

THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION:

the travaux préparatoires and selected documents

I. The Final Versions of the Charter of Fundamental Rights

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Table of contents

Foreword by Former Advocate General Sharpston	8
Foreword by President Dehousse	10
Analytical Introduction	12
Convention Chronology	29
1. <i>Full Chronology of the Charter Convention</i>	31
2. <i>Chronology of the Meetings of the Charter Convention</i>	43
3. <i>Chronology of the Meetings of the Praesidium of the Charter Convention</i>	47
4. <i>Chronology of Drafts of the Charter of Fundamental Rights</i>	49
Detailed Table of Contents	51
I. The Final Versions of the Charter of Fundamental Rights	83
1. <i>The First Version: the 2000 Charter of Fundamental Rights</i>	84
2. <i>The Second Version: the 2004 Charter of Fundamental Rights and Explanations, and Extracts from the Constitutional Treaty</i>	108
3. <i>The Version in Force: the 2007 Charter of Fundamental Rights and Explanations, and Extracts from the Treaties (Lisbon consolidated version)</i>	164
II. Key Pre-Charter Convention Documents	219
1. <i>The First Path – Institutional Resolutions, Calls and Drafts in relation to a Charter of Rights</i>	220
2. <i>The Second Path – Accession to the European Convention on Human Rights</i>	518
3. <i>The Judicial Origins of the Charter of Fundamental Rights</i>	570
4. <i>Fundamental Rights in the Treaties, from the Single European Act to Amsterdam (1986 – 1997)</i>	679
5. <i>Annex: Indicative Index of Additional Pre-Charter Documents</i>	702

III. The Charter Convention <i>travaux préparatoires</i>	708
1. <i>The Charter Convention's Mandate</i>	709
2. <i>Meeting records</i>	756
3. <i>Drafts, and Members' Amendments and Contributions</i>	1030
4. <i>NGOs and Others' Amendments and Contributions</i>	3865
5. <i>Miscellaneous Documents – Member Lists, Agendas and Work Plans, and European Parliament Delegation Documents</i>	5802
a. Member Lists and Curricula Vitae	5803
b. Agendas and timetables	6025
c. European Parliament Delegation Documents relating to the Charter Convention	6066
d. Council Press Releases Concerning the Charter Convention	6194
IV. Key Post-Charter Convention Documents	6217
1. <i>Selected travaux préparatoires from the 2002-2003 Convention on the Future of Europe and 2003-2004 Inter-Governmental Conference (IGC)</i>	6218
a. The Mandate of the Convention on the Future of Europe	6219
b. Meeting Records – Plenary, Praesidium and Working Group II	6242
c. Drafts, and Members' Amendments and Contributions	6540
d. NGOs and Others' Amendments and Contributions	7435
e. IGC Documents, 2003-2004	7574
2. <i>Selected travaux préparatoires from the Treaty of Lisbon and beyond</i>	7755
a. Council and IGC Documents, 2005-2007	7756
b. The Irish Protocol, 2009-2012	7837
c. The Withdrawn Proposal for a Czech protocol	7856
Annex: Sources of the Collected Documents	7873

Detailed Table of Contents

I. The Final Versions of the Charter of Fundamental Rights 83

1. The First Version: the 2000 Charter of Fundamental Rights 84

Document Reference	Title	Date	Language	Page
2000 OJ C364/01	Charter of Fundamental Rights of the European Union	07/12/2000 (Proclaimed)	EN	85

2. The Second Version: the 2004 Charter of Fundamental Rights and Explanations, and Extracts from the Constitutional Treaty 108

2004 OJ C310/01	Arts I-2 and I-9 of the Constitutional Treaty	16/12/2004	EN	109
2004 OJ C310/41	Part II of the Constitutional Treaty: The Charter of Fundamental Rights of the Union	16/12/2004	EN	112
2004 OJ C310/378	Protocol 32 to the Constitutional Treaty: Accession to the ECHR	16/12/2004	EN	126
2004 OJ C310/420	Declarations 2 and 12 of the Constitutional Treaty: On Art. I-9 and on the Explanations	16/12/2004	EN	127

3. The Version in Force: the 2007 Charter of Fundamental Rights and Explanations, and Extracts from the Treaties (Lisbon consolidated version) 164

2007 OJ C303/01	Charter of Fundamental Rights of the European Union	01/12/2009 (Entry into force)	EN	165
2007 OJ C303/17	Explanations Relating to the Charter of Fundamental Rights	14/12/2007	EN	181
2008 OJ C115/13	Arts 2 and 6 of the Treaty on European Union (Lisbon version)	01/12/2009 (Entry into force)	EN	200
2008 OJ C115/273	Protocols 8, 30 to the Treaties (Lisbon version): Accession to the ECHR, and the Application of the Charter to Poland and the United Kingdom	01/12/2009 (Entry into force)	EN	203
2008 OJ C115/337	Declarations 1, 2, 53, 61 and 62 to the Treaties (Lisbon version): On the Charter, on Art.6(2) TEU, by the Czech Republic on the Charter, and by Poland on the Charter and on Protocol 30	01/12/2009 (Entry into force)	EN	206
2013 OJ C60/131	Protocol 38 to the Treaties (Lisbon version): On the concerns of the Irish people on the Treaty of Lisbon	01/12/2014 (Entry into force)	EN	210

I. The Final Versions of the Charter of Fundamental Rights

I.1. The First Version: the 2000 Charter of Fundamental Rights

Editors' note to 2000 OJ C364/01,
**Charter of Fundamental Rights
of the European Union:**

The Charter Explanations were not published alongside the Charter itself in 2000. CHARTE 4473/00 was the final version of the Explanations produced by the Secretariat and Praesidium in 2000.

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

(2000/C 364/01)

PROCLAMACIÓN SOLEMNE

HØJTIDELIG PROKLAMATION

FEIERLICHE PROKLAMATION

ΠΑΝΗΓΥΡΙΚΗ ΔΙΑΚΗΡΥΞΗ

SOLEMN PROCLAMATION

PROCLAMATION SOLENELLE

FORÓGRA SOLLÚNTA

PROCLAMAZIONE SOLENNE

PLECHTIGE AFKONDIGING

PROCLAMAÇÃO SOLENE

JUHLALLINEN JULISTUS

HÖGTIDLIG PROKLAMATION

18.12.2000

EN

Official Journal of the European Communities

C 364/5

El Parlamento Europeo, el Consejo y la Comisión proclaman solemnemente en tanto que Carta de los Derechos Fundamentales de la Unión Europea el texto que figura a continuación.

Europa-Parlamentet, Rådet og Kommissionen proklamerer højtideligt den tekst, der følger nedenfor, som Den Europæiske Unions charter om grundlæggende rettigheder.

Das Europäische Parlament, der Rat und die Kommission proklamieren feierlich den nachstehenden Text als Charta der Grundrechte der Europäischen Union.

Το Ευρωπαϊκό Κοινοβούλιο, το Συμβούλιο και η Επιτροπή διακηρύσσουν πανηγυρικά, ως Χάρτη Θεμελιωδών Δικαιωμάτων της Ευρωπαϊκής Ένωσης, το κείμενο που ακολουθεί.

The European Parliament, the Council and the Commission solemnly proclaim the text below as the Charter of fundamental rights of the European Union.

Le Parlement européen, le Conseil et la Commission proclament solennellement en tant que Charte des droits fondamentaux de l'Union européenne le texte repris ci-après.

Forógraíonn Parlaimint na hEorpa, an Chomhairle agus an Coimisiún go sollúnta an téacs thíos mar an Chairt um Chearta Bunúsacha den Aontas Eorpach.

Il Parlamento europeo, il Consiglio e la Commissione proclamano solennemente quale Carta dei diritti fondamentali dell'Unione europea il testo riportato in appresso.

Het Europees Parlement, de Raad en de Commissie kondigen plechtig als Handvest van de grondrechten van de Europese Unie de hierna opgenomen tekst af.

O Parlamento Europeu, o Conselho e a Comissão proclamam solenemente, enquanto Carta dos Direitos Fundamentais da União Europeia, o texto a seguir transcrito.

Euroopan parlamentti, neuvosto ja komissio juhllallisesti julistavat jäljempänä esitetyn tekstin Euroopan unionin perusoikeuskirjaksi.

Europaparlamentet, rådet och kommissionen tillkännager högtidligt denna text såsom stadga om de grundläggande rättigheterna i Europeiska unionen.

Hecho en Niza, el siete de diciembre del año dos mil.

Udfærdiget i Nice den syvende december to tusind.

Geschehen zu Nizza am siebten Dezember zweitausend.

Έγινε στη Νίκαια, στις επτά Δεκεμβρίου δύο χιλιάδες.

Done at Nice on the seventh day of December in the year two thousand.

Fait à Nice, le sept décembre deux mille.

Arna dhéanamh i Nice, an seachtú lá de Nollaig sa bhliain dhá mhíle.

Fatto a Nizza, addì sette dicembre duemila.

Gedaan te Nice, de zevende december tweeduizend.

Feito em Nice, em sete de Dezembro de dois mil.

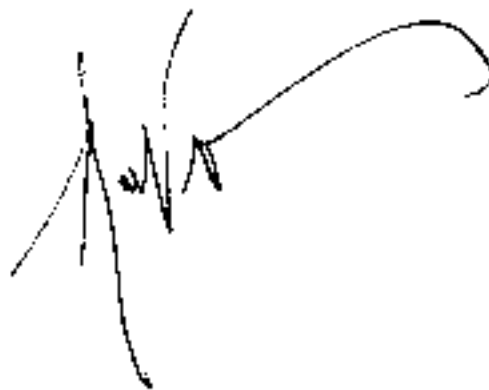
Tehty Nizzassa seitsemäntenä päivänä joulukuuta vuonna kaksituhatta.

Som skedde i Nice den sjunde december tjugohundra.

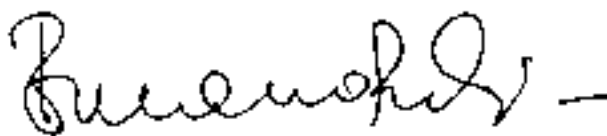
Por el Parlamento Europeo
 For Europa-Parlamentet
 Für das Europäische Parlament
 Για το Ευρωπαϊκό Κοινοβούλιο
 For the European Parliament
 Pour le Parlement européen
 Thar ceann Pharlaimint na hEorpa
 Per il Parlamento europeo
 Voor het Europees Parlement
 Pelo Parlamento Europeu
 Euroopan parlamentin puolesta
 För Europaparlamentet



Por el Consejo de la Unión Europea
 For Rådet for Den Europæiske Union
 Für den Rat der Europäischen Union
 Για το Συμβούλιο της Ευρωπαϊκής Ένωσης
 For the Council of the European Union
 Pour le Conseil de l'Union européenne
 Thar ceann Chomhairle an Aontais Eorpaigh
 Per il Consiglio dell'Unione europea
 Voor de Raad van de Europese Unie
 Pelo Conselho da União Europeia
 Euroopan unionin neuvoston puolesta
 För Europeiska unionens råd



Por la Comisión Europea
 For Europa-kommissionen
 Für die Europäische Kommission
 Για την Ευρωπαϊκή Επιτροπή
 For the European Commission
 Pour la Commission européenne
 Thar ceann an Choimisiúin Eorpaigh
 Per la Commissione europea
 Voor de Europese Commissie
 Pela Comissão Europeia
 Euroopan komission puolesta
 För Europeiska kommissionen



PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, goods, services and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case-law of the Court of Justice of the European Communities and of the European Court of Human Rights.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

CHAPTER I

DIGNITY*Article 1***Human dignity**

Human dignity is inviolable. It must be respected and protected.

*Article 2***Right to life**

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

*Article 3***Right to the integrity of the person**

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - the free and informed consent of the person concerned, according to the procedures laid down by law,
 - the prohibition of eugenic practices, in particular those aiming at the selection of persons,
 - the prohibition on making the human body and its parts as such a source of financial gain,
 - the prohibition of the reproductive cloning of human beings.

*Article 4***Prohibition of torture and inhuman or degrading treatment or punishment**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

*Article 5***Prohibition of slavery and forced labour**

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

CHAPTER II

FREEDOMS

*Article 6***Right to liberty and security**

Everyone has the right to liberty and security of person.

*Article 7***Respect for private and family life**

Everyone has the right to respect for his or her private and family life, home and communications.

*Article 8***Protection of personal data**

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

*Article 9***Right to marry and right to found a family**

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

*Article 10***Freedom of thought, conscience and religion**

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

*Article 11***Freedom of expression and information**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

*Article 12***Freedom of assembly and of association**

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

*Article 13***Freedom of the arts and sciences**

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

*Article 14***Right to education**

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

*Article 15***Freedom to choose an occupation and right to engage in work**

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.

3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article 16

Freedom to conduct a business

The freedom to conduct a business in accordance with Community law and national laws and practices is recognised.

Article 17

Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.

2. Intellectual property shall be protected.

Article 18

Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.

Article 19

Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.

2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

CHAPTER III

EQUALITY

*Article 20***Equality before the law**

Everyone is equal before the law.

*Article 21***Non-discrimination**

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

*Article 22***Cultural, religious and linguistic diversity**

The Union shall respect cultural, religious and linguistic diversity.

*Article 23***Equality between men and women**

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

*Article 24***The rights of the child**

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article 25

The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Article 26

Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

CHAPTER IV

SOLIDARITY*Article 27***Workers' right to information and consultation within the undertaking**

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices.

*Article 28***Right of collective bargaining and action**

Workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

*Article 29***Right of access to placement services**

Everyone has the right of access to a free placement service.

*Article 30***Protection in the event of unjustified dismissal**

Every worker has the right to protection against unjustified dismissal, in accordance with Community law and national laws and practices.

*Article 31***Fair and just working conditions**

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

*Article 32***Prohibition of child labour and protection of young people at work**

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

*Article 33***Family and professional life**

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

*Article 34***Social security and social assistance**

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.

*Article 35***Health care**

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

*Article 36***Access to services of general economic interest**

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaty establishing the European Community, in order to promote the social and territorial cohesion of the Union.

*Article 37***Environmental protection**

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

*Article 38***Consumer protection**

Union policies shall ensure a high level of consumer protection.

CHAPTER V
CITIZENS' RIGHTS

Article 39

Right to vote and to stand as a candidate at elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Article 40

Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Article 41

Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.
2. This right includes:
 - the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

*Article 42***Right of access to documents**

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.

*Article 43***Ombudsman**

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

*Article 44***Right to petition**

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

*Article 45***Freedom of movement and of residence**

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.

*Article 46***Diplomatic and consular protection**

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

CHAPTER VI

JUSTICE

*Article 47***Right to an effective remedy and to a fair trial**

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

*Article 48***Presumption of innocence and right of defence**

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

*Article 49***Principles of legality and proportionality of criminal offences and penalties**

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.

3. The severity of penalties must not be disproportionate to the criminal offence.

*Article 50***Right not to be tried or punished twice in criminal proceedings for the same criminal offence**

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

CHAPTER VII

GENERAL PROVISIONS*Article 51***Scope**

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.
2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

*Article 52***Scope of guaranteed rights**

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.
3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

*Article 53***Level of protection**

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

*Article 54***Prohibition of abuse of rights**

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

***I.2. The Second Version:
the 2004 Charter of
Fundamental Rights and
Explanations, and Extracts
from the Constitutional Treaty***

TREATY ESTABLISHING A CONSTITUTION FOR EUROPE

PART I

TITLE I

DEFINITION AND OBJECTIVES OF THE UNION

Article I-1

Establishment of the Union

1. Reflecting the will of the citizens and States of Europe to build a common future, this Constitution establishes the European Union, on which the Member States confer competences to attain objectives they have in common. The Union shall coordinate the policies by which the Member States aim to achieve these objectives, and shall exercise on a Community basis the competences they confer on it.
2. The Union shall be open to all European States which respect its values and are committed to promoting them together.

Article I-2

The Union's values

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Article I-3

The Union's objectives

1. The Union's aim is to promote peace, its values and the well-being of its peoples.
2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, and an internal market where competition is free and undistorted.
3. The Union shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

*Article I-7***Legal personality**

The Union shall have legal personality.

*Article I-8***The symbols of the Union**

The flag of the Union shall be a circle of twelve golden stars on a blue background.

The anthem of the Union shall be based on the 'Ode to Joy' from the Ninth Symphony by Ludwig van Beethoven.

The motto of the Union shall be: 'United in diversity'.

The currency of the Union shall be the euro.

Europe day shall be celebrated on 9 May throughout the Union.

TITLE II

FUNDAMENTAL RIGHTS AND CITIZENSHIP OF THE UNION*Article I-9***Fundamental rights**

1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes Part II.
2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Constitution.
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

*Article I-10***Citizenship of the Union**

1. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship and shall not replace it.

PART II

THE CHARTER OF FUNDAMENTAL RIGHTS OF THE UNION

PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, services, goods and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

TITLE I

DIGNITY

*Article II-61***Human dignity**

Human dignity is inviolable. It must be respected and protected.

*Article II-62***Right to life**

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

*Article II-63***Right to the integrity of the person**

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - (a) the free and informed consent of the person concerned, according to the procedures laid down by law;
 - (b) the prohibition of eugenic practices, in particular those aiming at the selection of persons;
 - (c) the prohibition on making the human body and its parts as such a source of financial gain;
 - (d) the prohibition of the reproductive cloning of human beings.

*Article II-64***Prohibition of torture and inhuman or degrading treatment or punishment**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

*Article II-65***Prohibition of slavery and forced labour**

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

TITLE II

FREEDOMS

*Article II-66***Right to liberty and security**

Everyone has the right to liberty and security of person.

*Article II-67***Respect for private and family life**

Everyone has the right to respect for his or her private and family life, home and communications.

*Article II-68***Protection of personal data**

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

*Article II-69***Right to marry and right to found a family**

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

*Article II-70***Freedom of thought, conscience and religion**

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

*Article II-71***Freedom of expression and information**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

*Article II-72***Freedom of assembly and of association**

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

*Article II-73***Freedom of the arts and sciences**

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

*Article II-74***Right to education**

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the

national laws governing the exercise of such freedom and right.

Article II-75

Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article II-76

Freedom to conduct a business

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

Article II-77

Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

Article II-78

Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Constitution.

Article II-79

Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

TITLE III**EQUALITY***Article II-80***Equality before the law**

Everyone is equal before the law.

