



**THE EUROPEAN POLICY CENTRE**

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## **A CHARTER OF RIGHTS FOR EUROPE**

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The EPC is grateful for the support of the European Commission



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## Executive Summary

The European Charter of Fundamental Rights is the first formal European Union (EU) document to bring together the values and the fundamental rights enjoyed by EU citizens. The issues raised by the Charter therefore go far beyond legal technicalities and are intrinsically linked with the question of what role the Union is expected to play in the lives of its citizens. The aim of this paper is to analyse these issues and suggest solutions to some of the problems which the Convention on the Future of Europe and the Member States are faced when considering the Charter, notably regarding the implications of incorporating the Charter within the treaties and Union's accession to the European Convention on Human Rights (ECHR).

This Paper, therefore, covers a number of points relating to incorporation, such as the status of the Charter in a Constitutional Treaty, the question of redrafting and amendments to the Charter, the impact on EU competences and access to justice. Regarding the question of accession to the ECHR, points covered include the question of whether the Union or European Community should accede, the creation of a legal basis for accession, forms of accession, the impact on competences and autonomy of the Community legal order, as well as on Member States' individual positions and the relationship between the EU and ECHR courts.

The incorporation of the Charter, as a fully binding text, into the future Constitutional Treaty of the Union is a key step in helping to create a sense of ownership for the citizens of the Union and in providing citizens with an extra and tangible level of democratic control of Union acts. Accession by the Union to the ECHR is an equally essential corollary to incorporation so as to ensure the consistency and legitimacy of the EU's activities which affect fundamental rights.

This Working Paper draws on a series of meetings and reports. Three of the main documents have been re-edited and are reproduced in the annexes:

- *The European Policy Centre project on the European Charter of Fundamental Rights: Some initial Considerations*
- *The Charter of Fundamental Rights: A Preliminary Assessment*
- *The Charter of Fundamental Rights: Redrafting and Incorporation*

## Key Recommendations

The following recommendations are central to the debate on the Charter of Fundamental Rights. The Convention and the Member State's Governments are urged to take them into account when considering the future of the Charter and accession to the European Convention on Human Rights (ECHR).

### **Incorporation of the Charter into the Treaties:**

1. A legally binding Charter with constitutional status should be a cornerstone of the European Constitutional Treaty. Any status for the Charter which lacks clarity, or creates greater uncertainty as to its application, will result in deep criticism and in confusion for courts and citizens. This must be avoided.
2. Insertion of the Charter at the beginning of the Constitutional Treaty would provide for political visibility, emphasize the importance of fundamental rights and ensure legal certainty.
3. The substance of the rights, as set out in the present Charter, should not be reopened as it is the result of a lengthy political and democratic process.
4. The preamble and the horizontal clauses are vital elements that should be maintained, although some technical adjustments may be necessary. However, further careful consideration is needed on the impact of the new horizontal clause seeking to define 'rights' and 'principles' which has been proposed by the Charter working group.
5. The access to justice and remedy provisions in the Treaty should be revised, in order not to frustrate the effectiveness of the rights set out in the Charter. In considering widening access to justice, the Member States must also accept that the European Court of Justice (ECJ) will require increased resources to ensure that an influx of cases can be effectively dealt with.
6. The Charter should be widely promoted and explained in the Union and in the accession countries. Increasing awareness among citizens, as well as training and setting up education programmes for regulators, judges and lawyers would be an important task for the future, to be promoted by EU institutions and other relevant bodies.



## Accession to the European Convention on Human Rights:

1. Accession to the ECHR is a necessity if the Charter becomes legally binding. Incorporation and accession are complementary and inextricably linked.
2. A constitutional authorization enabling the Union to accede to the ECHR should be enshrined in the Constitutional Treaty.
3. There should be full accession to the ECHR, as opposed to less ambitious alternatives such as the so called 'functional accession'.
4. Accession to the ECHR should not modify the division of competences between the Union and Member States. This could be expressly stated in the Union's ECHR accession provisions.
5. It should be made clear that accession will not impact on the autonomy of the Community legal order.
6. In the interim period, pending accession to the ECHR, ECJ and the European Court of Human Rights (ECrtHR) should increase their informal dialogue to ensure the effective exchange of information and the avoidance of conflicts, wherever possible.

# A CHARTER OF RIGHTS FOR EUROPE

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## 1. Introduction: From Nice to Laeken and the Convention on the Future of Europe

Since the European Union Charter of Fundamental Rights was solemnly proclaimed at Nice on 7 December 2000, it has existed as a political declaration. While it has had no express legal value, it has had a notable impact on the European Courts including the European Court of Justice (ECJ), national constitutional courts and even the European Court of Human Rights, which use the Charter as an interpretative aid. The Charter has also become an important reference document for the drafting of EU legislation in order to ensure the respect of fundamental rights.

