Sweden excluded). Three NDPAs expressed uncertainty (Estonia, Lithuania and Slovakia), while Hungary said it would change. Ireland and Italy claimed it would play a greater role, potentially offering a parameter for the future activity of the DPA. The EDPS, for whom the Charter is the main source of fundamental rights, noted that the Charter would continue playing the primary role, and that the revisions of the e-Privacy Directive may provide greater guidance on Article 7 of the Charter (respect for private life, particularly confidentiality of communications).

Q 5.2 Will the Charter play a different role after the GDPR and Directive 2016/680?

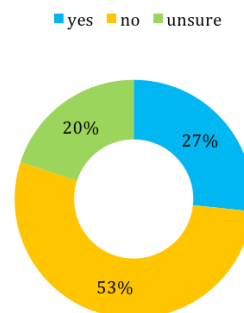


Figure 11 Q 5.2 Will the Charter play a different role after the entry into force of the General Data Protection Regulation and Directive 2016/680?

24 Sweden excluded.

These answers seem to overlook the role of the Charter in the upcoming legislation. Suffice to recall the first recital of the GDPR and Directive 2016/680

The protection of natural persons in relation to the processing of personal data is a fundamental right. Article 8(1) of the 'Charter'...provide that everyone has the right to the protection of personal data concerning him or her. And recital 46 of Directive 2016/680

Any restriction of the rights of the data subject must comply with the Charter and with the ECHR...and in particular respect the essence of those rights and freedoms.

## 5. CONCLUSIONS

The selected results illustrated in this report were discussed with a few NDPAs in the context of a workshop held in Florence on January 20<sup>th</sup> 2017.<sup>25</sup> Participants substantially confirmed the findings, as well as the need, emerged from answers to the questionnaire, to further investigate the subject matter, e.g. in the context of the activities of the Article 29 Data Protection Working Party. It is useful to recall that 50% of respondents to Q 16, concerning elements that can help defining the scope of application of Charter, said they would find it useful to discuss concrete cases among colleagues.

A prospective discussion should go beyond the mandatory nature of the application of the Charter, whose force, it should be recalled, is equivalent to that of the Treaties. In fact, the Charter may be of strategic importance in the context of a regulatory environment that aims at homogeneity, rather than harmonization, across the Union, particularly in the light of the new instrument of joint operations, which will require decisions (and related motivations) to be tenable in multiple Member States. The Charter, which enables NDPAs to further FRs in a logic of multilevel governance and protection, has also a number of advantages. First and foremost, it distinguishes between the right to respect for private and family life, home and communications, and the right to the protection of personal data. To be sure, a clearer intervention of the CJEU on the difference between the two rights is strongly needed (see, for instance, the inconclusiveness of *Digital Rights Ireland* and *Tele2 Sverige*<sup>26</sup>), but such intervention may be spurred by specific questions for preliminary reference raised by national courts, and prompted in turn by NDPAs. Secondly, the Charter concretizes special protection for specific categories, such as children and elderly people. Finally, the Charter devotes a full title to procedural rights, e.g. due process rights, that are so crucial in the quasi-judicial activities of NDPAs (see, for instance, *WebMind Licenses*<sup>27</sup>).

25 These were the Belgian, Croatian, Greek, Hungarian, Lithuanian and Italian NDPAs, as well as the EDPS.

26 Judgment of 8 April 2014 in *Digital Rights Ireland* and *Seitlinger and Others*, Joined cases C-293/12 and C-594/12, EU:C:2014:238; Judgment of 21 December 2016 in *Tele2 Sverige* and *Watson and others*, Joined cases C-203/15 and C-698/15, EU:C:2016:970.

27 Judgment of 17 December 2015 in *WebMindLicenses*,

### 5.1 Recommendations

The discussion of these results may benefit from a number of recommendations that come from the experience of the CharterClick! Project, and the first survey (see Annex 1). We suggest to: i) conduct training on the Charter, both for the internal staff as well as for categories of potential users, from lawyers to laypeople. As for the training of staff, NDPAs may find useful to consult the “Practical Guidelines on the use of the EU Charter – multiple functions and added value compared to other human rights instruments”; ii) make use of tools that support decision-makers in clarifying the scope of application of the Charter, such as the CharterClick! Tool, which could also be useful in the context of training, as well as support them in finding suitable case law, such as the database;<sup>28</sup> iii) experiment in introducing the Charter, as courts and other authorities will follow; iv) keep statistics on the use of the Charter in the various activities; v) discuss the results with colleagues.

C-419/14, EC:C:2015:832.