*Article II-81***Non-discrimination**

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Constitution and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

*Article II-82***Cultural, religious and linguistic diversity**

The Union shall respect cultural, religious and linguistic diversity.

*Article II-83***Equality between women and men**

Equality between women and men must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

*Article II-84***The rights of the child**

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article II-85

The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Article II-86

Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

TITLE IV

SOLIDARITY

Article II-87

Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

Article II-88

Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Article II-89

Right of access to placement services

Everyone has the right of access to a free placement service.

*Article II-90***Protection in the event of unjustified dismissal**

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

*Article II-91***Fair and just working conditions**

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

*Article II-92***Prohibition of child labour and protection of young people at work**

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

*Article II-93***Family and professional life**

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

*Article II-94***Social security and social assistance**

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.

2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.

3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

Article II-95

Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Article II-96

Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Constitution, in order to promote the social and territorial cohesion of the Union.

Article II-97

Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article II-98

Consumer protection

Union policies shall ensure a high level of consumer protection.

TITLE V

CITIZENS' RIGHTS

*Article II-99***Right to vote and to stand as a candidate at elections to the European Parliament**

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

*Article II-100***Right to vote and to stand as a candidate at municipal elections**

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

*Article II-101***Right to good administration**

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.
2. This right includes:
 - (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - (c) the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages of the Constitution and must have an answer in the same language.

*Article II-102***Right of access to documents**

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.

*Article II-103***European Ombudsman**

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union, with the exception of the Court of Justice of the European Union acting in its judicial role.

*Article II-104***Right to petition**

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

*Article II-105***Freedom of movement and of residence**

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Constitution, to nationals of third countries legally resident in the territory of a Member State.

*Article II-106***Diplomatic and consular protection**

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

TITLE VI

JUSTICE

*Article II-107***Right to an effective remedy and to a fair trial**

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

*Article II-108***Presumption of innocence and right of defence**

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

*Article II-109***Principles of legality and proportionality of criminal offences and penalties**

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

*Article II-110***Right not to be tried or punished twice in criminal proceedings for the same criminal offence**

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

TITLE VII

**GENERAL PROVISIONS GOVERNING THE INTERPRETATION
AND APPLICATION OF THE CHARTER***Article II-111***Field of application**

1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the other Parts of the Constitution.
2. This Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks defined in the other Parts of the Constitution.

*Article II-112***Scope and interpretation of rights and principles**

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter for which provision is made in other Parts of the Constitution shall be exercised under the conditions and within the limits defined by these relevant Parts.
3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
4. Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.
5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.

6. Full account shall be taken of national laws and practices as specified in this Charter.
7. The explanations drawn up as a way of providing guidance in the interpretation of the Charter of Fundamental Rights shall be given due regard by the courts of the Union and of the Member States.

Article II-113

Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article II-114

Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

32. PROTOCOL RELATING TO ARTICLE I-9(2) OF THE CONSTITUTION ON THE ACCESSION OF THE UNION TO THE EUROPEAN CONVENTION ON THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

THE HIGH CONTRACTING PARTIES

HAVE AGREED on the following provisions, which shall be annexed to the Treaty establishing a Constitution for Europe:

Article 1

The agreement relating to the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the 'European Convention') provided for in Article I-9(2) of the Constitution shall make provision for preserving the specific characteristics of the Union and Union law, in particular with regard to:

- (a) the specific arrangements for the Union's possible participation in the control bodies of the European Convention;
- (b) the mechanisms necessary to ensure that proceedings by non-Member States and individual applications are correctly addressed to Member States and/or the Union as appropriate.

Article 2

The agreement referred to in Article 1 shall ensure that accession of the Union shall not affect the competences of the Union or the powers of its institutions. It shall ensure that nothing therein affects the situation of Member States in relation to the European Convention, in particular in relation to the Protocols thereto, measures taken by Member States derogating from the European Convention in accordance with Article 15 thereof and reservations to the European Convention made by Member States in accordance with Article 57 thereof.

Article 3

Nothing in the agreement referred to in Article 1 shall affect Article III-375(2) of the Constitution.

A. DECLARATIONS CONCERNING PROVISIONS OF THE CONSTITUTION

1. Declaration on Article I-6

The Conference notes that Article I-6 reflects existing case-law of the Court of Justice of the European Communities and of the Court of First Instance.

2. Declaration on Article I-9(2)

The Conference agrees that the Union's accession to the European Convention on the Protection of Human Rights and Fundamental Freedoms should be arranged in such a way as to preserve the specific features of Union law. In this connection, the Conference notes the existence of a regular dialogue between the Court of Justice of the European Union and the European Court of Human Rights; such dialogue could be reinforced when the Union accedes to that Convention.

3. Declaration on Articles I-22, I-27 and I-28

In choosing the persons called upon to hold the offices of President of the European Council, President of the Commission and Union Minister for Foreign Affairs, due account is to be taken of the need to respect the geographical and demographic diversity of the Union and its Member States.

4. Declaration on Article I-24(7) concerning the European Council decision on the exercise of the Presidency of the Council

The Conference declares that the Council should begin preparing the European decision establishing the measures for applying the European decision of the European Council on the exercise of the Presidency of the Council as soon as the Treaty establishing a Constitution for Europe is signed and should give its political approval within six months. A draft European decision of the European Council, which will be adopted on the date of entry into force of the said Treaty, is set out below:

DRAFT EUROPEAN DECISION OF THE EUROPEAN COUNCIL ON THE EXERCISE OF THE PRESIDENCY OF THE COUNCIL

Article 1

1. The Presidency of the Council, with the exception of the Foreign Affairs configuration, shall be held by pre-established groups of three Member States for a period of 18 months. The groups shall be made up on a basis of equal rotation among the Member States, taking into account their diversity and geographical balance within the Union.

2. Each member of the group shall in turn chair for a six-month period all configurations of the Council, with the exception of the Foreign Affairs configuration. The other members of the group shall assist the Chair in all its responsibilities on the basis of a common programme. Members of the team may decide alternative arrangements among themselves.

12. Declaration concerning the explanations relating to the Charter of Fundamental Rights

The Conference takes note of the explanations relating to the Charter of Fundamental Rights prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention, as set out below.

EXPLANATIONS RELATING TO THE CHARTER OF FUNDAMENTAL RIGHTS

These explanations were originally prepared under the authority of the Praesidium of the Convention which drafted the Charter of Fundamental Rights of the European Union. They have been updated under the responsibility of the Praesidium of the European Convention, in the light of the drafting adjustments made to the text of the Charter by that Convention (notably to Articles 51 and 52 ⁽¹⁾) and of further developments of Union law. Although they do not as such have the status of law, they are a valuable tool of interpretation intended to clarify the provisions of the Charter.

PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, services, goods and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of

⁽¹⁾ Articles II-111 and II-112 of the Constitution.

the Praesidium of the European Convention.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

TITLE I

DIGNITY

Article 1 ⁽¹⁾

Human dignity

Human dignity is inviolable. It must be respected and protected.

Explanation

The dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights. The 1948 Universal Declaration of Human Rights enshrined human dignity in its preamble: 'Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.' In its judgment of 9 October 2001 in case C-377/98 *Netherlands v European Parliament and Council* [2001] ECR 7079, at grounds 70 to 77, the Court of Justice confirmed that a fundamental right to human dignity is part of Union law.

It results that none of the rights laid down in this Charter may be used to harm the dignity of another person, and that the dignity of the human person is part of the substance of the rights laid down in this Charter. It must therefore be respected, even where a right is restricted.

Article 2 ⁽²⁾

Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

Explanation

1. Paragraph 1 of this Article is based on the first sentence of Article 2(1) of the ECHR, which reads as follows:

'1. Everyone's right to life shall be protected by law...'

⁽¹⁾ Article II-61 of the Constitution.

⁽²⁾ Article II-62 of the Constitution.

2. The second sentence of the provision, which referred to the death penalty, was superseded by the entry into force of Article 1 of Protocol No 6 to the ECHR, which reads as follows:

‘The death penalty shall be abolished. No-one shall be condemned to such penalty or executed.’

Article 2(2) of the Charter ⁽¹⁾ is based on that provision.

3. The provisions of Article 2 of the Charter ⁽²⁾ correspond to those of the above Articles of the ECHR and its Protocol. They have the same meaning and the same scope, in accordance with Article 52(3) of the Charter ⁽³⁾. Therefore, the ‘negative’ definitions appearing in the ECHR must be regarded as also forming part of the Charter:

- (a) Article 2(2) of the ECHR:

‘Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.’

- (b) Article 2 of Protocol 6 to the ECHR:

‘A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions...’

Article 3 ⁽⁴⁾

Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - (a) the free and informed consent of the person concerned, according to the procedures laid down by law;
 - (b) the prohibition of eugenic practices, in particular those aiming at the selection of persons;

⁽¹⁾ Article II-62(2) of the Constitution.

⁽²⁾ Article II-62 of the Constitution.

⁽³⁾ Article II-112(3) of the Constitution.

⁽⁴⁾ Article II-63 of the Constitution.

- (c) the prohibition on making the human body and its parts as such a source of financial gain;
- (d) the prohibition of the reproductive cloning of human beings.

Explanation

1. In its judgment of 9 October 2001 in case C-377/98 *Netherlands v European Parliament and Council* [2001] ECR 7079, at grounds 70, 78 to 80, the Court of Justice confirmed that a fundamental right to human integrity is part of Union law and encompasses, in the context of medicine and biology, the free and informed consent of the donor and recipient.
2. The principles of Article 3 of the Charter ⁽¹⁾ are already included in the Convention on Human Rights and Biomedicine, adopted by the Council of Europe (ETS 164 and additional protocol ETS 168). The Charter does not set out to depart from those principles, and therefore prohibits only reproductive cloning. It neither authorises nor prohibits other forms of cloning. Thus it does not in any way prevent the legislature from prohibiting other forms of cloning.
3. The reference to eugenic practices, in particular those aiming at the selection of persons, relates to possible situations in which selection programmes are organised and implemented, involving campaigns for sterilisation, forced pregnancy, compulsory ethnic marriage among others, all acts deemed to be international crimes in the Statute of the International Criminal Court adopted in Rome on 17 July 1998 (see its Article 7(1)(g)).

Article 4 ⁽²⁾

Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Explanation

The right in Article 4 ⁽²⁾ is the right guaranteed by Article 3 of the ECHR, which has the same wording: 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment'. By virtue of Article 52(3) of the Charter ⁽³⁾, it therefore has the same meaning and the same scope as the ECHR Article.

Article 5 ⁽⁴⁾

Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.

⁽¹⁾ Article II-63 of the Constitution.

⁽²⁾ Article II-64 of the Constitution.

⁽³⁾ Article II-112(3) of the Constitution.

⁽⁴⁾ Article II-65 of the Constitution.

2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

Explanation

1. The right in Article 5(1) and (2) ⁽¹⁾ corresponds to Article 4(1) and (2) of the ECHR, which has the same wording. It therefore has the same meaning and scope as the ECHR Article, by virtue of Article 52(3) of the Charter ⁽²⁾. Consequently:

- no limitation may legitimately affect the right provided for in paragraph 1;
- in paragraph 2, ‘forced or compulsory labour’ must be understood in the light of the ‘negative’ definitions contained in Article 4(3) of the ECHR:

‘For the purpose of this article the term “forced or compulsory labour” shall not include:

- (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
 - (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
 - (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
 - (d) any work or service which forms part of normal civic obligations.’
2. Paragraph 3 stems directly from human dignity and takes account of recent developments in organised crime, such as the organisation of lucrative illegal immigration or sexual exploitation networks. The Annex to the Europol Convention contains the following definition which refers to trafficking for the purpose of sexual exploitation: ‘traffic in human beings: means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children’. Chapter VI of the Convention implementing the Schengen Agreement, which has been integrated into the Union’s *acquis*, in which the United Kingdom and Ireland participate, contains the following wording in Article 27(1) which refers to illegal immigration networks: ‘The Contracting Parties undertake to impose appropriate penalties on any person who, for financial gain, assists or tries to assist an alien to enter or reside within the territory of one of the Contracting Parties in breach of that Contracting Party’s laws on the entry and residence of aliens.’ On 19 July 2002, the Council adopted a framework decision on combating trafficking in human beings (OJ L 203/1) whose Article 1 defines in detail the offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation, which the Member States must make punishable by virtue of that framework decision.

⁽¹⁾ Article II-65 of the Constitution.

⁽²⁾ Article II-112(3) of the Constitution.

TITLE II

FREEDOMS

Article 6 ⁽¹⁾**Right to liberty and security**

Everyone has the right to liberty and security of person.

Explanation

The rights in Article 6 ⁽¹⁾ are the rights guaranteed by Article 5 of the ECHR, and in accordance with Article 52(3) of the Charter ⁽²⁾, they have the same meaning and scope. Consequently, the limitations which may legitimately be imposed on them may not exceed those permitted by the ECHR, in the wording of Article 5:

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - (a) the lawful detention of a person after conviction by a competent court;
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
 - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
 - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
 - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

⁽¹⁾ Article II-66 of the Constitution.

⁽²⁾ Article II-112(3) of the Constitution.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.'

The rights enshrined in Article 6 ⁽¹⁾ must be respected particularly when the European Parliament and the Council adopt laws and framework laws in the area of judicial cooperation in criminal matters, on the basis of Articles III-270, III-271 and III-273 of the Constitution, notably to define common minimum provisions as regards the categorisation of offences and punishments and certain aspects of procedural law.

Article 7 ⁽²⁾

Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Explanation

The rights guaranteed in Article 7 ⁽²⁾ correspond to those guaranteed by Article 8 of the ECHR. To take account of developments in technology the word 'correspondence' has been replaced by 'communications'.

In accordance with Article 52(3) ⁽³⁾, the meaning and scope of this right are the same as those of the corresponding article of the ECHR. Consequently, the limitations which may legitimately be imposed on this right are the same as those allowed by Article 8 of the ECHR:

- '1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'

⁽¹⁾ Article II-66 of the Constitution.

⁽²⁾ Article II-67 of the Constitution.

⁽³⁾ Article II-112(3) of the Constitution.

Article 8 ⁽¹⁾**Protection of personal data**

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

Explanation

This Article has been based on Article 286 of the Treaty establishing the European Community and Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995) as well as on Article 8 of the ECHR and on the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which has been ratified by all the Member States. Article 286 of the EC Treaty is now replaced by Article I-51 of the Constitution. Reference is also made to Regulation (EC) No 45/2001 of the European Parliament and of the Council 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, 12.1.2001). The abovementioned Directive and Regulation contain conditions and limitations for the exercise of the right to the protection of personal data.

Article 9 ⁽²⁾**Right to marry and right to found a family**

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Explanation

This Article is based on Article 12 of the ECHR, which reads as follows: 'Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercising of this right.' The wording of the Article has been modernised to cover cases in which national legislation recognises arrangements other than marriage for founding a family. This Article neither prohibits nor imposes the granting of the status of marriage to unions between people of the same sex. This right is thus similar to that afforded by the ECHR, but its scope may be wider when national legislation so provides.

⁽¹⁾ Article II-68 of the Constitution.

⁽²⁾ Article II-69 of the Constitution.

Article 10 ⁽¹⁾**Freedom of thought, conscience and religion**

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Explanation

The right guaranteed in paragraph 1 corresponds to the right guaranteed in Article 9 of the ECHR and, in accordance with Article 52(3) of the Charter ⁽²⁾, has the same meaning and scope. Limitations must therefore respect Article 9(2) of the Convention, which reads as follows: 'Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.'

The right guaranteed in paragraph 2 corresponds to national constitutional traditions and to the development of national legislation on this issue.

Article 11 ⁽³⁾**Freedom of expression and information**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

Explanation

1. Article 11 ⁽³⁾ corresponds to Article 10 of the European Convention on Human Rights, which reads as follows:
'1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.'

⁽¹⁾ Article II-70 of the Constitution.

⁽²⁾ Article II-112(3) of the Constitution.

⁽³⁾ Article II-71 of the Constitution.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.'

Pursuant to Article 52(3) of the Charter ⁽¹⁾, the meaning and scope of this right are the same as those guaranteed by the ECHR. The limitations which may be imposed on it may therefore not exceed those provided for in Article 10(2) of the Convention, without prejudice to any restrictions which competition law of the Union may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR.

2. Paragraph 2 of this Article spells out the consequences of paragraph 1 regarding freedom of the media. It is based in particular on Court of Justice case-law regarding television, particularly in case C-288/89 (judgment of 25 July 1991, Stichting Collectieve Antennevoorziening Gouda and others [1991] ECR I-4007), and on the Protocol on the system of public broadcasting in the Member States annexed to the EC Treaty and now to the Constitution, and on Council Directive 89/552/EC (particularly its seventeenth recital).

Article 12 ⁽²⁾

Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Explanation

1. Paragraph 1 of this Article corresponds to Article 11 of the ECHR, which reads as follows:
 - '1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.'

⁽¹⁾ Article II-112(3) of the Constitution.

⁽²⁾ Article II-72 of the Constitution.

The meaning of the provisions of paragraph 1 is the same as that of the ECHR, but their scope is wider since they apply at all levels including European level. In accordance with Article 52(3) of the Charter ⁽¹⁾, limitations on that right may not exceed those considered legitimate by virtue of Article 11(2) of the ECHR.

2. This right is also based on Article 11 of the Community Charter of the Fundamental Social Rights of Workers.

3. Paragraph 2 of this Article corresponds to Article I-46(4) of the Constitution.

Article 13 ⁽²⁾

Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Explanation

This right is deduced primarily from the right to freedom of thought and expression. It is to be exercised having regard to Article 1 ⁽³⁾ and may be subject to the limitations authorised by Article 10 of the ECHR.

Article 14 ⁽⁴⁾

Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.

2. This right includes the possibility to receive free compulsory education.

3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Explanation

1. This Article is based on the common constitutional traditions of Member States and on Article 2 of the Protocol to the ECHR, which reads as follows:

'No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.'

⁽¹⁾ Article II-112(3) of the Constitution.

⁽²⁾ Article II-73 of the Constitution.

⁽³⁾ Article II-61 of the Constitution.

⁽⁴⁾ Article II-74 of the Constitution.

It was considered useful to extend this article to access to vocational and continuing training (see point 15 of the Community Charter of the Fundamental Social Rights of Workers and Article 10 of the Social Charter) and to add the principle of free compulsory education. As it is worded, the latter principle merely implies that as regards compulsory education, each child has the possibility of attending an establishment which offers free education. It does not require all establishments which provide education or vocational and continuing training, in particular private ones, to be free of charge. Nor does it exclude certain specific forms of education having to be paid for, if the State takes measures to grant financial compensation. Insofar as the Charter applies to the Union, this means that in its training policies the Union must respect free compulsory education, but this does not, of course, create new powers. Regarding the right of parents, it must be interpreted in conjunction with the provisions of Article 24 ⁽¹⁾.