In December 2001 the European Council in Laeken established a Convention with the mandate to consider, among other things, whether the Charter should be integrated within the Treaties and whether the Union or European Community should accede to the European Convention on Human Rights (ECHR). The so-called Convention on the Future of Europe established a working group, chaired by Commissioner Antonio Vitorino to deal with these two questions.

## 2. The Added Value of the Charter: The Essentials

The Charter clearly brings substantial political and legal benefits to the EU and its citizens which are yet to be fully realized. These will only bear fruit if the Charter is placed at the centre of the Treaty.

- **Conferring legitimacy to the Union.** The Charter establishes for the first time in the Union's history a formal comprehensive catalogue of fundamental rights. Granting the Charter a binding status would put fundamental rights at the heart of the development of the Union, thereby reinforcing the concept of EU citizenship. The sense of 'inclusiveness' that the Charter brings is an important element for the legitimacy of the Union. It also confirms that the EU has developed from an economic organisation to a political one.



- **Public commitment to fundamental rights at the Union Level.** Any increase in the powers or competences of the Union requires a commensurate increase in the legal checks and balances necessary in a democratic society. Therefore, as the Union's tasks expand and additional powers are gained, a strong Union commitment to fundamental rights is needed. This is especially important in the context of the forth coming enlargement of the Union.
- **Making rights visible.** For the first time a European legal instrument would bring together civil, political, economic and social rights. The Charter, therefore, makes rights visible to those it is intended to benefit and provides transparency and consistency for citizens, lawmakers and regulators.
- **Increasing accountability.** Citizens of the Union should be able to challenge the legality of acts of the EU institutions and bodies, as well as the Member States pursuant to EU Treaty obligations where the fundamental rights of citizens have been infringed. There is currently a lack of accountability on fundamental rights issues regarding the acts and policies of EU institutions, which a binding Charter would help to redress. Furthermore, the codification of the Charter provides some legal certainty for the application of Article 7 of the Treaty on European Union (TEU), on sanctions against Member States for "*serious and persistent*" breach of fundamental rights.
- **The need for a fully accountable Area of Freedom, Security and Justice.** It is essential that, if the EU wishes to establish an effective Area of Freedom, Security and Justice, the principles and rights guaranteed by the Charter are appropriately protected and enforced. It is clear that the implementation of EU policies in this area directly affects the rights of individuals.
- **A coherent human rights policy.** A binding Charter will help the Union to develop a more coherent and legitimate human rights policy both internally and externally. This would enable the Union to act, and be seen to act, with more authority and credibility on such issues.

### 3. A Legally binding Charter: Incorporation of Charter into the Treaties

The overall consensus in the Convention is that the Charter should be given legal status and be fully integrated into the Treaties. The authors are convinced that this step is essential, but wish to raise the following points:

- **A building block for the Constitution.** The Charter should be a cornerstone of the future Constitutional Treaty. The method by which the Charter is incorporated cannot therefore be decided in isolation from the question of the structure of the new Constitutional Treaty. Two options are under consideration:
  - To include the Charter in the first part of the Constitutional Treaty as a bill of rights within the Constitution. This option would place the Charter at the centre of European developments, giving a strong message to citizens on the importance which the Union attaches to fundamental rights.
  - To include a reference to the Charter in the Treaty and attach the Charter to it in a separate instrument, such as a Protocol annexed to the Treaty. This solution provides the Charter with legal force. This option is simpler in technical terms, since the Charter need not be in the body of the text and would require fewer amendments.

While the choice between these two options would very much depend on the final structure of the Treaty, as well its length, it should be noted that including the Charter into a Protocol would negatively affect the visibility of fundamental rights of the Union. The first option is to be preferred: a European Constitution with the Charter of Fundamental Rights as its first part.

In any event, great caution is urged in order to avoid any potential compromise that plays with the text of the Charter. It is important to note that a physical reorganization of the Charter rights, even without changing their substance, affects the value of these rights.<sup>1</sup>