28 All instruments mentioned here are available on the new website: <http://52.58.51.113>.





# REFERENCES

## CJEU case law

Judgment of 8 April 2014 in Digital Rights Ireland and Seitlinger and Others, Joined cases C-293/12 and C-594/12, EU:C:2014:238

Judgment of 6 October 2015 in Schrems, C-362/14, EU:C:2015:650

Judgment of 17 December 2015 in WebMindLicenses, C-419/14, EC:C:2015:832

Judgment of 21 December 2016 in Tele2 Sverige and Watson and others, Joined cases C-203/15 and C-698/15, EU:C:2016:970

## EU law

Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the Protection of Individuals with regard to the Processing of Personal Data and on the Free Movement of such Data (Data Protection Directive) OJ L 281

Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data by Competent Authorities for the Purposes of the Prevention, Investigation, Detection or Prosecution of Criminal Offences or the Execution of Criminal Penalties, and on the Free Movement of such Data, and Repealing Council Framework Decision 2008/977/JHA, OJ L 119/89

Regulation 45/2001/EC of the European Parliament and of the Council of 18 December 2000 on the Protection of Individuals with regard to the Processing of Personal data by the Community institutions and Bodies and on the Free Movement of such Data, OJ L 8

Regulation 2016/679/EU of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of such data, and Repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119/1

## Secondary literature

Fundamental Rights Agency, *Data Protection in the European Union: the role of National Data Protection Authorities. Strengthening the fundamental rights architecture in the EU.* (Publications Office of the European Union, 2010)



## 1. Annex: Methodological Note

The questionnaire was sent to NDPAs at the end of September 2016. Responses were collected up until January 2017. Data protection authorities were asked to answer a questionnaire tailored to their specific role as quasi-judicial bodies tasked with mainly one right, the protection of personal data, enshrined in Article 8 of the Charter. The questionnaire, which was filled in by 14 NDPAs and the EDPS (whose specificities are clarified in section 1 of this Report), is provided in Annex 2 below.

This questionnaire has been refined on the basis of the first survey filled in by National Human Rights Bodies (hereafter NHRBs), which was designed to embrace as many NHRBs as possibly, taking into account their diverse powers and tasks relating to the oversight of different rights.<sup>29</sup> The Swedish NDPA took part in the first survey, whose parts I and II are different from the questionnaire analysed herein.

The objective of this analysis being to be as inclusive as possible, answers by Sweden are included only when directly comparable. For the sake of methodological transparency, each question illustrated in this report is complemented by a note, put in brackets, stating whether the Swedish response is available, and clarifying the corresponding total. Hence, if the answer is available, I write (Sweden included, 100% = 16), whereas if an answer is unavailable/incomparable, I write (Sweden excluded, 100% = 15).

The results illustrated in this report are derived from quantitative information (mostly in the shape of YES/NO questions) combined with qualitative information provided by respondents. Please note that qualitative information is relevant irrespective of the number of respondents who provide such answers.

## 2. Annex: the questionnaire

*!!! Please, note that the questions below refer to your experience in the application of the Charter from 1 December 2009 (the date on which the Charter became legally binding) to the date on which you fill in the questionnaire.*

### 2.1 Part I – Your institution

The purpose of this first part is to gather basic information about the supervisory authorities operating within the Member States, and the legal areas covered, if not limited to the protection of personal data. Previous research shows that the mandate of supervisory authorities varies in relation to the transposition of Article 28 of Directive 95/46/EC on tasks and competences (a situation likely to change with the entry into force of the General Data Protection Regulation).

#### 1. Full name:

#### 2. Member State:

#### 3. Legal form:

Please, indicate if the act establishing your body is available in English and, whenever possible, include a link to it or send us a pdf version.

#### 4. Mandate

**4.1** Please, specify which of the following fundamental rights listed in the Charter are within your remit: (multiple replies possible)

- a. protection of personal data
- b. respect for private and family life
- c. freedom of information
- d. Other (please specify)

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<sup>29</sup> Results concerning the first survey, elaborated by Dr. Moraru, can be found at: <http://52.58.51.113/guidelines>.