2. Freedom to found public or private educational establishments is guaranteed as one of the aspects of freedom to conduct a business but it is limited by respect for democratic principles and is exercised in accordance with the arrangements defined by national legislation.

Article 15 ⁽²⁾

Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Explanation

Freedom to choose an occupation, as enshrined in Article 15(1) ⁽²⁾, is recognised in Court of Justice case-law (see *inter alia* judgment of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraphs 12 to 14 of the grounds; judgment of 13 December 1979, Case 44/79 Hauer [1979] ECR 3727; judgment of 8 October 1986, Case 234/85 Keller [1986] ECR 2897, paragraph 8 of the grounds).

This paragraph also draws upon Article 1(2) of the European Social Charter, which was signed on 18 October 1961 and has been ratified by all the Member States, and on point 4 of the Community Charter of the Fundamental Social Rights of Workers of 9 December 1989. The expression 'working conditions' is to be understood in the sense of Article III-213 of the Constitution.

Paragraph 2 deals with the three freedoms guaranteed by Articles I-4 and III-133, III-137 and III-144 of the Constitution, namely freedom of movement for workers, freedom of establishment and freedom to provide services.

Paragraph 3 has been based on TEC Article 137(3), fourth indent, now replaced by Article III-210(1)(g) of the Constitution, and on Article 19(4) of the European Social Charter signed on 18 October 1961 and ratified by all the

⁽¹⁾ Article II-84 of the Constitution.

⁽²⁾ Article II-75 of the Constitution.

Member States. Article 52(2) of the Charter ⁽¹⁾ is therefore applicable. The question of recruitment of seamen having the nationality of third States for the crews of vessels flying the flag of a Member State of the Union is governed by Union law and national legislation and practice.

Article 16 ⁽²⁾

Freedom to conduct a business

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

Explanation

This Article is based on Court of Justice case-law which has recognised freedom to exercise an economic or commercial activity (see judgments of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraph 14 of the grounds, and of 27 September 1979, Case 230-78 SPA Eridiana and others [1979] ECR 2749, paragraphs 20 and 31 of the grounds) and freedom of contract (see *inter alia* Sukkerfabriken Nykøbing judgment, Case 151/78 [1979] ECR 1, paragraph 19 of the grounds, and judgment of 5 October 1999, C-240/97 Spain v Commission, [1999] ECR I-6571, paragraph 99 of the grounds) and Article I-3(2) of the Constitution, which recognises free competition. Of course, this right is to be exercised with respect for Union law and national legislation. It may be subject to the limitations provided for in Article 52(1) of the Charter ⁽³⁾.

Article 17 ⁽⁴⁾

Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

Explanation

This Article is based on Article 1 of the Protocol to the ECHR:

‘Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.’

⁽¹⁾ Article II-112(2) of the Constitution.

⁽²⁾ Article II-76 of the Constitution.

⁽³⁾ Article II-112(1) of the Constitution.

⁽⁴⁾ Article II-77 of the Constitution.

This is a fundamental right common to all national constitutions. It has been recognised on numerous occasions by the case-law of the Court of Justice, initially in the Hauer judgment (13 December 1979, ECR [1979] 3727). The wording has been updated but, in accordance with Article 52(3) ⁽¹⁾, the meaning and scope of the right are the same as those of the right guaranteed by the ECHR and the limitations may not exceed those provided for there.

Protection of intellectual property, one aspect of the right of property, is explicitly mentioned in paragraph 2 because of its growing importance and Community secondary legislation. Intellectual property covers not only literary and artistic property but also inter alia patent and trademark rights and associated rights. The guarantees laid down in paragraph 1 shall apply as appropriate to intellectual property.

Article 18 ⁽²⁾

Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Constitution.

Explanation

The text of the Article has been based on TEC Article 63, now replaced by Article III-266 of the Constitution, which requires the Union to respect the Geneva Convention on refugees. Reference should be made to the Protocols relating to the United Kingdom and Ireland annexed to the [Treaty of Amsterdam] Constitution and to Denmark to determine the extent to which those Member States implement Union law in this area and the extent to which this Article is applicable to them. This Article is in line with the Protocol on Asylum annexed to the Constitution.

Article 19 ⁽³⁾

Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

Explanation

Paragraph 1 of this Article has the same meaning and scope as Article 4 of Protocol 4 to the ECHR concerning collective expulsion. Its purpose is to guarantee that every decision is based on a specific examination and that no single measure can be taken to expel all persons having the nationality of a particular State (see also Article 13 of the Covenant on Civil and Political Rights).

Paragraph 2 incorporates the relevant case-law from the European Court of Human Rights regarding Article 3 of the ECHR (see *Ahmed v Austria*, judgment of 17 December 1996, [1996] ECR VI-2206 and *Soering*, judgment of 7 July 1989).

⁽¹⁾ Article II-112(3) of the Constitution.

⁽²⁾ Article II-78 of the Constitution.

⁽³⁾ Article II-79 of the Constitution.

TITLE III

EQUALITY

Article 20 ⁽¹⁾**Equality before the law**

Everyone is equal before the law.

Explanation

This Article corresponds to a general principle of law which is included in all European constitutions and has also been recognised by the Court of Justice as a basic principle of Community law (judgment of 13 November 1984, Case 283/83 *Racke* [1984] ECR 3791, judgment of 17 April 1997, Case 15/95 *EARL* [1997] ECR I-1961, and judgment of 13 April 2000, Case 292/97 *Karlsson* [2000] ECR 2737).

Article 21 ⁽²⁾**Non-discrimination**

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Constitution and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

Explanation

Paragraph 1 draws on Article 13 of the EC Treaty, now replaced by Article III-124 of the Constitution, Article 14 of the ECHR and Article 11 of the Convention on Human Rights and Biomedicine as regards genetic heritage. Insofar as this corresponds to Article 14 of the ECHR, it applies in compliance with it.

There is no contradiction or incompatibility between paragraph 1 and Article III-124 of the Constitution which has a different scope and purpose: Article III-124 confers power on the Union to adopt legislative acts, including harmonisation of the Member States' laws and regulations, to combat certain forms of discrimination, listed exhaustively in that Article. Such legislation may cover action of Member State authorities (as well as relations between private individuals) in any area within the limits of the Union's powers. In contrast, the provision in paragraph 1 does not create any power to enact anti-discrimination laws in these areas of Member State or private action, nor does it lay down a sweeping ban of discrimination in such wide-ranging areas. Instead, it only addresses discriminations by the institutions and bodies of the Union themselves, when exercising powers conferred under other articles of Parts I and III

⁽¹⁾ Article II-80 of the Constitution.

⁽²⁾ Article II-81 of the Constitution.

of the Constitution, and by Member States only when they are implementing Union law. Paragraph 1 therefore does not alter the extent of powers granted under Article III-124 nor the interpretation given to that Article.

Paragraph 2 corresponds to Article I-4(2) of the Constitution and must be applied in compliance with that Article.

Article 22 ⁽¹⁾

Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Explanation

This Article has been based on Article 6 of the Treaty on European Union and on Article 151(1) and (4) of the EC Treaty, now replaced by Article III-280(1) and (4) of the Constitution, concerning culture. Respect for cultural and linguistic diversity is now also laid down in Article I-3(3) of the Constitution. The Article is also inspired by Declaration No 11 to the Final Act of the Amsterdam Treaty on the status of churches and non-confessional organisations, now taken over in Article I-52 of the Constitution.

Article 23 ⁽²⁾

Equality between women and men

Equality between women and men must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Explanation

The first paragraph has been based on Articles 2 and 3(2) of the EC Treaty, now replaced by Articles I-3 and III-116 of the Constitution which impose the objective of promoting equality between men and women on the Union, and on Article 141(1) of the EC Treaty, now replaced by Article III-214(1) of the Constitution. It draws on Article 20 of the revised European Social Charter of 3 May 1996 and on point 16 of the Community Charter on the rights of workers.

It is also based on Article 141(3) of the EC Treaty, now replaced by Article III-214(3) of the Constitution, and Article 2 (4) of Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

The second paragraph takes over in shorter form Article III-214(4) of the Constitution which provides that the principle of equal treatment does not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for

⁽¹⁾ Article II-82 of the Constitution.

⁽²⁾ Article II-83 of the Constitution.

disadvantages in professional careers. In accordance with Article 52(2) ⁽¹⁾, the present paragraph does not amend Article III-214(4).

Article 24 ⁽²⁾

The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Explanation

This Article is based on the New York Convention on the Rights of the Child signed on 20 November 1989 and ratified by all the Member States, particularly Articles 3, 9, 12 and 13 thereof.

Paragraph 3 takes account of the fact that, as part of the establishment of an area of freedom, security and justice, Union legislation on civil matters having cross-border implications, for which Article III-269 of the Constitution confers power, may include notably visiting rights ensuring that children can maintain on a regular basis a personal and direct contact with both his or her parents.

Article 25 ⁽³⁾

The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Explanation

This Article draws on Article 23 of the revised European Social Charter and Articles 24 and 25 of the Community Charter of the Fundamental Social Rights of Workers. Of course, participation in social and cultural life also covers participation in political life.

⁽¹⁾ Article II-112(2) of the Constitution.

⁽²⁾ Article II-84 of the Constitution.

⁽³⁾ Article II-85 of the Constitution.

Article 26 ⁽¹⁾**Integration of persons with disabilities**

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

Explanation

The principle set out in this Article is based on Article 15 of the European Social Charter and also draws on point 26 of the Community Charter of the Fundamental Social Rights of Workers.

TITLE IV

SOLIDARITY*Article 27* ⁽²⁾**Workers' right to information and consultation within the undertaking**

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

Explanation

This Article appears in the revised European Social Charter (Article 21) and in the Community Charter on the rights of workers (points 17 and 18). It applies under the conditions laid down by Union law and by national laws. The reference to appropriate levels refers to the levels laid down by Union law or by national laws and practices, which might include the European level when Union legislation so provides. There is a considerable Union *acquis* in this field: Articles III-211 and III-212 of the Constitution, and Directives 2002/14/EC (general framework for informing and consulting employees in the European Community), 98/59/EC (collective redundancies), 2001/23/EC (transfers of undertakings) and 94/45/EC (European works councils).

Article 28 ⁽³⁾**Right of collective bargaining and action**

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

⁽¹⁾ Article II-86 of the Constitution.

⁽²⁾ Article II-87 of the Constitution.

⁽³⁾ Article II-88 of the Constitution.

Explanation

This Article is based on Article 6 of the European Social Charter and on the Community Charter of the Fundamental Social Rights of Workers (points 12 to 14). The right of collective action was recognised by the European Court of Human Rights as one of the elements of trade union rights laid down by Article 11 of the ECHR. As regards the appropriate levels at which collective negotiation might take place, see the explanation given for the above Article. The modalities and limits for the exercise of collective action, including strike action, come under national laws and practices, including the question of whether it may be carried out in parallel in several Member States.

Article 29 ⁽¹⁾**Right of access to placement services**

Everyone has the right of access to a free placement service.

Explanation

This Article is based on Article 1(3) of the European Social Charter and point 13 of the Community Charter of the Fundamental Social Rights of Workers.

Article 30 ⁽²⁾**Protection in the event of unjustified dismissal**

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

Explanation

This Article draws on Article 24 of the revised Social Charter. See also Directive 2001/23/EC on the safeguarding of employees' rights in the event of transfers of undertakings, and Directive 80/987/EEC on the protection of employees in the event of the insolvency of their employer, as amended by Directive 2002/74/EC.

Article 31 ⁽³⁾**Fair and just working conditions**

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

⁽¹⁾ Article II-89 of the Constitution.

⁽²⁾ Article II-90 of the Constitution.

⁽³⁾ Article II-91 of the Constitution.

Explanation

1. Paragraph 1 of this Article is based on Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work. It also draws on Article 3 of the Social Charter and point 19 of the Community Charter on the rights of workers, and, as regards dignity at work, on Article 26 of the revised Social Charter. The expression 'working conditions' must be understood in the sense of Article III-213 of the Constitution.

2. Paragraph 2 is based on Directive 93/104/EC concerning certain aspects of the organisation of working time, Article 2 of the European Social Charter and point 8 of the Community Charter on the rights of workers.

Article 32 ⁽¹⁾

Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Explanation

This Article is based on Directive 94/33/EC on the protection of young people at work, Article 7 of the European Social Charter and points 20 to 23 of the Community Charter of the Fundamental Social Rights of Workers.

Article 33 ⁽²⁾

Family and professional life

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Explanation

Article 33(1) ⁽²⁾ is based on Article 16 of the European Social Charter.

⁽¹⁾ Article II-92 of the Constitution.

⁽²⁾ Article II-93 of the Constitution.

The second paragraph draws on Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding and Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC. It is also based on Article 8 (protection of maternity) of the European Social Charter and draws on Article 27 (right of workers with family responsibilities to equal opportunities and equal treatment) of the revised Social Charter. 'Maternity' covers the period from conception to weaning.

Article 34 ⁽¹⁾

Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

Explanation

The principle set out in Article 34(1) ⁽¹⁾ is based on Articles 137 and 140 of the EC Treaty, now replaced by Articles III-210 and III-213 and on Article 12 of the European Social Charter and point 10 of the Community Charter on the rights of workers. The Union must respect it when exercising the powers conferred on it by Articles III-210 and III-213 of the Constitution. The reference to social services relates to cases in which such services have been introduced to provide certain advantages but does not imply that such services must be created where they do not exist. 'Maternity' must be understood in the same sense as in the preceding Article.

Paragraph 2 is based on Articles 12(4) and 13(4) of the European Social Charter and point 2 of the Community Charter of the Fundamental Social Rights of Workers and reflects the rules arising from Regulation No 1408/71 and Regulation No 1612/68.

Paragraph 3 draws on Article 13 of the European Social Charter and Articles 30 and 31 of the revised Social Charter and point 10 of the Community Charter. The Union must respect it in the context of policies based on Article III-210 of the Constitution.

⁽¹⁾ Article II-94 of the Constitution.

Article 35 ⁽¹⁾**Health care**

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Explanation

The principles set out in this Article are based on Article 152 of the EC Treaty, now replaced by Article III-278 of the Constitution, and on Articles 11 and 13 of the European Social Charter. The second sentence of the Article takes over Article III-278(1).

Article 36 ⁽²⁾**Access to services of general economic interest**

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Constitution, in order to promote the social and territorial cohesion of the Union.

Explanation

This Article is fully in line with Article III-122 of the Constitution and does not create any new right. It merely sets out the principle of respect by the Union for the access to services of general economic interest as provided for by national provisions, when those provisions are compatible with Union law.

Article 37 ⁽³⁾**Environmental protection**

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Explanation

The principles set out in this Article have been based on Articles 2, 6 and 174 of the EC Treaty, which have now been replaced by Articles I-3(3), III-119 and III-233 of the Constitution.

It also draws on the provisions of some national constitutions.

⁽¹⁾ Article II-95 of the Constitution.

⁽²⁾ Article II-96 of the Constitution.

⁽³⁾ Article II-97 of the Constitution.

Article 38 ⁽¹⁾**Consumer protection**

Union policies shall ensure a high level of consumer protection.

Explanation

The principles set out in this Article have been based on Article 153 of the EC Treaty, now replaced by Article III-235 of the Constitution.

TITLE V

CITIZENS' RIGHTS

Article 39 ⁽²⁾**Right to vote and to stand as a candidate at elections to the European Parliament**

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Explanation

Article 39 ⁽²⁾ applies under the conditions laid down in Parts I and III of the Constitution, in accordance with Article 52 ⁽²⁾ of the Charter ⁽³⁾. Article 39(1) ⁽²⁾ corresponds to the right guaranteed in Article I-10(2) of the Constitution (see also the legal base in Article III-126 for the adoption of detailed arrangements for the exercise of that right) and Article 39 ⁽²⁾ ⁽²⁾ corresponds to Article I-20(2) of the Constitution. Article 39(2) ⁽²⁾ takes over the basic principles of the electoral system in a democratic State.

Article 40 ⁽⁴⁾**Right to vote and to stand as a candidate at municipal elections**

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

⁽¹⁾ Article II-98 of the Constitution.

⁽²⁾ Article II-99 of the Constitution.

⁽³⁾ Article II-112(2) of the Constitution.

⁽⁴⁾ Article II-100 of the Constitution.

Explanation

This Article corresponds to the right guaranteed by Article I-10(2) of the Constitution (see also the legal base in Article III-126 for the adoption of detailed arrangements for the exercise of that right). In accordance with Article 52(2) of the Charter ⁽¹⁾, it applies under the conditions set out in these Articles of Parts I and III of the Constitution.

Article 41 ⁽²⁾

Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.
2. This right includes:
 - (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - (c) the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages of the Constitution and must have an answer in the same language.

Explanation

Article 41 ⁽²⁾ is based on the existence of the Union as subject to the rule of law whose characteristics were developed in the case-law which enshrined, *inter alia*, good administration as a general principle of law (see, *inter alia*, Court of Justice judgment of 31 March 1992 in Case C-255/90 P, *Burban* [1992] ECR I-2253, and Court of First Instance judgments of 18 September 1995 in Case T-167/94 *Nölle* [1995] ECR II-2589, and 9 July 1999 in Case T-231/97 *New Europe Consulting and others* [1999] ECR II-2403). The wording for that right in the first two paragraphs results from the case-law (Court of Justice judgment of 15 October 1987 in Case 222/86 *Heylens* [1987] ECR 4097, paragraph 15 of the grounds, judgment of 18 October 1989 in Case 374/87 *Orkem* [1989] ECR 3283, judgment of 21 November 1991 in Case C-269/90 *TU München* [1991] ECR I-5469, and Court of First Instance judgments of 6 December 1994 in Case T-450/93 *Lisrestal* [1994] ECR II-1177, 18 September 1995 in Case T-167/94 *Nölle* [1995] ECR II-258) and the wording regarding the obligation to give reasons comes from Article 253 of the EC Treaty, now replaced by Article I-38(2) of the Constitution (see also the legal base in Article III-398 of the Constitution for the adoption of legislation in the interest of an open, efficient and independent European administration).

⁽¹⁾ Article II-112(2) of the Constitution.

