Chapter 3

The Impact of the Charter of Fundamental Rights on European Union Policies and Legislation

Lorenza Violini

1 Introduction

After the entry into force of the Lisbon Treaty in December 2009, the Charter of Fundamental Rights (CFR) acquired a legally binding nature for the European legal system. The Charter aims at strengthening the overall EU protection of fundamental rights within the field of action of the European Union and of the Member States when they are tasked with the implementation of European legislation.1 Rather than merely defending fundamental rights on a judicial level, the Charter gives EU institutions the opportunity to become proactive with respect to fundamental rights, both strengthening the EU monitoring mechanism of human rights and triggering the policy-making process, which encompasses both policies and legislation.

Because of the wide-ranging relevance of the Charter, many documents, agendas, frameworks, and strategies related to its content have been issued by the institutions in many areas ranging from Roma integration to equality between women and men. The breadth of the Charter’s relevance extends to EU legislation to such an extent that analyzing its precise influence would be immensely valuable, though far beyond the scope of one scholar to achieve. For this reason we will focus on structural changes within the EU institutions in order to become better equipped to assess the effects of the Charter on EU legislation. This preliminary investigation reveals the increasing intention of the EU institutions to engage the Fundamental Rights Agency (FRA) in its legislative activity, which makes an analysis of its role in implementing the Charter vital to this study. Looking at the institutions and the FRA together demonstrates that the presence of the Charter has increased the need for greater accountability among not only the institutions but also other independent bodies, which has in time effected a number of structural and legislative changes. We hope this study will provide the foundation to assess

1 Court of Justice, Case C-483/12 ECJ, Pelckmans Turnhout NV v Walter Van Gastel Balen NV and Others, Judgment of 8 May 2014.
whether or not these structural changes will create a culture of respect for fundamental rights among legislators.

In order to identify the increasing presence of the Charter in EU legislation, we will therefore begin with an investigation of the structural changes to the institutions in response to the entry into force of the Lisbon Treaty. This section will successively describe these changes in the three institutions, and will conclude by demonstrating the increased importance of the FRA in the legislative process. The following section will give a general account of the legislative acts adopted by the EU Parliament and the Council of the EU in the period 2010-2014 following proposals by the Commission issued after the entry into force of the Charter investigating, in particular, the extent to which they make reference to the CFR and the characteristics of these references. This section will conclude by repeating this process with other acts adopted by the Commission. After making some concluding remarks, we will also provide a set of tables to reveal the complete data on the acts subject to analysis.

Another obstacle for this study, in contrast to the massive scope of the project of rendering fundamental rights vital to legislation, is the short period under investigation. Only five years have passed since the Charter came into force, too short a period to evaluate with a sufficient degree of certainty the real impact of the Charter at the EU level. The picture therefore may evolve greatly in the coming years, due to the fact that this process of integration of the Charter in the life of the Union is still in its initial stage. The brevity of the period under investigation may be partially responsible for the comparatively small amount of approved Directives and Regulations making reference to the Charter, yet this scarcity is still worth questioning. In light of the slow nature of creating a culture centered around fundamental rights, any conclusions at this stage can only be partial, and thus the prudent reaction to this study is to keep following the trends highlighted as the relevance of the Charter develops and to assess the coherence of legislation to fundamental rights.

2 Strengthening Fundamental Rights Protection at the EU Level: The EU Charter and the EU Institutions

While the main purpose for the authors of the Charter was to make the acquis of the European Union in the area of fundamental rights more visible, its long-term impact has extended into the whole EU system. Indeed, as it

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2 As it is well known, until the Cologne European Council (1999), which decided to prepare the Charter, the ECJ took responsibility for the protection of fundamental rights