4.2 Please, select which of the following activities are included in your mandate:

- a. Training
- b. Awareness raising
- c. Complaints/claims processing: addressing claims ☐; deciding claims ☐
- d. Advisory role for government: mandatory ☐; optional ☐
- e. Processing operations: prior checking ☐; blocking/erasing data ☐;
- f. Engaging in legal proceedings: intervening in cases before judicial authorities ☐; bringing cases before judicial authorities ☐;
- g. Referring cases to: police forces ☐; judicial authorities/public prosecutor ☐
- h. Mediation provider: advising parties ☐; out-of-court dispute settlement ☐
- i. Issuing sanctions: administrative measures ☐; pecuniary fines ☐
- j. Other (please specify) \_\_\_\_\_

4.2.1 Is the remit of your mandate bound to change after the entry into force of the General Data Protection Regulation?

4.3 *If your mandate includes the processing of complaints/claims raised by individuals ((c) in question 4.2), could you specify the legal value of the decisions you may issue? (Multiple replies possible)*

- a. Legally binding for parties
- b. Not legally binding for parties
- c. Subject to appeal or judicial review by courts/administrative bodies/other (please specify)
- d. Not subject to appeal or judicial review
- e. Compulsory for parties before any judicial action

Please add any additional aspect you may deem interesting.

4.3.1 What is the general examination process followed by your body when processing complaints/claims raised by individuals, and its timeline? If available, please add links to the relevant documents.

4.3.2 Does the examination process change where the complaint falls outside the scope of application of the Charter (e.g. national security/intelligence), or where the complaint concerns an area of shared competence between the European Union and Member States (e.g. cross-border data exchange for law enforcement purposes)? If so, could you highlight the main differences in processing in such cases?

4.3.3. Is your supervisory authority planning to change the examination process as a result of the entry into force of the Directive 2016/680 (Directive on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data)?

4.4 *If your mandate includes litigating cases before courts ((f) in question 4.2), could you describe the role you may have in front of courts?*

- a. As a legal representative
- b. As an amicus curiae
- c. As an expert consultant
- d. Other (please specify below)





## 2.2 Part II – The EU Charter in your day-to-day activity

The purpose of this part is to identify where, among the array of activities that your institution carries out, the EU Charter has a specific role. The questions will allow us to improve our understanding on how the EU Charter impacts on such activities and which are – if any – the tools employed to make the best use of the EU Charter.

### 5. Which role does the Charter play within your activities? (multiple answers possible)

- a. As a legal source to hear/decide any cases [complaints, prior checks, issuing administrative measures, sanctions etc.]
- b. As a legal basis/source, among others (e.g. national constitutions, international conventions...), of inspiration for arguments when engaging in legal proceedings
- c. As a source or ground, when referring the cases to the police or courts
- d. As a legal source in mediation and/or out of court settlement activity
- e. As a focus of guidelines, recommendations and opinions
- f. As a focus of awareness raising campaigns
- g. As a training subject for internal staff
- h. As a training subject for specific entities (public authorities, schools, legal practitioners, etc.)
- i. Other (Please specify)

5.1. If the Charter is not the human rights instrument of reference in your work, which other source of human rights do you rely upon the most:

- a. The Constitution
- b. Statutory provisions
- c. The European Convention on Human Rights
- d. The Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data
- e. Other sources of international law
- f. Other (please specify) \_\_\_\_\_

5.2 Will the Charter play a different role after the entry into force of the General Data Protection Regulation and Directive 2016/680?

### 6. How many of the cases that you heard/decided have concerned the violation of the Charter?

If possible, specify the number of relevant cases *per* year since 2010 and the total number of cases dealt within the same year.

If you produce a version of your annual report translated into English, please add a link here.

2010 -	Total cases _____	Cases involving the Charter _____
2011 -	Total cases _____	Cases involving the Charter _____
2012 -	Total cases _____	Cases involving the Charter _____
2013 -	Total cases _____	Cases involving the Charter _____
2014 -	Total cases _____	Cases involving the Charter _____
2015 -	Total cases _____	Cases involving the Charter _____
2016 -	Total cases _____	Cases involving the Charter _____

#### 6.1 Who introduced the EU Charter in the case analysis?

- The claimant
- The defendant
- The deciding body
- Other (please, specify below)

#### 6.2 In the cases that you heard/decided, which consequences did the use of the Charter entail?

Please specify, in particular, whether the use of the Charter led to establishing a different interpretation of the fundamental right concerned as compared to the domestic sources applicable.

If yes, please specify whether the Charter contributed to establishing a higher or lower standard of protection than the domestic sources.





**6.3. Can you briefly (and anonymously if preferred) describe the most important case (or cases) where you applied the EU Charter?** Please select the one(s) where the Charter has played a role in the authority's reasoning.