⁽²⁾ Article II-101 of the Constitution.

Paragraph 3 reproduces the right now guaranteed by Article III-431 of the Constitution. Paragraph 4 reproduces the right now guaranteed by Articles I-10(2)(d) and III-129 of the Constitution. In accordance with Article 52(2) of the Charter ⁽¹⁾, those rights are to be applied under the conditions and within the limits defined by Part III of the Constitution.

The right to an effective remedy, which is an important aspect of this question, is guaranteed in Article 47 of this Charter ⁽²⁾.

Article 42 ⁽³⁾

Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.

Explanation

The right guaranteed in this Article has been taken over from Article 255 of the EC Treaty, on the basis of which Regulation 1049/2001 has subsequently been adopted. The European Convention has extended this right to documents of institutions, bodies and agencies generally, regardless of their form, see Article I-50(3) of the Constitution. In accordance with Article 52(2) of the Charter ⁽¹⁾, the right of access to documents is exercised under the conditions and within the limits for which provision is made in Articles I-50(3) and III-399.

Article 43 ⁽⁴⁾

European Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union, with the exception of the Court of Justice of the European Union acting in its judicial role.

Explanation

The right guaranteed in this Article is the right guaranteed by Articles I-10 and III-335 of the Constitution. In accordance with Article 52(2) of the Charter ⁽¹⁾, it applies under the conditions defined in these two Articles.

⁽¹⁾ Article II-112(2) of the Constitution.

⁽²⁾ Article II-107 of the Constitution.

⁽³⁾ Article II-102 of the Constitution.

⁽⁴⁾ Article II-103 of the Constitution.

Article 44 ⁽¹⁾**Right to petition**

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Explanation

The right guaranteed in this Article is the right guaranteed by Articles I-10 and III-334 of the Constitution. In accordance with Article 52(2) of the Charter ⁽²⁾, it applies under the conditions defined in these two Articles.

Article 45 ⁽³⁾**Freedom of movement and of residence**

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Constitution, to nationals of third countries legally resident in the territory of a Member State.

Explanation

The right guaranteed by paragraph 1 is the right guaranteed by Article I-10(2)(a) of the Constitution (cf. also the legal base in Article III-125; and the judgement of the Court of Justice of 17 September 2002, C-413/99 Baumbast, [2002] ECR 709). In accordance with Article 52(2) of the Charter ⁽²⁾, it applies under the conditions and within the limits defined for which provision is made in Part III of the Constitution.

Paragraph 2 refers to the power granted to the Union by Articles III-265 to III-267 of the Constitution. Consequently, the granting of this right depends on the institutions exercising that power.

Article 46 ⁽⁴⁾**Diplomatic and consular protection**

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

⁽¹⁾ Article II-104 of the Constitution.

⁽²⁾ Article II-112(2) of the Constitution.

⁽³⁾ Article II-105 of the Constitution.

⁽⁴⁾ Article II-106 of the Constitution.

Explanation

The right guaranteed by this Article is the right guaranteed by Article I-10 of the Constitution; cf. also the legal base in Article III-127. In accordance with Article 52(2) of the Charter ⁽¹⁾, it applies under the conditions defined in these Articles.

TITLE VI

JUSTICE

Article 47 ⁽²⁾

Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

Explanation

The first paragraph is based on Article 13 of the ECHR:

‘Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.’

However, in Union law the protection is more extensive since it guarantees the right to an effective remedy before a court. The Court of Justice enshrined that right in its judgment of 15 May 1986 as a general principle of Union law (Case 222/84 Johnston [1986] ECR 1651; see also judgment of 15 October 1987, Case 222/86 Heylens [1987] ECR 4097 and judgment of 3 December 1992, Case C-97/91 Borelli [1992] ECR I-6313). According to the Court, that general principle of Union law also applies to the Member States when they are implementing Union law. The inclusion of this precedent in the Charter has not been intended to change the system of judicial review laid down by the Treaties, and particularly the rules relating to admissibility for direct actions before the Court of Justice of the European Union. The European Convention has considered the Union’s system of judicial review including the rules on admissibility, and confirmed them while amending them as to certain aspects, as reflected in Articles III-353 to III-381 of the Constitution, and in particular in Article III-365(4). Article 47 ⁽²⁾ applies to the institutions of the Union and of Member States when they are implementing Union law and does so for all rights guaranteed by Union law.

⁽¹⁾ Article II-112(2) of the Constitution.

⁽²⁾ Article II-107 of the Constitution.

The second paragraph corresponds to Article 6(1) of the ECHR which reads as follows:

'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.'

In Union law, the right to a fair hearing is not confined to disputes relating to civil law rights and obligations. That is one of the consequences of the fact that the Union is a community based on the rule of law as stated by the Court in Case 294/83, 'Les Verts' v European Parliament (judgment of 23 April 1986, [1988] ECR 1339). Nevertheless, in all respects other than their scope, the guarantees afforded by the ECHR apply in a similar way to the Union.

With regard to the third paragraph, it should be noted that in accordance with the case-law of the European Court of Human Rights, provision should be made for legal aid where the absence of such aid would make it impossible to ensure an effective remedy (ECHR Judgment of 9 October 1979, Airey, Series A, Volume 32, 11). There is also a system of legal assistance for cases before the Court of Justice of the European Union.

Article 48⁽¹⁾

Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Explanation

Article 48⁽¹⁾ is the same as Article 6(2) and (3) of the ECHR, which reads as follows:

- '2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
 - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - (b) to have adequate time and facilities for the preparation of his defence;

⁽¹⁾ Article II-108 of the Constitution.

- (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.'

In accordance with Article 52(3) ⁽¹⁾, this right has the same meaning and scope as the right guaranteed by the ECHR.

Article 49 ⁽²⁾

Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

Explanation

This Article follows the traditional rule of the non-retroactivity of laws and criminal sanctions. There has been added the rule of the retroactivity of a more lenient penal law, which exists in a number of Member States and which features in Article 15 of the Covenant on Civil and Political Rights.

Article 7 of the ECHR is worded as follows:

- '1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.'

⁽¹⁾ Article II-112(3) of the Constitution.

⁽²⁾ Article II-109 of the Constitution.

In paragraph 2, the reference to ‘civilised’ nations has been deleted; this does not change the meaning of this paragraph, which refers to crimes against humanity in particular. In accordance with Article 52(3) ⁽¹⁾, the right guaranteed here therefore has the same meaning and scope as the right guaranteed by the ECHR.

Paragraph 3 states the general principle of proportionality between penalties and criminal offences which is enshrined in the common constitutional traditions of the Member States and in the case-law of the Court of Justice of the Communities.

Article 50 ⁽²⁾

Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

Explanation

Article 4 of Protocol No 7 to the ECHR reads as follows:

1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.
2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and the penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.
3. No derogation from this Article shall be made under Article 15 of the Convention.’

The ‘non bis in idem’ rule applies in Union law (see, among the many precedents, the judgment of 5 May 1966, Cases 18/65 and 35/65, *Gutmann v Commission* [1966] ECR 103 and a recent case, the decision of the Court of First Instance of 20 April 1999, *Joined Cases T-305/94 and others, Limburgse Vinyl Maatschappij NV v. Commission* [1999] ECR II-931). The rule prohibiting cumulation refers to cumulation of two penalties of the same kind, that is to say criminal law penalties.

In accordance with Article 50 ⁽²⁾, the ‘non bis in idem’ rule applies not only within the jurisdiction of one State but also between the jurisdictions of several Member States. That corresponds to the *acquis* in Union law; see Articles 54 to 58 of the Schengen Convention and the judgment of the Court of Justice of 11 February 2003, C-187/01 *Gözütok* (not yet published), Article 7 of the Convention on the Protection of the European Communities’ Financial Interests and Article 10 of the Convention on the fight against corruption. The very limited exceptions in those Conventions permitting the Member States to derogate from the ‘non bis in idem’ rule are covered by the horizontal clause in Article 52(1) of the Charter ⁽³⁾ concerning limitations. As regards the situations referred to by Article 4 of Protocol No 7, namely the application of the principle within the same Member State, the guaranteed right has the same meaning and the same scope as the corresponding right in the ECHR.

⁽¹⁾ Article II-112(3) of the Constitution.

⁽²⁾ Article II-110 of the Constitution.

⁽³⁾ Article II-112(1) of the Constitution.

TITLE VII

GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER

Article 51 ⁽¹⁾**Field of application**

1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the other Parts of the Constitution.
2. This Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks defined in the other Parts of the Constitution.

Explanation

The aim of Article 51 ⁽¹⁾ is to determine the scope of the Charter. It seeks to establish clearly that the Charter applies primarily to the institutions and bodies of the Union, in compliance with the principle of subsidiarity. This provision was drafted in keeping with Article 6(2) of the Treaty on European Union, which required the Union to respect fundamental rights, and with the mandate issued by Cologne European Council. The term 'institutions' is enshrined in Part I of the Constitution. The expression 'bodies, offices and agencies' is commonly used in the Constitution to refer to all the authorities set up by the Constitution or by secondary legislation (see, e.g., Articles I-50 or I-51 of the Constitution).

As regards the Member States, it follows unambiguously from the case-law of the Court of Justice that the requirement to respect fundamental rights defined in a Union context is only binding on the Member States when they act in the scope of Union law (judgment of 13 July 1989, Case 5/88 Wachauf [1989] ECR 2609; judgment of 18 June 1991, ERT [1991] ECR I-2925; judgment of 18 December 1997 (C-309/96 Annibaldi [1997] ECR I-7493). The Court of Justice confirmed this case-law in the following terms: 'In addition, it should be remembered that the requirements flowing from the protection of fundamental rights in the Community legal order are also binding on Member States when they implement Community rules ...' (judgment of 13 April 2000, Case C-292/97, [2000] ECR 2737, paragraph 37 of the grounds). Of course this rule, as enshrined in this Charter, applies to the central authorities as well as to regional or local bodies, and to public organisations, when they are implementing Union law.

Paragraph 2, together with the second sentence of paragraph 1, confirms that the Charter may not have the effect of extending the competences and tasks which the other Parts of the Constitution confer on the Union. Explicit mention is made here of the logical consequences of the principle of subsidiarity and of the fact that the Union only has those powers which have been conferred upon it. The fundamental rights as guaranteed in the Union do not have any effect other than in the context of the powers determined by Parts I and III of the Constitution. Consequently, an obligation, pursuant to the second sentence of paragraph 1, for the Union's institutions to promote principles laid down in the Charter, may arise only within the limits of these same powers.

⁽¹⁾ Article II-111 of the Constitution.

Paragraph 2 also confirms that the Charter may not have the effect of extending the field of application of Union law beyond the powers of the Union as established in the other Parts of the Constitution. The Court of Justice has already established this rule with respect to the fundamental rights recognised as part of Union law (judgment of 17 February 1998, C-249/96 Grant, 1998 ECR I-621, paragraph 45 of the grounds). In accordance with this rule, it goes without saying that the incorporation of the Charter into the Constitution cannot be understood as extending by itself the range of Member State action considered to be 'implementation of Union law' (within the meaning of paragraph 1 and the above-mentioned case-law).

Article 52⁽¹⁾

Scope and interpretation of rights and principles

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter for which provision is made in other Parts of the Constitution shall be exercised under the conditions and within the limits defined by these relevant Parts.
3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
4. Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.
5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.
6. Full account shall be taken of national laws and practices as specified in this Charter.
7. The explanations drawn up as a way of providing guidance in the interpretation of the Charter of Fundamental Rights shall be given due regard by the courts of the Union and of the Member States.

⁽¹⁾ Article II-112 of the Constitution.

Explanation

The purpose of Article 52 ⁽¹⁾ is to set the scope of the rights and principles of the Charter, and to lay down rules for their interpretation. Paragraph 1 deals with the arrangements for the limitation of rights. The wording is based on the case-law of the Court of Justice: ‘... it is well established in the case-law of the Court that restrictions may be imposed on the exercise of fundamental rights, in particular in the context of a common organisation of the market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, disproportionate and unreasonable interference undermining the very substance of those rights’ (judgment of 13 April 2000, Case C-292/97, paragraph 45 of the grounds). The reference to general interests recognised by the Union covers both the objectives mentioned in Article I-2 of the Constitution and other interests protected by specific provisions of the Constitution such as Articles I-5(1), III-133(3), III-154 and III-436.

Paragraph 2 refers to rights which were already expressly guaranteed in the Treaty establishing the European Community and have been recognised in the Charter, and which are now found in other Parts of the Constitution (notably the rights derived from Union citizenship). It clarifies that such rights remain subject to the conditions and limits applicable to the Union law on which they are based, and for which provision is now made in Parts I and III of the Constitution. The Charter does not alter the system of rights conferred by the EC Treaty and now taken over by Parts I and III of the Constitution.

Paragraph 3 is intended to ensure the necessary consistency between the Charter and the ECHR by establishing the rule that, insofar as the rights in the present Charter also correspond to rights guaranteed by the ECHR, the meaning and scope of those rights, including authorised limitations, are the same as those laid down by the ECHR. This means in particular that the legislator, in laying down limitations to those rights, must comply with the same standards as are fixed by the detailed limitation arrangements laid down in the ECHR, which are thus made applicable for the rights covered by this paragraph, without thereby adversely affecting the autonomy of Union law and of that of the Court of Justice of the European Union.

The reference to the ECHR covers both the Convention and the Protocols to it. The meaning and the scope of the guaranteed rights are determined not only by the text of those instruments, but also by the case-law of the European Court of Human Rights and by the Court of Justice of the European Union. The last sentence of the paragraph is designed to allow the Union to guarantee more extensive protection. In any event, the level of protection afforded by the Charter may never be lower than that guaranteed by the ECHR.

The Charter does not affect the possibilities of Member States to avail themselves of Article 15 ECHR, allowing derogations from ECHR rights in the event of war or of other public dangers threatening the life of the nation, when they take action in the areas of national defence in the event of war and of the maintenance of law and order, in accordance with their responsibilities recognised in Articles I-5 (1), III-131, III-262 of the Constitution.

The list of rights which may at the present stage, without precluding developments in the law, legislation and the Treaties, be regarded as corresponding to rights in the ECHR within the meaning of the present paragraph is given hereafter. It does not include rights additional to those in the ECHR.

1. Articles of the Charter where both the meaning and the scope are the same as the corresponding Articles of the ECHR:

— Article 2 ⁽²⁾ corresponds to Article 2 of the ECHR

⁽¹⁾ Article II-112 of the Constitution.

⁽²⁾ Article II-62 of the Constitution.

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- Article 4 ⁽¹⁾ corresponds to Article 3 of the ECHR
 - Article 5(1) and (2) ⁽²⁾ correspond to Article 4 of the ECHR
 - Article 6 ⁽³⁾ corresponds to Article 5 of the ECHR
 - Article 7 ⁽⁴⁾ corresponds to Article 8 of the ECHR
 - Article 10(1) ⁽⁵⁾ corresponds to Article 9 of the ECHR
 - Article 11 ⁽⁶⁾ corresponds to Article 10 of the ECHR without prejudice to any restrictions which Union law may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR
 - Article 17 ⁽⁷⁾ corresponds to Article 1 of the Protocol to the ECHR
 - Article 19(1) ⁽⁸⁾ corresponds to Article 4 of Protocol No 4
 - Article 19(2) ⁽⁸⁾ corresponds to Article 3 of the ECHR as interpreted by the European Court of Human Rights
 - Article 48 ⁽⁹⁾ corresponds to Article 6(2) and(3) of the ECHR
 - Article 49(1) (with the exception of the last sentence) and (2) ⁽¹⁰⁾ correspond to Article 7 of the ECHR
2. Articles where the meaning is the same as the corresponding Articles of the ECHR, but where the scope is wider:
- Article 9 ⁽¹¹⁾ covers the same field as Article 12 of the ECHR, but its scope may be extended to other forms of marriage if these are established by national legislation

⁽¹⁾ Article II-64 of the Constitution.

⁽²⁾ Article II-65 of the Constitution.

⁽³⁾ Article II-66 of the Constitution.

⁽⁴⁾ Article II-67 of the Constitution.

⁽⁵⁾ Article II-70 of the Constitution.

⁽⁶⁾ Article II-71 of the Constitution.

⁽⁷⁾ Article II-77 of the Constitution.

⁽⁸⁾ Article II-79 of the Constitution.

⁽⁹⁾ Article II-108 of the Constitution.

⁽¹⁰⁾ Article II-109 of the Constitution.

⁽¹¹⁾ Article II-69 of the Constitution.

- Article 12(1) ⁽¹⁾ corresponds to Article 11 of the ECHR, but its scope is extended to European Union level
- Article 14(1) ⁽²⁾ corresponds to Article 2 of the Protocol to the ECHR, but its scope is extended to cover access to vocational and continuing training
- Article 14(3) ⁽²⁾ corresponds to Article 2 of the Protocol to the ECHR as regards the rights of parents
- Article 47(2) and (3) ⁽³⁾ correspond to Article 6(1) of the ECHR, but the limitation to the determination of civil rights and obligations or criminal charges does not apply as regards Union law and its implementation
- Article 50 ⁽⁴⁾ corresponds to Article 4 of Protocol No 7 to the ECHR, but its scope is extended to European Union level between the Courts of the Member States.
- Finally, citizens of the European Union may not be considered as aliens in the scope of the application of Union law, because of the prohibition of any discrimination on grounds of nationality. The limitations provided for by Article 16 of the ECHR as regards the rights of aliens therefore do not apply to them in this context.

The rule of interpretation contained in paragraph 4 has been based on the wording of Article 6(2) of the Treaty on European Union (cf. now the wording of Article I-9(3) of the Constitution) and takes due account of the approach to common constitutional traditions followed by the Court of Justice (e.g., judgment of 13 December 1979, Case 44/79 Hauer [1979] ECR 3727; judgment of 18 May 1982, Case 155/79, AM&S, [1982] ECR 1575). Under that rule, rather than following a rigid approach of ‘a lowest common denominator’, the Charter rights concerned should be interpreted in a way offering a high standard of protection which is adequate for the law of the Union and in harmony with the common constitutional traditions.

Paragraph 5 clarifies the distinction between ‘rights’ and ‘principles’ set out in the Charter. According to that distinction, subjective rights shall be respected, whereas principles shall be observed (Article 51 (1)) ⁽⁵⁾. Principles may be implemented through legislative or executive acts (adopted by the Union in accordance with its powers, and by the Member States only when they implement Union law); accordingly, they become significant for the Courts only when such acts are interpreted or reviewed. They do not however give rise to direct claims for positive action by the Union’s institutions or Member States authorities. This is consistent both with case-law of the Court of Justice (Cf. notably case-law on the ‘precautionary principle’ in Article 174 (2) TEC (replaced by Article III-233 of the Constitution): judgment of the CFI of 11 September 2002, T-13/99, Pfizer vs. Council, with numerous references to earlier case-law; and a series of judgments on Article 33 (ex 39) on the principles of agricultural law, e.g. judgment of the Court of Justice C-265/85, Van den Berg, 1987 ECR 1155: scrutiny of the principle of market stabilisation and of reasonable expectations) and with the approach of the Member States’ constitutional systems to

⁽¹⁾ Article II-72 of the Constitution.

⁽²⁾ Article II-74 of the Constitution.

⁽³⁾ Article II-107 of the Constitution.

⁽⁴⁾ Article II-110 of the Constitution.

⁽⁵⁾ Article II-111 of the Constitution.

'principles' particularly in the field of social law. For illustration, examples for principles recognised in the Charter include e.g. Articles 25, 26 and 37 ⁽¹⁾. In some cases, an Article of the Charter may contain both elements of a right and of a principle, e.g. Articles 23, 33 and 34 ⁽²⁾.

Paragraph 6 refers to the various Articles in the Charter which, in the spirit of subsidiarity, make reference to national laws and practices.

Article 53 ⁽³⁾

Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Explanation

This provision is intended to maintain the level of protection currently afforded within their respective scope by Union law, national law and international law. Owing to its importance, mention is made of the ECHR.

Article 54 ⁽⁴⁾

Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

Explanation

This Article corresponds to Article 17 of the ECHR:

'Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.'

⁽¹⁾ Articles II-85, II-86 and II-97 of the Constitution.

⁽²⁾ Articles II-83, II-93 and II-94 of the Constitution.

⁽³⁾ Article II-113 of the Constitution.

⁽⁴⁾ Article II-114 of the Constitution.

***I.3. The Version in Force:
the 2007 Charter of
Fundamental Rights and
Explanations, and Extracts
from the Treaties (Lisbon
consolidated version)***

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

EUROPEAN PARLIAMENT

COUNCIL

COMMISSION

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

(2007/C 303/01)

The European Parliament, the Council and the Commission solemnly proclaim the following text as the Charter of Fundamental Rights of the European Union.

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Preamble

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, services, goods and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Union and for the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

TITLE I

DIGNITY

*Article 1***Human dignity**

Human dignity is inviolable. It must be respected and protected.

*Article 2***Right to life**

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

*Article 3***Right to the integrity of the person**

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - (a) the free and informed consent of the person concerned, according to the procedures laid down by law;
 - (b) the prohibition of eugenic practices, in particular those aiming at the selection of persons;
 - (c) the prohibition on making the human body and its parts as such a source of financial gain;
 - (d) the prohibition of the reproductive cloning of human beings.

*Article 4***Prohibition of torture and inhuman or degrading treatment or punishment**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

*Article 5***Prohibition of slavery and forced labour**

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

TITLE II

FREEDOMS

*Article 6***Right to liberty and security**

Everyone has the right to liberty and security of person.

*Article 7***Respect for private and family life**

Everyone has the right to respect for his or her private and family life, home and communications.

*Article 8***Protection of personal data**

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

*Article 9***Right to marry and right to found a family**

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

*Article 10***Freedom of thought, conscience and religion**

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

*Article 11***Freedom of expression and information**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

*Article 12***Freedom of assembly and of association**

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

*Article 13***Freedom of the arts and sciences**

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

*Article 14***Right to education**

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

*Article 15***Freedom to choose an occupation and right to engage in work**

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

*Article 16***Freedom to conduct a business**

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

*Article 17***Right to property**

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.

2. Intellectual property shall be protected.

*Article 18***Right to asylum**

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as ‘the Treaties’).

*Article 19***Protection in the event of removal, expulsion or extradition**

1. Collective expulsions are prohibited.

2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

TITLE III

EQUALITY

*Article 20***Equality before the law**

Everyone is equal before the law.

*Article 21***Non-discrimination**

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

*Article 22***Cultural, religious and linguistic diversity**

The Union shall respect cultural, religious and linguistic diversity.

*Article 23***Equality between women and men**

Equality between women and men must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

*Article 24***The rights of the child**

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

*Article 25***The rights of the elderly**

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

*Article 26***Integration of persons with disabilities**

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

TITLE IV

SOLIDARITY*Article 27***Workers' right to information and consultation within the undertaking**

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

*Article 28***Right of collective bargaining and action**

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

*Article 29***Right of access to placement services**

Everyone has the right of access to a free placement service.

*Article 30***Protection in the event of unjustified dismissal**

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

*Article 31***Fair and just working conditions**

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

*Article 32***Prohibition of child labour and protection of young people at work**

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

*Article 33***Family and professional life**

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

*Article 34***Social security and social assistance**

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

*Article 35***Health care**

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities.

*Article 36***Access to services of general economic interest**

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaties, in order to promote the social and territorial cohesion of the Union.

*Article 37***Environmental protection**

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

*Article 38***Consumer protection**

Union policies shall ensure a high level of consumer protection.

TITLE V

CITIZENS' RIGHTS

*Article 39***Right to vote and to stand as a candidate at elections to the European Parliament**

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

*Article 40***Right to vote and to stand as a candidate at municipal elections**

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

*Article 41***Right to good administration**

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

2. This right includes:
- (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - (c) the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article 42

Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.

Article 43

European Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union, with the exception of the Court of Justice of the European Union acting in its judicial role.

Article 44

Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Article 45

Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State.

*Article 46***Diplomatic and consular protection**

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

TITLE VI

JUSTICE

*Article 47***Right to an effective remedy and to a fair trial**

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

*Article 48***Presumption of innocence and right of defence**

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

*Article 49***Principles of legality and proportionality of criminal offences and penalties**

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

*Article 50***Right not to be tried or punished twice in criminal proceedings for the same criminal offence**

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

TITLE VII

GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER*Article 51***Field of application**

1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.
2. The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.

*Article 52***Scope and interpretation of rights and principles**

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits defined by those Treaties.
3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
4. In so far as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.

5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.
6. Full account shall be taken of national laws and practices as specified in this Charter.
7. The explanations drawn up as a way of providing guidance in the interpretation of this Charter shall be given due regard by the courts of the Union and of the Member States.

Article 53

Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article 54

Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.



The above text adapts the wording of the Charter proclaimed on 7 December 2000, and will replace it as from the date of entry into force of the Treaty of Lisbon.

Съставено в Страсбург на дванадесети декември две хиляди и седма година.

Hecho en Estrasburgo, el doce de diciembre de dos mil siete.

Ve Štrasburku dne dvanáctého prosince dva tisíce sedm.

Udfærdiget i Strasbourg den tolvte december to tusind og syv.

Geschehen zu Strassburg am zwölften Dezember zweitausendsieben.

Kahe tuhanda seitsmenda aasta detsembrikuu kaheteistkümnendal päeval Strasbourgis.

Έγινε στο Στρασβούργο, στις δώδεκα Δεκεμβρίου δύο χιλιάδες επτά.

Done at Strasbourg on the twelfth day of December in the year two thousand and seven.

Fait à Strasbourg, le douze décembre deux mille sept.

Arna dhéanamh in Strasbourg an dara lá déag de Nollaig sa bhliain dhá mhíle a seacht.

Fatto a Strasburgo, addì dodici dicembre duemilasette.

Strasbūrā, divtūkstoš septītā gada divpadsmitajā decembrī.

Priimta du tūkstančiai septintųjų metų gruodžio dvyliktą dieną Strasbūre.

Kelt Strasbourgban, a kétézer-hetedik év december tizenkettedik napján.

Magħmul fi Strasburgu, fit-tnax-il jum ta' Dicembru tas-sena elfejn u sebgha.

Gedaan te Straatsburg, de twaalfde december tweeduizend zeven.

Sporządzono w Strasburgu dnia dwunastego grudnia roku dwa tysiące siódmego.

Feito em Estrasburgo, em doze de Dezembro de dois mil e sete.

Întocmit la Strasbourg, la doisprezece decembrie două mii șapte.

V Štrasburgu dňa dvanásteho decembra dvetisícšedem.

V Strasbourgü, dne dvanajstega decembra leta dva tisoč sedem.

Tehty Strasbourgissa kahdentenatoista päivänä joulukuuta vuonna kaksituhattaseitsemän.

Som skedde i Strasbourg den tolfte december tjugohundrasju.

<p>За Европейския парламент Por el Parlamento Europeo Za Evropský parlament For Europa-Parlamentet Im Namen des Europäischen Parlaments Euroopa Parlamendi nimel Για το Ευρωπαϊκό Κοινοβούλιο For the European Parliament Pour le Parlement européen Thar ceann Pharlaimint na hEorpa Per il Parlamento europeo Eiroparlamenta vārdā Europos Parlamento vardu Az Európai Parlament részéről Ghall-Parlament Ewropew Voor het Europees Parlement W imieniu Parlamentu Europejskiego Pelo Parlamento Europeu Pentru Parlamentul European za Európsky parlament za Evropski parlament Euroopan parlamentin puolesta På Europaparlamentets vägnar</p>	<p>За Съвета на Европейския съюз Por el Consejo de la Unión Europea Za Radu Evropské unie For Rådet for Den Europæiske Union Für den Rat der Europäischen Union Euroopa Liidu Nõukogu nimel Για το Συμβούλιο της Ευρωπαϊκής Ένωσης For the Council of the European Union Pour le Conseil de l'Union européenne Thar ceann Chomhairle an Aontais Eorpaigh Per il Consiglio dell'Unione europea Eiropas Savienības Padomes vārdā Europos Sąjungos Tarybos vardu Az Európai Unió Tanácsa részéről Ghall-Kunsill ta' l-Unjoni Ewropea Voor de Raad van de Europese Unie W imieniu Rady Unii Europejskiej Pelo Conselho da União Europeia Pentru Consiliul Uniunii Europene za Radu Európskej únie za Svet Evropske unije Euroopan unionin neuvoston puolesta För Europeiska unionens råd</p>	<p>За Комисията на Европейските общности Por la Comisión de las Comunidades Europeas Za Komisi Evropských společenství For Kommission for De Europæiske Fællesskaber Für die Kommission der Europäischen Gemeinschaften Euroopa Ühenduste Komisjoni nimel Για την Επιτροπή των Ευρωπαϊκών Κοινοτήτων For the Commission of the European Communities Pour la Commission des communautés européennes Thar ceann Choimisiún na gComhphobal Eorpach Per la Commissione delle Comunità europee Eiropas Kopienu Komisijas vārdā Europos Bendrijų Komisijos vardu Az Európai Közösségek Bizottsága részéről Ghall-Kummissjoni tal-Komunitajiet Ewropej Voor de Commissie van de Europese Gemeenschappen W imieniu Komisji Wspólnot Europejskich Pela Comissão das Comunidades Europeias Pentru Comisia Comunităților Europene Za Komisiu Európskych spoločenstiev Za Komisijo Evropskih skupnosti Euroopan yhteisöjen komission puolesta På Europeiska gemenskapernas kommissions vägnar</p>
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EXPLANATIONS (*) RELATING TO THE CHARTER OF FUNDAMENTAL RIGHTS

(2007/C 303/02)

These explanations were originally prepared under the authority of the Praesidium of the Convention which drafted the Charter of Fundamental Rights of the European Union. They have been updated under the responsibility of the Praesidium of the European Convention, in the light of the drafting adjustments made to the text of the Charter by that Convention (notably to Articles 51 and 52) and of further developments of Union law. Although they do not as such have the status of law, they are a valuable tool of interpretation intended to clarify the provisions of the Charter.

TITLE I — DIGNITY

Explanation on Article 1 — Human dignity

The dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights. The 1948 Universal Declaration of Human Rights enshrined human dignity in its preamble: 'Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.' In its judgment of 9 October 2001 in Case C-377/98 *Netherlands v European Parliament and Council* [2001] ECR I-7079, at grounds 70 — 77, the Court of Justice confirmed that a fundamental right to human dignity is part of Union law.

It results that none of the rights laid down in this Charter may be used to harm the dignity of another person, and that the dignity of the human person is part of the substance of the rights laid down in this Charter. It must therefore be respected, even where a right is restricted.

Explanation on Article 2 — Right to life

1. Paragraph 1 of this Article is based on the first sentence of Article 2(1) of the ECHR, which reads as follows:

'1. Everyone's right to life shall be protected by law ...'.

2. The second sentence of the provision, which referred to the death penalty, was superseded by the entry into force of Article 1 of Protocol No 6 to the ECHR, which reads as follows:

'The death penalty shall be abolished. No-one shall be condemned to such penalty or executed.'

Article 2(2) of the Charter is based on that provision.

3. The provisions of Article 2 of the Charter correspond to those of the above Articles of the ECHR and its Protocol. They have the same meaning and the same scope, in accordance with Article 52(3) of the Charter. Therefore, the 'negative' definitions appearing in the ECHR must be regarded as also forming part of the Charter:

(a) Article 2(2) of the ECHR:

'Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(*) Editor's note: References to article numbers in the Treaties have been updated and some minor technical errors have been corrected.

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.’

(b) Article 2 of Protocol No 6 to the ECHR:

‘A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions...’.

Explanation on Article 3 — Right to the integrity of the person

1. In its judgment of 9 October 2001 in Case C-377/98 *Netherlands v European Parliament and Council* [2001] ECR-I 7079, at grounds 70, 78 to 80, the Court of Justice confirmed that a fundamental right to human integrity is part of Union law and encompasses, in the context of medicine and biology, the free and informed consent of the donor and recipient.
2. The principles of Article 3 of the Charter are already included in the Convention on Human Rights and Biomedicine, adopted by the Council of Europe (ETS 164 and additional protocol ETS 168). The Charter does not set out to depart from those principles, and therefore prohibits only reproductive cloning. It neither authorises nor prohibits other forms of cloning. Thus it does not in any way prevent the legislature from prohibiting other forms of cloning.
3. The reference to eugenic practices, in particular those aiming at the selection of persons, relates to possible situations in which selection programmes are organised and implemented, involving campaigns for sterilisation, forced pregnancy, compulsory ethnic marriage among others, all acts deemed to be international crimes in the Statute of the International Criminal Court adopted in Rome on 17 July 1998 (see its Article 7(1)(g)).

Explanation on Article 4 — Prohibition of torture and inhuman or degrading treatment or punishment

The right in Article 4 is the right guaranteed by Article 3 of the ECHR, which has the same wording: ‘No one shall be subjected to torture or to inhuman or degrading treatment or punishment’. By virtue of Article 52(3) of the Charter, it therefore has the same meaning and the same scope as the ECHR Article.

Explanation on Article 5 — Prohibition of slavery and forced labour

1. The right in Article 5(1) and (2) corresponds to Article 4(1) and (2) of the ECHR, which has the same wording. It therefore has the same meaning and scope as the ECHR Article, by virtue of Article 52(3) of the Charter. Consequently:
 - no limitation may legitimately affect the right provided for in paragraph 1,
 - in paragraph 2, ‘forced or compulsory labour’ must be understood in the light of the ‘negative’ definitions contained in Article 4(3) of the ECHR:

‘For the purpose of this article the term “forced or compulsory labour” shall not include:

- (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
- (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

- (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
 - (d) any work or service which forms part of normal civic obligations.’.
2. Paragraph 3 stems directly from human dignity and takes account of recent developments in organised crime, such as the organisation of lucrative illegal immigration or sexual exploitation networks. The Annex to the Europol Convention contains the following definition which refers to trafficking for the purpose of sexual exploitation: ‘traffic in human beings: means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children’. Chapter VI of the Convention implementing the Schengen Agreement, which has been integrated into the Union’s *acquis*, in which the United Kingdom and Ireland participate, contains the following wording in Article 27(1) which refers to illegal immigration networks: ‘The Contracting Parties undertake to impose appropriate penalties on any person who, for financial gain, assists or tries to assist an alien to enter or reside within the territory of one of the Contracting Parties in breach of that Contracting Party’s laws on the entry and residence of aliens.’ On 19 July 2002, the Council adopted a framework decision on combating trafficking in human beings (OJ L 203, 1.8.2002, p. 1) whose Article 1 defines in detail the offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation, which the Member States must make punishable by virtue of that framework decision.

TITLE II — FREEDOMS

Explanation on Article 6 — Right to liberty and security

The rights in Article 6 are the rights guaranteed by Article 5 of the ECHR, and in accordance with Article 52(3) of the Charter, they have the same meaning and scope. Consequently, the limitations which may legitimately be imposed on them may not exceed those permitted by the ECHR, in the wording of Article 5:

- ‘1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
- (a) the lawful detention of a person after conviction by a competent court;
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
 - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
 - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
 - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.'

The rights enshrined in Article 6 must be respected particularly when the European Parliament and the Council adopt legislative acts in the area of judicial cooperation in criminal matters, on the basis of Articles 82, 83 and 85 of the Treaty on the Functioning of the European Union, notably to define common minimum provisions as regards the categorisation of offences and punishments and certain aspects of procedural law.

Explanation on Article 7 — Respect for private and family life

The rights guaranteed in Article 7 correspond to those guaranteed by Article 8 of the ECHR. To take account of developments in technology the word 'correspondence' has been replaced by 'communications'.

In accordance with Article 52(3), the meaning and scope of this right are the same as those of the corresponding article of the ECHR. Consequently, the limitations which may legitimately be imposed on this right are the same as those allowed by Article 8 of the ECHR:

- '1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'

Explanation on Article 8 — Protection of personal data

This Article has been based on Article 286 of the Treaty establishing the European Community and Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31) as well as on Article 8 of the ECHR and on the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which has been ratified by all the Member States. Article 286 of the EC Treaty is now replaced by Article 16 of the Treaty on the Functioning of the European Union and Article 39 of the Treaty on European Union. Reference is also made to Regulation (EC) No 45/2001 of the European Parliament and of the Council 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, 12.1.2001, p. 1). The above-mentioned Directive and Regulation contain conditions and limitations for the exercise of the right to the protection of personal data.

Explanation on Article 9 — Right to marry and right to found a family

This Article is based on Article 12 of the ECHR, which reads as follows: ‘Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercising of this right.’ The wording of the Article has been modernised to cover cases in which national legislation recognises arrangements other than marriage for founding a family. This Article neither prohibits nor imposes the granting of the status of marriage to unions between people of the same sex. This right is thus similar to that afforded by the ECHR, but its scope may be wider when national legislation so provides.