**7. How many of the court cases you followed (including preliminary references and third party interventions) concerned an alleged violation of the application of the EU Charter, or the interpretation thereof?**

**7.1 Could you provide an approximate indication of the number of court cases in which the EU Charter was principally relied on? In how many cases did it serve as an auxiliary argument?**

**7.2 Who introduced the EU Charter in the court case analysis?**

- a. Victim of the violation
- b. Suspected author of the violation
- c. Deciding body
- d. The supervisory authority

**7.2.1 If you replied (d) to question 7.2 above,** could you describe the role you may have had in front of courts?

- e. As a legal representative
- f. As an *amicus curiae*
- g. As an expert consultant
- h. Other (please specify below)

**7.3 In the court cases where the Charter was principally relied on, which consequences did its use entail?** Please specify, in particular, whether the use of the Charter led to establishing a different interpretation of the fundamental right concerned as compared to the EU/domestic sources applicable.

If yes, please specify whether the Charter contributed to establishing a higher or lower standard of protection than the EU/domestic sources.

**7.4 Can you mention a court case where the national court upheld your arguments based on the Charter?**

**7.5 Can you mention a court case where the national court did not follow your arguments based on the Charter?**

**8. As part of your advisory role for governments,** could you indicate which legislation protecting or potentially interfering with the rights enshrined in the Charter you discussed, if any? Were your comments implemented?

**9. If your mandate includes mediation and/or out-of-court dispute settlement,** could you briefly describe the most relevant case (or cases) of alleged violations of the Charter you were involved in? Please, highlight the rights invoked and the outcome of the case.

**10. Which are the fundamental rights enshrined in the Charter that are most frequently at stake in your activity?** Please, specify the provisions of the Charter that you refer to most frequently, possibly providing also some information on the context of the case

**11. Which of the following tools/databases do you use in order to collect information on the interpretation and application of the Charter and its potential?**

- a. CJEU database (Curia)
- b. Eur-lex
- c. FRA Charterpedia
- d. Academic works
- e. Internal database
- f. Best practices shared with other institutions
- g. Other (*Please, specify*): \_\_\_\_\_

**11.1** In case you answered e) or f) in the previous question (Q.11), could you please provide us some details on the tools/best practices you are referring to?



### 2.3. Part III – Help us modelling the CharterClick! On-line platform on your needs

The purpose of this part is to involve your institution in identifying the challenges the supervisory authorities may face when using the EU Charter, selecting the most useful tools that would help to overcome such difficulties. This will also help the project members in fine-tuning the CharterClick! deliverables upon the real needs of supervisory authorities.

#### 12. Which are the main difficulties you experience in the practical use of the EU Charter?

- a. Determining whether the situation concerned falls within the scope of application of the Charter in light of its Article 51, par. 1, and the related case law of the EU Court of Justice
- b. Coordinating the provisions of the Charter with the other applicable legal sources, both national and international
- c. Other (Please explain)

#### 13. Which would be the most useful tool among the CharterClick deliverables (please see below in the document for a wider description)? For more information on the design of each of the deliverables, please refer to Annex 1.

Please indicate your preference between 1 (extremely useful) and 5 (not very useful).

- a. Admissibility Checklist
- b. Database
- c. Practical Guidelines on the application of the Charter
- d. Best Practices concerning how to handle fundamental rights violations falling within the scope of the Charter.

Please, elaborate your answer(s):

#### 14. Which are the features that CharterClick! deliverable(s) should have in order to better fit with your needs?

- a. Clarity
- b. Ready to use (off the shelf) tools
- c. Language accessibility
- d. Internet/mobile accessibility
- e. Rich legal comparative data

Please, explain:

#### 15. Which are the main features that CharterClick! deliverables should have in order to make the Charter clearer to affected individuals who are non-professionals? Please list and explain the main features.

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_
- e. \_\_\_\_\_

#### 16. Based on your experience, which other type of tools (e.g. direct exchanges, meetings, networks, etc.) would be more useful to help you when defining the scope of application of the Charter?

#### 17. Would you have any additional consideration and suggestion?

Please share your views with us



## 2.4. Part IV – Awareness raising and training activities

This part concerns the initiatives aimed at raising awareness, also incidentally, on the EU Charter organised by the addressees during the reference period (2010-2016).

**18.** Could you indicate the most relevant ones in the last three years?

a. Title:

Number of person exposed:

Timeframe:

Description:

b. Title:

Number of person exposed:

Timeframe:

Description:

c. Title:

Number of person exposed:

Timeframe:

Description

**19.** If your mandate includes training activities as regards the Charter, could you indicate the most relevant ones in the last three years?

**19. 1. Which were the target groups that benefited from these training activities?** Please indicate the most numerous groups.

a. Own staff

b. Public officials

c. Law enforcement officers

d. Judges and prosecutors

e. Academics

f. Students

g. Social

h. General population

i. Other. Please specify:



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