Explanation on Article 10 — Freedom of thought, conscience and religion

The right guaranteed in paragraph 1 corresponds to the right guaranteed in Article 9 of the ECHR and, in accordance with Article 52(3) of the Charter, has the same meaning and scope. Limitations must therefore respect Article 9(2) of the Convention, which reads as follows: ‘Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.’

The right guaranteed in paragraph 2 corresponds to national constitutional traditions and to the development of national legislation on this issue.

Explanation on Article 11 — Freedom of expression and information

1. Article 11 corresponds to Article 10 of the European Convention on Human Rights, which reads as follows:

- ‘1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.’

Pursuant to Article 52(3) of the Charter, the meaning and scope of this right are the same as those guaranteed by the ECHR. The limitations which may be imposed on it may therefore not exceed those provided for in Article 10(2) of the Convention, without prejudice to any restrictions which the competition law of the Union may impose on Member States’ right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR.

2. Paragraph 2 of this Article spells out the consequences of paragraph 1 regarding freedom of the media. It is based in particular on Court of Justice case-law regarding television, particularly in Case C-288/89 (judgment of 25 July 1991, *Stichting Collectieve Antennevoorziening Gouda and others* [1991] ECR I-4007), and on the Protocol on the system of public broadcasting in the Member States annexed to the EC Treaty and now to the Treaties, and on Council Directive 89/552/EC (particularly its seventeenth recital).

Explanation on Article 12 — Freedom of assembly and of association

1. Paragraph 1 of this Article corresponds to Article 11 of the ECHR, which reads as follows:

- ‘1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.’

The meaning of the provisions of paragraph 1 of this Article 12 is the same as that of the ECHR, but their scope is wider since they apply at all levels including European level. In accordance with Article 52(3) of the Charter, limitations on that right may not exceed those considered legitimate by virtue of Article 11(2) of the ECHR.

2. This right is also based on Article 11 of the Community Charter of the Fundamental Social Rights of Workers.
3. Paragraph 2 of this Article corresponds to Article 10(4) of the Treaty on European Union.

Explanation on Article 13 — Freedom of the arts and sciences

This right is deduced primarily from the right to freedom of thought and expression. It is to be exercised having regard to Article 1 and may be subject to the limitations authorised by Article 10 of the ECHR.

Explanation on Article 14 — Right to education

1. This Article is based on the common constitutional traditions of Member States and on Article 2 of the Protocol to the ECHR, which reads as follows:

‘No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.’

It was considered useful to extend this Article to access to vocational and continuing training (see point 15 of the Community Charter of the Fundamental Social Rights of Workers and Article 10 of the Social Charter) and to add the principle of free compulsory education. As it is worded, the latter principle merely implies that as regards compulsory education, each child has the possibility of attending an establishment which offers free education. It does not require all establishments which provide education or vocational and continuing training, in particular private ones, to be free of charge. Nor does it exclude certain specific forms of education having to be paid for, if the State takes measures to grant financial compensation. In so far as the Charter applies to the Union, this means that in its training policies the Union must respect free compulsory education, but this does not, of course, create new powers. Regarding the right of parents, it must be interpreted in conjunction with the provisions of Article 24.

2. Freedom to found public or private educational establishments is guaranteed as one of the aspects of freedom to conduct a business but it is limited by respect for democratic principles and is exercised in accordance with the arrangements defined by national legislation.

Explanation on Article 15 — Freedom to choose an occupation and right to engage in work

Freedom to choose an occupation, as enshrined in Article 15(1), is recognised in Court of Justice case-law (see *inter alia* judgment of 14 May 1974, Case 4/73 *Nold* [1974] ECR 491, paragraphs 12 to 14 of the grounds; judgment of 13 December 1979, Case 44/79 *Hauer* [1979] ECR 3727; judgment of 8 October 1986, Case 234/85 *Keller* [1986] ECR 2897, paragraph 8 of the grounds).

This paragraph also draws upon Article 1(2) of the European Social Charter, which was signed on 18 October 1961 and has been ratified by all the Member States, and on point 4 of the Community Charter of the Fundamental Social Rights of Workers of 9 December 1989. The expression ‘working conditions’ is to be understood in the sense of Article 156 of the Treaty on the Functioning of the European Union.

Paragraph 2 deals with the three freedoms guaranteed by Articles 26, 45, 49 and 56 of the Treaty on the Functioning of the European Union, namely freedom of movement for workers, freedom of establishment and freedom to provide services.

Paragraph 3 has been based on Article 153(1)(g) of the Treaty on the Functioning of the European Union, and on Article 19(4) of the European Social Charter signed on 18 October 1961 and ratified by all the Member States. Article 52(2) of the Charter is therefore applicable. The question of recruitment of seamen having the nationality of third States for the crews of vessels flying the flag of a Member State of the Union is governed by Union law and national legislation and practice.

Explanation on Article 16 — Freedom to conduct a business

This Article is based on Court of Justice case-law which has recognised freedom to exercise an economic or commercial activity (see judgments of 14 May 1974, Case 4/73 *Nold* [1974] ECR 491, paragraph 14 of the grounds, and of 27 September 1979, Case 230-78 *SpA Eridiana and others* [1979] ECR 2749, paragraphs 20 and 31 of the grounds) and freedom of contract (see *inter alia* *Sukkerfabriken Nykøbing* judgment, Case 151/78 [1979] ECR 1, paragraph 19 of the grounds, and judgment of 5 October 1999, C-240/97 *Spain v Commission* [1999] ECR I-6571, paragraph 99 of the grounds) and Article 119(1) and (3) of the Treaty on the Functioning of the European Union, which recognises free competition. Of course, this right is to be exercised with respect for Union law and national legislation. It may be subject to the limitations provided for in Article 52(1) of the Charter.

Explanation on Article 17 — Right to property

This Article is based on Article 1 of the Protocol to the ECHR:

‘Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.’

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.’

This is a fundamental right common to all national constitutions. It has been recognised on numerous occasions by the case-law of the Court of Justice, initially in the *Hauer* judgment (13 December 1979, [1979] ECR 3727). The wording has been updated but, in accordance with Article 52(3), the meaning and scope of the right are the same as those of the right guaranteed by the ECHR and the limitations may not exceed those provided for there.

Protection of intellectual property, one aspect of the right of property, is explicitly mentioned in paragraph 2 because of its growing importance and Community secondary legislation. Intellectual property covers not only literary and artistic property but also *inter alia* patent and trademark rights and associated rights. The guarantees laid down in paragraph 1 shall apply as appropriate to intellectual property.

Explanation on Article 18 — Right to asylum

The text of the Article has been based on TEC Article 63, now replaced by Article 78 of the Treaty on the Functioning of the European Union, which requires the Union to respect the Geneva Convention on refugees. Reference should be made to the Protocols relating to the United Kingdom and Ireland, annexed to the Treaties, and to Denmark, to determine the extent to which those Member States implement Union law in this area and the extent to which this Article is applicable to them. This Article is in line with the Protocol on Asylum annexed to the Treaties.

Explanation on Article 19 — Protection in the event of removal, expulsion or extradition

Paragraph 1 of this Article has the same meaning and scope as Article 4 of Protocol No 4 to the ECHR concerning collective expulsion. Its purpose is to guarantee that every decision is based on a specific examination and that no single measure can be taken to expel all persons having the nationality of a particular State (see also Article 13 of the Covenant on Civil and Political Rights).

Paragraph 2 incorporates the relevant case-law from the European Court of Human Rights regarding Article 3 of the ECHR (see *Ahmed v. Austria*, judgment of 17 December 1996, 1996-VI, p. 2206, and *Soering*, judgment of 7 July 1989).

TITLE III — EQUALITY

Explanation on Article 20 — Equality before the law

This Article corresponds to a general principle of law which is included in all European constitutions and has also been recognised by the Court of Justice as a basic principle of Community law (judgment of 13 November 1984, Case 283/83 *Racke* [1984] ECR 3791, judgment of 17 April 1997, Case C-15/95 *EARL* [1997] ECR I-1961, and judgment of 13 April 2000, Case C-292/97 *Karlsson* [2000] ECR 2737).

Explanation on Article 21 — Non-discrimination

Paragraph 1 draws on Article 13 of the EC Treaty, now replaced by Article 19 of the Treaty on the Functioning of the European Union, Article 14 of the ECHR and Article 11 of the Convention on Human Rights and Biomedicine as regards genetic heritage. In so far as this corresponds to Article 14 of the ECHR, it applies in compliance with it.

There is no contradiction or incompatibility between paragraph 1 and Article 19 of the Treaty on the Functioning of the European Union which has a different scope and purpose: Article 19 confers power on the Union to adopt legislative acts, including harmonisation of the Member States' laws and regulations, to combat certain forms of discrimination, listed exhaustively in that Article. Such legislation may cover action of Member State authorities (as well as relations between private individuals) in any area within the limits of the Union's powers. In contrast, the provision in Article 21(1) does not create any power to enact anti-discrimination laws in these areas of Member State or private action, nor does it lay down a sweeping ban of discrimination in such wide-ranging areas. Instead, it only addresses discriminations by the institutions and bodies of the Union themselves, when exercising powers conferred under the Treaties, and by Member States only when they are implementing Union law. Paragraph 1 therefore does not alter the extent of powers granted under Article 19 nor the interpretation given to that Article.

Paragraph 2 corresponds to the first paragraph of Article 18 of the Treaty on the Functioning of the European Union and must be applied in compliance with that Article.

Explanation on Article 22 — Cultural, religious and linguistic diversity

This Article has been based on Article 6 of the Treaty on European Union and on Article 151(1) and (4) of the EC Treaty, now replaced by Article 167(1) and (4) of the Treaty on the Functioning of the European Union, concerning culture. Respect for cultural and linguistic diversity is now also laid down in Article 3(3) of the Treaty on European Union. The Article is also inspired by Declaration No 11 to the Final Act of the Amsterdam Treaty on the status of churches and non-confessional organisations, now taken over in Article 17 of the Treaty on the Functioning of the European Union.

Explanation on Article 23 — Equality between women and men

The first paragraph has been based on Articles 2 and 3(2) of the EC Treaty, now replaced by Article 3 of the Treaty on European Union and Article 8 of the Treaty on the Functioning of the European Union which impose the objective of promoting equality between men and women on the Union, and on Article 157(1) of the Treaty on the Functioning of the European Union. It draws on Article 20 of the revised European Social Charter of 3 May 1996 and on point 16 of the Community Charter on the rights of workers.

It is also based on Article 157(3) of the Treaty on the Functioning of the European Union and Article 2(4) of Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

The second paragraph takes over in shorter form Article 157(4) of the Treaty on the Functioning of the European Union which provides that the principle of equal treatment does not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers. In accordance with Article 52(2), the present paragraph does not amend Article 157(4).

Explanation on Article 24 — The rights of the child

This Article is based on the New York Convention on the Rights of the Child signed on 20 November 1989 and ratified by all the Member States, particularly Articles 3, 9, 12 and 13 thereof.

Paragraph 3 takes account of the fact that, as part of the establishment of an area of freedom, security and justice, the legislation of the Union on civil matters having cross-border implications, for which Article 81 of the Treaty on the Functioning of the European Union confers power, may include notably visiting rights ensuring that children can maintain on a regular basis a personal and direct contact with both of their parents.

Explanation on Article 25 — The rights of the elderly

This Article draws on Article 23 of the revised European Social Charter and Articles 24 and 25 of the Community Charter of the Fundamental Social Rights of Workers. Of course, participation in social and cultural life also covers participation in political life.

Explanation on Article 26 — Integration of persons with disabilities

The principle set out in this Article is based on Article 15 of the European Social Charter and also draws on point 26 of the Community Charter of the Fundamental Social Rights of Workers.

TITLE IV — SOLIDARITY

Explanation on Article 27 — Workers' right to information and consultation within the undertaking

This Article appears in the revised European Social Charter (Article 21) and in the Community Charter on the rights of workers (points 17 and 18). It applies under the conditions laid down by Union law and by national laws. The reference to appropriate levels refers to the levels laid down by Union law or by national laws and practices, which might include the European level when Union legislation so provides. There is a considerable Union *acquis* in this field: Articles 154 and 155 of the Treaty on the Functioning of the European Union, and Directives 2002/14/EC (general framework for informing and consulting employees in the European Community), 98/59/EC (collective redundancies), 2001/23/EC (transfers of undertakings) and 94/45/EC (European works councils).

Explanation on Article 28 — Right of collective bargaining and action

This Article is based on Article 6 of the European Social Charter and on the Community Charter of the Fundamental Social Rights of Workers (points 12 to 14). The right of collective action was recognised by the European Court of Human Rights as one of the elements of trade union rights laid down by Article 11 of the ECHR. As regards the appropriate levels at which collective negotiation might take place, see the explanation given for the above Article. The modalities and limits for the exercise of collective action, including strike action, come under national laws and practices, including the question of whether it may be carried out in parallel in several Member States.

Explanation on Article 29 — Right of access to placement services

This Article is based on Article 1(3) of the European Social Charter and point 13 of the Community Charter of the Fundamental Social Rights of Workers.

Explanation on Article 30 — Protection in the event of unjustified dismissal

This Article draws on Article 24 of the revised Social Charter. See also Directive 2001/23/EC on the safeguarding of employees' rights in the event of transfers of undertakings, and Directive 80/987/EEC on the protection of employees in the event of the insolvency of their employer, as amended by Directive 2002/74/EC.

Explanation on Article 31 — Fair and just working conditions

1. Paragraph 1 of this Article is based on Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work. It also draws on Article 3 of the Social Charter and point 19 of the Community Charter on the rights of workers, and, as regards dignity at work, on Article 26 of the revised Social Charter. The expression 'working conditions' is to be understood in the sense of Article 156 of the Treaty on the Functioning of the European Union.
2. Paragraph 2 is based on Directive 93/104/EC concerning certain aspects of the organisation of working time, Article 2 of the European Social Charter and point 8 of the Community Charter on the rights of workers.

Explanation on Article 32 — Prohibition of child labour and protection of young people at work

This Article is based on Directive 94/33/EC on the protection of young people at work, Article 7 of the European Social Charter and points 20 to 23 of the Community Charter of the Fundamental Social Rights of Workers.

Explanation on Article 33 — Family and professional life

Article 33(1) is based on Article 16 of the European Social Charter.

Paragraph 2 draws on Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding and Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC. It is also based on Article 8 (protection of maternity) of the European Social Charter and draws on Article 27 (right of workers with family responsibilities to equal opportunities and equal treatment) of the revised Social Charter. ‘Maternity’ covers the period from conception to weaning.

Explanation on Article 34 — Social security and social assistance

The principle set out in Article 34(1) is based on Articles 153 and 156 of the Treaty on the Functioning of the European Union, Article 12 of the European Social Charter and point 10 of the Community Charter on the rights of workers. The Union must respect it when exercising the powers conferred on it by Articles 153 and 156 of the Treaty on the Functioning of the European Union. The reference to social services relates to cases in which such services have been introduced to provide certain advantages but does not imply that such services must be created where they do not exist. ‘Maternity’ must be understood in the same sense as in the preceding Article.

Paragraph 2 is based on Articles 12(4) and 13(4) of the European Social Charter and point 2 of the Community Charter of the Fundamental Social Rights of Workers and reflects the rules arising from Regulation (EEC) No 1408/71 and Regulation (EEC) No 1612/68.

Paragraph 3 draws on Article 13 of the European Social Charter and Articles 30 and 31 of the revised Social Charter and point 10 of the Community Charter. The Union must respect it in the context of policies based on Article 153 of the Treaty on the Functioning of the European Union.

Explanation on Article 35 — Health care

The principles set out in this Article are based on Article 152 of the EC Treaty, now replaced by Article 168 of the Treaty on the Functioning of the European Union, and on Articles 11 and 13 of the European Social Charter. The second sentence of the Article takes over Article 168(1).

Explanation on Article 36 — Access to services of general economic interest

This Article is fully in line with Article 14 of the Treaty on the Functioning of the European Union and does not create any new right. It merely sets out the principle of respect by the Union for the access to services of general economic interest as provided for by national provisions, when those provisions are compatible with Union law.

Explanation on Article 37 — Environmental protection

The principles set out in this Article have been based on Articles 2, 6 and 174 of the EC Treaty, which have now been replaced by Article 3(3) of the Treaty on European Union and Articles 11 and 191 of the Treaty on the Functioning of the European Union.

It also draws on the provisions of some national constitutions.

Explanation on Article 38 — Consumer protection

The principles set out in this Article have been based on Article 169 of the Treaty on the Functioning of the European Union.

TITLE V — CITIZENS' RIGHTS

Explanation on Article 39 — Right to vote and to stand as a candidate at elections to the European Parliament

Article 39 applies under the conditions laid down in the Treaties, in accordance with Article 52(2) of the Charter. Article 39(1) corresponds to the right guaranteed in Article 20(2) of the Treaty on the Functioning of the European Union (cf. also the legal base in Article 22 of the Treaty on the Functioning of the European Union for the adoption of detailed arrangements for the exercise of that right) and Article 39(2) corresponds to Article 14(3) of the Treaty on European Union. Article 39(2) takes over the basic principles of the electoral system in a democratic State.

Explanation on Article 40 — Right to vote and to stand as a candidate at municipal elections

This Article corresponds to the right guaranteed by Article 20(2) of the Treaty on the Functioning of the European Union (cf. also the legal base in Article 22 of the Treaty on the Functioning of the European Union for the adoption of detailed arrangements for the exercise of that right). In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these Articles in the Treaties.

Explanation on Article 41 — Right to good administration

Article 41 is based on the existence of the Union as subject to the rule of law whose characteristics were developed in the case-law which enshrined *inter alia* good administration as a general principle of law (see *inter alia* Court of Justice judgment of 31 March 1992 in Case C-255/90 P *Burban* [1992] ECR I-2253, and Court of First Instance judgments of 18 September 1995 in Case T-167/94 *Nölle* [1995] ECR II-2589, and 9 July 1999 in Case T-231/97 *New Europe Consulting and others* [1999] ECR II-2403). The wording for that right in the first two paragraphs results from the case-law (Court of Justice judgment of 15 October 1987 in Case 222/86 *Heylens* [1987] ECR 4097, paragraph 15 of the grounds, judgment of 18 October 1989 in Case 374/87 *Orkem* [1989] ECR 3283, judgment of 21 November 1991 in Case C-269/90 *TU München* [1991] ECR I-5469, and Court of First Instance judgments of 6 December 1994 in Case T-450/93 *Lisrestal* [1994] ECR II-1177, 18 September 1995 in Case T-167/94 *Nölle* [1995] ECR II-2589) and the wording regarding the obligation to give reasons comes from Article 296 of the Treaty on the Functioning of the European Union (cf. also the legal base in Article 298 of the Treaty on the Functioning of the European Union for the adoption of legislation in the interest of an open, efficient and independent European administration).

Paragraph 3 reproduces the right now guaranteed by Article 340 of the Treaty on the Functioning of the European Union. Paragraph 4 reproduces the right now guaranteed by Article 20(2)(d) and Article 25 of the Treaty on the Functioning of the European Union. In accordance with Article 52(2) of the Charter, those rights are to be applied under the conditions and within the limits defined by the Treaties.

The right to an effective remedy, which is an important aspect of this question, is guaranteed in Article 47 of this Charter.

Explanation on Article 42 — Right of access to documents

The right guaranteed in this Article has been taken over from Article 255 of the EC Treaty, on the basis of which Regulation (EC) No 1049/2001 has subsequently been adopted. The European Convention has extended this right to documents of institutions, bodies and agencies generally, regardless of their form (see Article 15(3) of the Treaty on the Functioning of the European Union). In accordance with Article 52(2) of the Charter, the right of access to documents is exercised under the conditions and within the limits for which provision is made in Article 15(3) of the Treaty on the Functioning of the European Union.

Explanation on Article 43 — European Ombudsman

The right guaranteed in this Article is the right guaranteed by Articles 20 and 228 of the Treaty on the Functioning of the European Union. In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these two Articles.

Explanation on Article 44 — Right to petition

The right guaranteed in this Article is the right guaranteed by Articles 20 and 227 of the Treaty on the Functioning of the European Union. In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these two Articles.

Explanation on Article 45 — Freedom of movement and of residence

The right guaranteed by paragraph 1 is the right guaranteed by Article 20(2)(a) of the Treaty on the Functioning of the European Union (cf. also the legal base in Article 21; and the judgment of the Court of Justice of 17 September 2002, Case C-413/99 *Baumbast* [2002] ECR I-7091). In accordance with Article 52(2) of the Charter, those rights are to be applied under the conditions and within the limits defined by the Treaties.

Paragraph 2 refers to the power granted to the Union by Articles 77, 78 and 79 of the Treaty on the Functioning of the European Union. Consequently, the granting of this right depends on the institutions exercising that power.

Explanation on Article 46 — Diplomatic and consular protection

The right guaranteed in this Article is the right guaranteed by Article 20 of the Treaty on the Functioning of the European Union (cf. also the legal base in Article 23). In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these two Articles.

TITLE VI — JUSTICE

Explanation on Article 47 — Right to an effective remedy and to a fair trial

The first paragraph is based on Article 13 of the ECHR:

‘Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.’

However, in Union law the protection is more extensive since it guarantees the right to an effective remedy before a court. The Court of Justice enshrined that right in its judgment of 15 May 1986 as a general principle of Union law (Case 222/84 *Johnston* [1986] ECR 1651; see also judgment of 15 October 1987, Case 222/86 *Heylens* [1987] ECR 4097 and judgment of 3 December 1992, Case C-97/91 *Borelli* [1992] ECR I-6313). According to the Court, that general principle of Union law also applies to the Member States when they are implementing Union law. The inclusion of this precedent in the Charter has not been intended to change the system of judicial review laid down by the Treaties, and particularly the rules relating to admissibility for direct actions before the Court of Justice of the European Union. The European Convention has considered the Union’s system of judicial review including the rules on admissibility, and confirmed them while amending them as to certain aspects, as reflected in Articles 251 to 281 of the Treaty on the Functioning of the European Union, and in particular in the fourth paragraph of Article 263. Article 47 applies to the institutions of the Union and of Member States when they are implementing Union law and does so for all rights guaranteed by Union law.

The second paragraph corresponds to Article 6(1) of the ECHR which reads as follows:

'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.'

In Union law, the right to a fair hearing is not confined to disputes relating to civil law rights and obligations. That is one of the consequences of the fact that the Union is a community based on the rule of law as stated by the Court in Case 294/83, *'Les Verts' v European Parliament* (judgment of 23 April 1986, [1986] ECR 1339). Nevertheless, in all respects other than their scope, the guarantees afforded by the ECHR apply in a similar way to the Union.

With regard to the third paragraph, it should be noted that in accordance with the case-law of the European Court of Human Rights, provision should be made for legal aid where the absence of such aid would make it impossible to ensure an effective remedy (ECHR judgment of 9 October 1979, *Airey*, Series A, Volume 32, p. 11). There is also a system of legal assistance for cases before the Court of Justice of the European Union.

Explanation on Article 48 — Presumption of innocence and right of defence

Article 48 is the same as Article 6(2) and (3) of the ECHR, which reads as follows:

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
 - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - (b) to have adequate time and facilities for the preparation of his defence;
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.'

In accordance with Article 52(3), this right has the same meaning and scope as the right guaranteed by the ECHR.

Explanation on Article 49 — Principles of legality and proportionality of criminal offences and penalties

This Article follows the traditional rule of the non-retroactivity of laws and criminal sanctions. There has been added the rule of the retroactivity of a more lenient penal law, which exists in a number of Member States and which features in Article 15 of the Covenant on Civil and Political Rights.

Article 7 of the ECHR is worded as follows:

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.'

In paragraph 2, the reference to 'civilised' nations has been deleted; this does not change the meaning of this paragraph, which refers to crimes against humanity in particular. In accordance with Article 52(3), the right guaranteed here therefore has the same meaning and scope as the right guaranteed by the ECHR.

Paragraph 3 states the general principle of proportionality between penalties and criminal offences which is enshrined in the common constitutional traditions of the Member States and in the case-law of the Court of Justice of the Communities.

Explanation on Article 50 — Right not to be tried or punished twice in criminal proceedings for the same criminal offence

Article 4 of Protocol No 7 to the ECHR reads as follows:

1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.
2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and the penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.
3. No derogation from this Article shall be made under Article 15 of the Convention.'

The '*non bis in idem*' rule applies in Union law (see, among the many precedents, the judgment of 5 May 1966, Joined Cases 18/65 and 35/65 *Gutmann v Commission* [1966] ECR 149 and a recent case, the decision of the Court of First Instance of 20 April 1999, Joined Cases T-305/94 and others *Limburgse Vinyl Maatschappij NV v Commission* [1999] ECR II-931). The rule prohibiting cumulation refers to cumulation of two penalties of the same kind, that is to say criminal-law penalties.

In accordance with Article 50, the '*non bis in idem*' rule applies not only within the jurisdiction of one State but also between the jurisdictions of several Member States. That corresponds to the *acquis* in Union law; see Articles 54 to 58 of the Schengen Convention and the judgment of the Court of Justice of 11 February 2003, C-187/01 *Gözütok* [2003] ECR I-1345, Article 7 of the Convention on the Protection of the European Communities' Financial Interests and Article 10 of the Convention on the fight against corruption. The very limited exceptions in those Conventions permitting the Member States to derogate from the '*non bis in idem*' rule are covered by the horizontal clause in Article 52(1) of the Charter concerning limitations. As regards the situations referred to by Article 4 of Protocol No 7, namely the application of the principle within the same Member State, the guaranteed right has the same meaning and the same scope as the corresponding right in the ECHR.

TITLE VII — GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER

Explanation on Article 51 — Field of application

The aim of Article 51 is to determine the scope of the Charter. It seeks to establish clearly that the Charter applies primarily to the institutions and bodies of the Union, in compliance with the principle of subsidiarity. This provision was drafted in keeping with Article 6(2) of the Treaty on European Union, which required the Union to respect fundamental rights, and with the mandate issued by the Cologne European Council. The term ‘institutions’ is enshrined in the Treaties. The expression ‘bodies, offices and agencies’ is commonly used in the Treaties to refer to all the authorities set up by the Treaties or by secondary legislation (see, e.g., Articles 15 or 16 of the Treaty on the Functioning of the European Union).

As regards the Member States, it follows unambiguously from the case-law of the Court of Justice that the requirement to respect fundamental rights defined in the context of the Union is only binding on the Member States when they act in the scope of Union law (judgment of 13 July 1989, Case 5/88 *Wachauf* [1989] ECR 2609; judgment of 18 June 1991, Case C-260/89 *ERT* [1991] ECR I-2925; judgment of 18 December 1997, Case C-309/96 *Annibaldi* [1997] ECR I-7493). The Court of Justice confirmed this case-law in the following terms: ‘In addition, it should be remembered that the requirements flowing from the protection of fundamental rights in the Community legal order are also binding on Member States when they implement Community rules ...’ (judgment of 13 April 2000, Case C-292/97 [2000] ECR I-2737, paragraph 37 of the grounds). Of course this rule, as enshrined in this Charter, applies to the central authorities as well as to regional or local bodies, and to public organisations, when they are implementing Union law.

Paragraph 2, together with the second sentence of paragraph 1, confirms that the Charter may not have the effect of extending the competences and tasks which the Treaties confer on the Union. Explicit mention is made here of the logical consequences of the principle of subsidiarity and of the fact that the Union only has those powers which have been conferred upon it. The fundamental rights as guaranteed in the Union do not have any effect other than in the context of the powers determined by the Treaties. Consequently, an obligation, pursuant to the second sentence of paragraph 1, for the Union’s institutions to promote principles laid down in the Charter may arise only within the limits of these same powers.

Paragraph 2 also confirms that the Charter may not have the effect of extending the field of application of Union law beyond the powers of the Union as established in the Treaties. The Court of Justice has already established this rule with respect to the fundamental rights recognised as part of Union law (judgment of 17 February 1998, C-249/96 *Grant* [1998] ECR I-621, paragraph 45 of the grounds). In accordance with this rule, it goes without saying that the reference to the Charter in Article 6 of the Treaty on European Union cannot be understood as extending by itself the range of Member State action considered to be ‘implementation of Union law’ (within the meaning of paragraph 1 and the above-mentioned case-law).

Explanation on Article 52 — Scope and interpretation of rights and principles

The purpose of Article 52 is to set the scope of the rights and principles of the Charter, and to lay down rules for their interpretation. Paragraph 1 deals with the arrangements for the limitation of rights. The wording is based on the case-law of the Court of Justice: ‘... it is well established in the case-law of the Court that restrictions may be imposed on the exercise of fundamental rights, in particular in the context of a common organisation of the market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, disproportionate and unreasonable interference undermining the very substance of those rights’ (judgment of 13 April 2000, Case C-292/97, paragraph 45 of the grounds). The reference to general interests recognised by the Union covers both the objectives mentioned in Article 3 of the Treaty on European Union and other interests protected by specific provisions of the Treaties such as Article 4(1) of the Treaty on European Union and Articles 35(3), 36 and 346 of the Treaty on the Functioning of the European Union.

Paragraph 2 refers to rights which were already expressly guaranteed in the Treaty establishing the European Community and have been recognised in the Charter, and which are now found in the Treaties (notably the rights derived from Union citizenship). It clarifies that such rights remain subject to the conditions and limits applicable to the Union law on which they are based, and for which provision is made in the Treaties. The Charter does not alter the system of rights conferred by the EC Treaty and taken over by the Treaties.

Paragraph 3 is intended to ensure the necessary consistency between the Charter and the ECHR by establishing the rule that, in so far as the rights in the present Charter also correspond to rights guaranteed by the ECHR, the meaning and scope of those rights, including authorised limitations, are the same as those laid down by the ECHR. This means in particular that the legislator, in laying down limitations to those rights, must comply with the same standards as are fixed by the detailed limitation arrangements laid down in the ECHR, which are thus made applicable for the rights covered by this paragraph, without thereby adversely affecting the autonomy of Union law and of that of the Court of Justice of the European Union.

The reference to the ECHR covers both the Convention and the Protocols to it. The meaning and the scope of the guaranteed rights are determined not only by the text of those instruments, but also by the case-law of the European Court of Human Rights and by the Court of Justice of the European Union. The last sentence of the paragraph is designed to allow the Union to guarantee more extensive protection. In any event, the level of protection afforded by the Charter may never be lower than that guaranteed by the ECHR.

The Charter does not affect the possibilities of Member States to avail themselves of Article 15 ECHR, allowing derogations from ECHR rights in the event of war or of other public dangers threatening the life of the nation, when they take action in the areas of national defence in the event of war and of the maintenance of law and order, in accordance with their responsibilities recognised in Article 4(1) of the Treaty on European Union and in Articles 72 and 347 of the Treaty on the Functioning of the European Union.

The list of rights which may at the present stage, without precluding developments in the law, legislation and the Treaties, be regarded as corresponding to rights in the ECHR within the meaning of the present paragraph is given hereafter. It does not include rights additional to those in the ECHR.

1. Articles of the Charter where both the meaning and the scope are the same as the corresponding Articles of the ECHR:
 - Article 2 corresponds to Article 2 of the ECHR,
 - Article 4 corresponds to Article 3 of the ECHR,
 - Article 5(1) and (2) corresponds to Article 4 of the ECHR,
 - Article 6 corresponds to Article 5 of the ECHR,
 - Article 7 corresponds to Article 8 of the ECHR,
 - Article 10(1) corresponds to Article 9 of the ECHR,
 - Article 11 corresponds to Article 10 of the ECHR without prejudice to any restrictions which Union law may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR,

- Article 17 corresponds to Article 1 of the Protocol to the ECHR,
 - Article 19(1) corresponds to Article 4 of Protocol No 4,
 - Article 19(2) corresponds to Article 3 of the ECHR as interpreted by the European Court of Human Rights,
 - Article 48 corresponds to Article 6(2) and(3) of the ECHR,
 - Article 49(1) (with the exception of the last sentence) and (2) correspond to Article 7 of the ECHR.
2. Articles where the meaning is the same as the corresponding Articles of the ECHR, but where the scope is wider:
- Article 9 covers the same field as Article 12 of the ECHR, but its scope may be extended to other forms of marriage if these are established by national legislation,
 - Article 12(1) corresponds to Article 11 of the ECHR, but its scope is extended to European Union level,
 - Article 14(1) corresponds to Article 2 of the Protocol to the ECHR, but its scope is extended to cover access to vocational and continuing training,
 - Article 14(3) corresponds to Article 2 of the Protocol to the ECHR as regards the rights of parents,
 - Article 47(2) and (3) corresponds to Article 6(1) of the ECHR, but the limitation to the determination of civil rights and obligations or criminal charges does not apply as regards Union law and its implementation,
 - Article 50 corresponds to Article 4 of Protocol No 7 to the ECHR, but its scope is extended to European Union level between the Courts of the Member States,
 - Finally, citizens of the European Union may not be considered as aliens in the scope of the application of Union law, because of the prohibition of any discrimination on grounds of nationality. The limitations provided for by Article 16 of the ECHR as regards the rights of aliens therefore do not apply to them in this context.

The rule of interpretation contained in paragraph 4 has been based on the wording of Article 6(3) of the Treaty on European Union and takes due account of the approach to common constitutional traditions followed by the Court of Justice (e.g., judgment of 13 December 1979, Case 44/79 *Hauer* [1979] ECR 3727; judgment of 18 May 1982, Case 155/79 *AM&S* [1982] ECR 1575). Under that rule, rather than following a rigid approach of ‘a lowest common denominator’, the Charter rights concerned should be interpreted in a way offering a high standard of protection which is adequate for the law of the Union and in harmony with the common constitutional traditions.

Paragraph 5 clarifies the distinction between ‘rights’ and ‘principles’ set out in the Charter. According to that distinction, subjective rights shall be respected, whereas principles shall be observed (Article 51(1)). Principles may be implemented through legislative or executive acts (adopted by the Union in accordance with its powers, and by the Member States only when they implement Union law); accordingly, they become significant for the Courts only when such acts are interpreted or reviewed. They do not however give rise to direct claims for positive action by the Union’s institutions or Member States authorities. This is consistent both with case-law of the Court of Justice (cf. notably case-law on the ‘precautionary principle’ in Article 191(2) of the Treaty on the Functioning of the European Union: judgment of the CFI of 11 September 2002, Case T-13/99 *Pfizer v Council*, with numerous references to earlier case-law; and a series of judgments on Article 33 (ex-39) on the principles of agricultural law, e.g. judgment of the Court of Justice in Case 265/85 *Van den Berg* [1987] ECR 1155: scrutiny of the principle of market stabilisation and of reasonable expectations) and with the approach of the Member States’ constitutional systems to ‘principles’, particularly in the field of social law. For illustration, examples for principles, recognised in the Charter include e.g. Articles 25, 26 and 37. In some cases, an Article of the Charter may contain both elements of a right and of a principle, e.g. Articles 23, 33 and 34.

Paragraph 6 refers to the various Articles in the Charter which, in the spirit of subsidiarity, make reference to national laws and practices.

Explanation on Article 53 — Level of protection

This provision is intended to maintain the level of protection currently afforded within their respective scope by Union law, national law and international law. Owing to its importance, mention is made of the ECHR.

Explanation on Article 54 — Prohibition of abuse of rights

This Article corresponds to Article 17 of the ECHR:

‘Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.’

**CONSOLIDATED VERSION
OF
THE TREATY ON EUROPEAN UNION**

Article 2

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Article 3

(ex Article 2 TEU)

1. The Union's aim is to promote peace, its values and the well-being of its peoples.
2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.
3. The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.

4. The Union shall establish an economic and monetary union whose currency is the euro.
5. In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.
6. The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties.

Article 6
(ex Article 6 TEU)

1. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.

The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.

The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.

2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.

3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

Article 7
(ex Article 7 TEU)

1. On a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission, the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2. Before making such a determination, the Council shall hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure.

The Council shall regularly verify that the grounds on which such a determination was made continue to apply.

2. The European Council, acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the consent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of the values referred to in Article 2, after inviting the Member State in question to submit its observations.

3. Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

PROTOCOL (No 8)
**RELATING TO ARTICLE 6(2) OF THE TREATY ON
EUROPEAN UNION ON THE ACCESSION OF THE
UNION TO THE EUROPEAN CONVENTION ON THE
PROTECTION OF HUMAN RIGHTS AND
FUNDAMENTAL FREEDOMS**

THE HIGH CONTRACTING PARTIES,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

The agreement relating to the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the 'European Convention') provided for in Article 6(2) of the Treaty on European Union shall make provision for preserving the specific characteristics of the Union and Union law, in particular with regard to:

- (a) the specific arrangements for the Union's possible participation in the control bodies of the European Convention;
- (b) the mechanisms necessary to ensure that proceedings by non-Member States and individual applications are correctly addressed to Member States and/or the Union as appropriate.

Article 2

The agreement referred to in Article 1 shall ensure that accession of the Union shall not affect the competences of the Union or the powers of its institutions. It shall ensure that nothing therein affects the situation of Member States in relation to the European Convention, in particular in relation to the Protocols thereto, measures taken by Member States derogating from the European Convention in accordance with Article 15 thereof and reservations to the European Convention made by Member States in accordance with Article 57 thereof.

Article 3

Nothing in the agreement referred to in Article 1 shall affect Article 344 of the Treaty on the Functioning of the European Union.

PROTOCOL (No 30)
**ON THE APPLICATION OF THE CHARTER OF
FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION
TO POLAND AND TO THE UNITED KINGDOM**

THE HIGH CONTRACTING PARTIES,

WHEREAS in Article 6 of the Treaty on European Union, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union,

WHEREAS the Charter is to be applied in strict accordance with the provisions of the aforementioned Article 6 and Title VII of the Charter itself,

WHEREAS the aforementioned Article 6 requires the Charter to be applied and interpreted by the courts of Poland and of the United Kingdom strictly in accordance with the explanations referred to in that Article,

WHEREAS the Charter contains both rights and principles,

WHEREAS the Charter contains both provisions which are civil and political in character and those which are economic and social in character,

WHEREAS the Charter reaffirms the rights, freedoms and principles recognised in the Union and makes those rights more visible, but does not create new rights or principles,

RECALLING the obligations devolving upon Poland and the United Kingdom under the Treaty on European Union, the Treaty on the Functioning of the European Union, and Union law generally,

NOTING the wish of Poland and the United Kingdom to clarify certain aspects of the application of the Charter,

DESIROUS therefore of clarifying the application of the Charter in relation to the laws and administrative action of Poland and of the United Kingdom and of its justiciability within Poland and within the United Kingdom,

REAFFIRMING that references in this Protocol to the operation of specific provisions of the Charter are strictly without prejudice to the operation of other provisions of the Charter,

REAFFIRMING that this Protocol is without prejudice to the application of the Charter to other Member States,

REAFFIRMING that this Protocol is without prejudice to other obligations devolving upon Poland and the United Kingdom under the Treaty on European Union, the Treaty on the Functioning of the European Union, and Union law generally,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

1. The Charter does not extend the ability of the Court of Justice of the European Union, or any court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms.

2. In particular, and for the avoidance of doubt, nothing in Title IV of the Charter creates justiciable rights applicable to Poland or the United Kingdom except in so far as Poland or the United Kingdom has provided for such rights in its national law.

Article 2

To the extent that a provision of the Charter refers to national laws and practices, it shall only apply to Poland or the United Kingdom to the extent that the rights or principles that it contains are recognised in the law or practices of Poland or of the United Kingdom.

A. **DECLARATIONS CONCERNING PROVISIONS OF THE TREATIES**

1. **Declaration concerning the Charter of Fundamental Rights of the European Union**

The Charter of Fundamental Rights of the European Union, which has legally binding force, confirms the fundamental rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States.

The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined by the Treaties.

2. **Declaration on Article 6(2) of the Treaty on European Union**

The Conference agrees that the Union's accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms should be arranged in such a way as to preserve the specific features of Union law. In this connection, the Conference notes the existence of a regular dialogue between the Court of Justice of the European Union and the European Court of Human Rights; such dialogue could be reinforced when the Union accedes to that Convention.

3. **Declaration on Article 8 of the Treaty on European Union**

The Union will take into account the particular situation of small-sized countries which maintain specific relations of proximity with it.

4. **Declaration on the composition of the European Parliament**

The additional seat in the European Parliament will be attributed to Italy.

5. **Declaration on the political agreement by the European Council concerning the draft Decision on the composition of the European Parliament**

The European Council will give its political agreement on the revised draft Decision on the composition of the European Parliament for the legislative period 2009-2014, based on the proposal from the European Parliament.

C. DECLARATIONS BY MEMBER STATES

51. Declaration by the Kingdom of Belgium on national Parliaments

Belgium wishes to make clear that, in accordance with its constitutional law, not only the Chamber of Representatives and Senate of the Federal Parliament but also the parliamentary assemblies of the Communities and the Regions act, in terms of the competences exercised by the Union, as components of the national parliamentary system or chambers of the national Parliament.

52. Declaration by the Kingdom of Belgium, the Republic of Bulgaria, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the Italian Republic, the Republic of Cyprus, the Republic of Lithuania, the Grand-Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Republic of Austria, the Portuguese Republic, Romania, the Republic of Slovenia and the Slovak Republic on the symbols of the European Union

Belgium, Bulgaria, Germany, Greece, Spain, Italy, Cyprus, Lithuania, Luxemburg, Hungary, Malta, Austria, Portugal, Romania, Slovenia and the Slovak Republic declare that the flag with a circle of twelve golden stars on a blue background, the anthem based on the 'Ode to Joy' from the Ninth Symphony by Ludwig van Beethoven, the motto 'United in diversity', the euro as the currency of the European Union and Europe Day on 9 May will for them continue as symbols to express the sense of community of the people in the European Union and their allegiance to it.

53. Declaration by the Czech Republic on the Charter of Fundamental Rights of the European Union

1. The Czech Republic recalls that the provisions of the Charter of Fundamental Rights of the European Union are addressed to the institutions and bodies of the European Union with due regard for the principle of subsidiarity and division of competences between the European Union and its Member States, as reaffirmed in Declaration (No 18) in relation to the delimitation of competences. The Czech Republic stresses that its provisions are addressed to the Member States only when they are implementing Union law, and not when they are adopting and implementing national law independently from Union law.

2. The Czech Republic also emphasises that the Charter does not extend the field of application of Union law and does not establish any new power for the Union. It does not diminish the field of application of national law and does not restrain any current powers of the national authorities in this field.

3. The Czech Republic stresses that, in so far as the Charter recognises fundamental rights and principles as they result from constitutional traditions common to the Member States, those rights and principles are to be interpreted in harmony with those traditions.

4. The Czech Republic further stresses that nothing in the Charter may be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective field of application, by Union law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' Constitutions.

54. Declaration by the Federal Republic of Germany, Ireland, the Republic of Hungary, the Republic of Austria and the Kingdom of Sweden

Germany, Ireland, Hungary, Austria and Sweden note that the core provisions of the Treaty establishing the European Atomic Energy Community have not been substantially amended since its entry into force and need to be brought up to date. They therefore support the idea of a Conference of the Representatives of the Governments of the Member States, which should be convened as soon as possible.

55. Declaration by the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland

The Treaties apply to Gibraltar as a European territory for whose external relations a Member State is responsible. This shall not imply changes in the respective positions of the Member States concerned.

56. Declaration by Ireland on Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice

Ireland affirms its commitment to the Union as an area of freedom, security and justice respecting fundamental rights and the different legal systems and traditions of the Member States within which citizens are provided with a high level of safety.

Accordingly, Ireland declares its firm intention to exercise its right under Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice to take part in the adoption of measures pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union to the maximum extent it deems possible.

Ireland will, in particular, participate to the maximum possible extent in measures in the field of police cooperation.

60. Declaration by the Kingdom of the Netherlands on Article 355 of the Treaty on the Functioning of the European Union

The Kingdom of the Netherlands declares that an initiative for a decision, as referred to in Article 355(6) aimed at amending the status of the Netherlands Antilles and/or Aruba with regard to the Union, will be submitted only on the basis of a decision taken in conformity with the Charter for the Kingdom of the Netherlands.

61. Declaration by the Republic of Poland on the Charter of Fundamental Rights of the European Union

The Charter does not affect in any way the right of Member States to legislate in the sphere of public morality, family law, as well as the protection of human dignity and respect for human physical and moral integrity.

62. Declaration by the Republic of Poland concerning the Protocol on the application of the Charter of Fundamental Rights of the European Union in relation to Poland and the United Kingdom

Poland declares that, having regard to the tradition of social movement of 'Solidarity' and its significant contribution to the struggle for social and labour rights, it fully respects social and labour rights, as established by European Union law, and in particular those reaffirmed in Title IV of the Charter of Fundamental Rights of the European Union.

63. Declaration by the United Kingdom of Great Britain and Northern Ireland on the definition of the term 'nationals'

In respect of the Treaties and the Treaty establishing the European Atomic Energy Community, and in any of the acts deriving from those Treaties or continued in force by those Treaties, the United Kingdom reiterates the Declaration it made on 31 December 1982 on the definition of the term 'nationals' with the exception that the reference to 'British Dependent Territories Citizens' shall be read as meaning 'British overseas territories citizens'.

64. Declaration by the United Kingdom of Great Britain and Northern Ireland on the franchise for elections to the European Parliament

The United Kingdom notes that Article 14 of the Treaty on European Union and other provisions of the Treaties are not intended to change the basis for the franchise for elections to the European Parliament.

PROTOCOL
on the concerns of the Irish people on the Treaty of Lisbon

THE KINGDOM OF BELGIUM,

THE REPUBLIC OF BULGARIA,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE REPUBLIC OF ESTONIA,

IRELAND,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBOURG,

HUNGARY,

MALTA,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

ROMANIA,

THE REPUBLIC OF SLOVENIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

hereinafter referred to as 'THE HIGH CONTRACTING PARTIES',

RECALLING the Decision of the Heads of State or Government of the 27 Member States of the European Union, meeting within the European Council, on 18-19 June 2009, on the concerns of the Irish people on the Treaty of Lisbon;

RECALLING the declaration of the Heads of State or Government, meeting within the European Council, on 18-19 June 2009, that they would, at the time of the conclusion of the next Accession Treaty, set out the provisions of that Decision in a Protocol to be attached, in accordance with their respective constitutional requirements, to the Treaty on European Union and the Treaty on the Functioning of the European Union;

NOTING the signature by the High Contracting Parties of the Treaty between the High Contracting Parties and the Republic of Croatia concerning the accession of the Republic of Croatia to the European Union;

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

TITLE I

RIGHT TO LIFE, FAMILY AND EDUCATION

Article 1

Nothing in the Treaty of Lisbon attributing legal status to the Charter of Fundamental Rights of the European Union, or in the provisions of that Treaty in the area of Freedom, Security and Justice affects in any way the scope and applicability of the protection of the right to life in Article 40.3.1, 40.3.2 and 40.3.3, the protection of the family in Article 41 and the protection of the rights in respect of education in Articles 42 and 44.2.4 and 44.2.5 provided by the Constitution of Ireland.

It will be for Member States - including Ireland, acting in a spirit of solidarity and without prejudice to its traditional policy of military neutrality - to determine the nature of aid or assistance to be provided to a Member State which is the object of a terrorist attack or the victim of armed aggression on its territory.

Any decision to move to a common defence will require a unanimous decision of the European Council. It would be a matter for the Member States, including Ireland, to decide, in accordance with the provisions of the Treaty of Lisbon and with their respective constitutional requirements, whether or not to adopt a common defence.

TITLE II

TAXATION

Article 2

Nothing in the Treaty of Lisbon makes any change of any kind, for any Member State, to the extent or operation of the competence of the European Union in relation to taxation.

Nothing in this Title affects or prejudices the position or policy of any other Member State on security and defence.

It is also a matter for each Member State to decide, in accordance with the provisions of the Treaty of Lisbon and any domestic legal requirements, whether to participate in permanent structured cooperation or the European Defence Agency.

TITLE III

SECURITY AND DEFENCE

Article 3

The Union's action on the international scene is guided by the principles of democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

The Treaty of Lisbon does not provide for the creation of a European army or for conscription to any military formation.

It does not affect the right of Ireland or any other Member State to determine the nature and volume of its defence and security expenditure and the nature of its defence capabilities.

It will be a matter for Ireland or any other Member State, to decide, in accordance with any domestic legal requirements, whether or not to participate in any military operation.

The Union's common security and defence policy is an integral part of the common foreign and security policy and provides the Union with an operational capacity to undertake missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter.

It does not prejudice the security and defence policy of each Member State, including Ireland, or the obligations of any Member State.

The Treaty of Lisbon does not affect or prejudice Ireland's traditional policy of military neutrality.

TITLE IV

FINAL PROVISIONS

Article 4

This Protocol shall remain open for signature by the High Contracting Parties until 30 June 2012.

This Protocol shall be ratified by the High Contracting Parties, and by the Republic of Croatia in the event that this Protocol has not entered into force by the date of accession of the Republic of Croatia to the European Union, in accordance

with their respective constitutional requirements. The instruments of ratification shall be deposited with the Government of the Italian Republic.

This Protocol shall enter into force if possible on 30 June 2013, provided that all the instruments of ratification have been deposited, or, failing that, on the first day of the month following the deposit of the instrument of ratification by the last Member State to take this step.

Article 5

This Protocol, drawn up in a single original in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each text being equally auth-

entic, shall be deposited in the archives of the Government of the Italian Republic, which shall transmit a certified copy to each of the governments of the other Member States.

Once the Republic of Croatia has become bound by this Protocol pursuant to Article 2 of the Act concerning the conditions of accession of the Republic of Croatia, the Croatian text of this Protocol, which shall be equally authentic to the texts referred to in the first paragraph, shall also be deposited in the archives of the Government of the Italian Republic, which shall transmit a certified copy to each of the governments of the other Member States.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed this Protocol.

Съставено в Брюксел на тринадесети юни две хиляди и дванадесета година.
Hecho en Bruselas, el trece de junio de dos mil doce.
V Bruselu dne třináctého června dva tisíce dvanáct.
Udfærdiget i Bruxelles den trettende juni to tusind og tolv.
Geschehen zu Brüssel am dreizehnten Juni zweitausendzwoölf.
Kahe tuhande kaheteistkümnenda aasta juunikuu kolmeteistkümnendal päeval Brüsselis.
Έγινε στις Βρυξέλλες, στις δέκα τρεις Ιουνίου δύο χιλιάδες δώδεκα.
Done at Brussels on the thirteenth day of June in the year two thousand and twelve.
Fait à Bruxelles, le treize juin deux mille douze.
Arna dhéanamh sa Bhruiséil, an tríú lá déag de Mheitheamh an bhliain dhá mhíle agus a dó dhéag.
Fatto a Bruxelles, addì tredici giugno duemiladodici.
Briselē, divi tūkstoši divpadsmitā gada trīspadsmitajā jūnijā.
Priimta du tūkstančiai dvyliktų metų birželio tryliktą dieną Briuselyje.
Kelt Brüsszelben, a kétezer-tizenkettedik év június havának tizenharmadik napján.
Magħmul fi Brussell, fit-tlethax-il jum ta' Ġunju tas-sena elfejn u tnax.
Gedaan te Brussel, de dertiende juni tweeduizend twaalf.
Sporządzono w Brukseli dnia trzynastego czerwca roku dwa tysiące dwunastego.
Feito em Bruxelas, em treze de junho de dois mil e doze.
Íntocmit la Bruxelles la treisprezece iunie două mii doisprezece.
V Bruseli dňa trinásteho júna dvetisícdvánásť.
V Bruslju, dne trinajstega junija leta dva tisoč dvanajst.
Tehty Brysselissä kolmantentoista päivänä kesäkuuta vuonna kaksituhattakaksitoista.
Som skedde i Bryssel den trettonde juni tjugohundratolv.


2.3.2013

EN

Official Journal of the European Union

L 60/135

Voor het Koninkrijk België
 Pour le Royaume de Belgique
 Für das Königreich Belgien



Deze handtekening verbindt eveneens de Vlaamse Gemeenschap, de Franse Gemeenschap, de Duitstalige Gemeenschap, het Vlaamse Gewest, het Waalse Gewest en het Brussels Hoofdstedelijk Gewest.

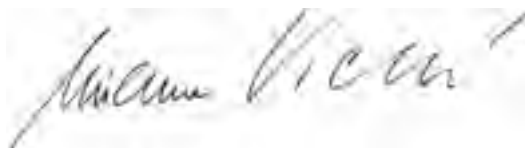
Cette signature engage également la Communauté française, la Communauté flamande, la Communauté germanophone, la Région wallonne, la Région flamande et la Région de Bruxelles-Capitale.

Diese Unterschrift bindet zugleich die Deutschsprachige Gemeinschaft, die Flämische Gemeinschaft, die Französische Gemeinschaft, die Wallonische Region, die Flämische Region und die Region Brüssel-Hauptstadt.

За Република България



Za Českou republiku



For Kongeriget Danmark



Für die Bundesrepublik Deutschland

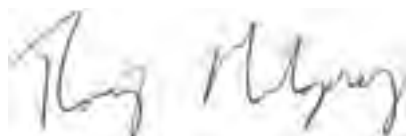


Eesti Vabariigi nimel



Thar cheann Na hÉireann

For Ireland



Για την Ελληνική Δημοκρατία



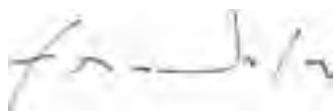
Por el Reino de España



Pour la République française



Per la Repubblica italiana



Για την Κυπριακή Δημοκρατία



2.3.2013

EN

Official Journal of the European Union

L 60/137

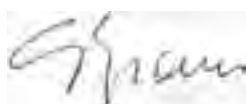
Latvijas Republikas vārdā –



Lietuvos Respublikos vardu



Pour le Grand-Duché de Luxembourg



Magyarország részéről



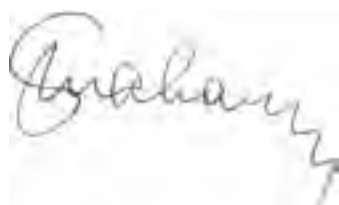
Għal Malta



Voor het Koninkrijk der Nederlanden



Für die Republik Österreich



W imieniu Rzeczypospolitej Polskiej



Pela República Portuguesa




Pentru România



Za Republiko Slovenijo



Za Slovenskú republiku



Suomen tasavallan puolesta

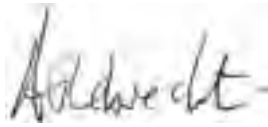
För Republiken Finland



För Konungariket Sverige



For the United Kingdom of Great Britain and Northern Ireland



A. Adcock