- **No reopening of the substance of the Charter.** The authors agree with the widely held view that rights set out in the present Charter should not be redrafted at this stage. The Charter was drafted following a legitimate democratic procedure with every clause being the result of a political consensus on the text as a whole. To re-open the debate on the content of the Charter would undermine the consensus already achieved by the previous Convention and by the European Heads of State and Government.
- **The preamble.** The preamble of the Charter must be maintained as an essential element of the Charter. It was key in securing a final agreement to the text of the Charter and cannot be divorced from the text. If the Charter is to be introduced as the first chapter in the Constitution, the existing preamble should be the basis for the preamble of the Constitution itself.
- **Future adaptation of the Charter.** The Charter, as part of a constitutional text, should be open to adaptation according to the modalities for constitutional revision. The details of such modalities are still an open question and should be included within the broader question as to how to amend the Constitution. However, it is clear that the Charter needs to live, be applied and interpreted before further amendments are suggested.
- **The General Provisions.** The general provisions in the Charter (also known as ‘horizontal clauses’), which aimed at clarifying the scope of the Charter, were vital in order to achieve agreement on the text. As with the preamble, these provisions need to be maintained. However some technical adjustments of the horizontal provisions of the Charter are required to enhance legal certainty and clarity on some of the more difficult questions. In this sense the technical adjustments of the horizontal clauses suggested by the Convention’s working group are welcomed overall. These amendments aim to:
  - restate that the Charter does not modify the division of competences between EU and Member State.
  - confirm that Charter rights derived from the common constitutional traditions of Member States should be interpreted according to those constitutional traditions.

- guarantee the harmonious interpretation of the articles in the Charter in relation to those of the Treaty.
- **The ‘New’ Horizontal clause.** A new horizontal clause has also been suggested, in article 51(1) of the Charter, to clarify the distinction between ‘rights’ and ‘principles’, with the aim of limiting certain provisions from creating directly enforceable rights. This suggestion seeks to distinguish between social & economic rights (which tend to require some implementing legislation) and civil & political rights. However, there is a growing international consensus that the distinction between these two groups of rights is artificial and unhelpful, as the lines between these groups are increasingly blurred. While the Charter provisions are not all intended to grant enforceable rights, without requiring implementing legislation, this new horizontal clause could potentially damage the standard of protection of the Charter by pre-empting the future judicial interpretation of provisions whose effect may change depending on the context of the case. While clarity is to be pursued, this new horizontal clause should not be a Trojan horse allowing for the future restriction of the Charter articles which grant individuals practical and effective rights. This is still an open question and further careful analysis is required.
- **Impact of the Charter on EU competences.** Article 51(2) of the Charter states that the Charter should not necessarily constitute a basis for the adoption of positive measures by the Union outside the limits of its existing powers. However, it is clear that the Charter will act as a policy driver as the Union increases its existing competences. The Charter should be a guide to action rather than a limit on it. The limitations built into the Charter should not prevent the Union from building on the values of the Charter and should have a proactive effect in promoting fundamental rights further.
- **Status of the Praesidium notes.** The explanatory notes of the Praesidium of the previous Convention which drafted the Charter provide a helpful indicator for interpreting the scope of the Charter provisions. They currently do not have any legal value and were not intended to be fully comprehensive. The Convention should



formally endorse these explanatory notes, as well as the current working group conclusions. This would provide European courts with an essential aid in interpreting the scope and effect of the Charter rights.

- **Level of protection and access to Justice.** Giving legal value to the Charter must be accompanied by providing effective access to justice. Under the current situation, individuals may only go to the ECJ under the ‘direct action’ procedure in Article 230(4) of the Treaty establishing the European Community (TEC). Those conditions have tended to be applied by the ECJ and the Court of First Instance in a very restricted manner and may constitute a breach of the ECHR provisions on access to justice. The ECJ itself has made this point clear to the Member States. It cannot be right to incorporate the Charter without ensuring that the Community legal order guarantees effective access to justice. It is highly regrettable that the Working Group did not call on the Member States to open up Article 230(4) TEC to ensure effective judicial protection. The Convention should consider this matter as an issue of utmost importance. There are also other issues to bear in mind if Article 230 TEC is not reformed:
  - There is a real danger that the ECtHR will find that the EU is in breach of Article 6 ECHR for not providing effective judicial remedies for individuals.
  - If citizens feel that the ECJ cannot guarantee ECHR rights effectively, more complainants will go to the ECHR and it is possible that the ECtHR will be called increasingly to scrutinize EU legislation.
- **Effective Remedies.** Access to justice reforms should be accompanied by appropriate judicial remedies, compensation and sanctions for breach or non-compliance. It should be noted that there is little evidence that work has been undertaken on this crucial issue. The Convention and Member States should investigate urgently the institutional reforms required to ensure that the Charter is effective, both regarding direct actions before the ECJ and actions before national courts.

- **Article 6(2) of the Treaty on EU.** There is currently a debate as to whether Article 6(2)TEU should be maintained, following incorporation of the Charter. Article 6(2) expressly refers to the Union respecting fundamental rights as guaranteed by sources of Law now contained within the Charter (i.e. the ECHR and the constitutional traditions common to the Member States). There is, therefore, an argument to say that Article 6(2) would be redundant. However, it should be remembered that Article 6(2) is currently not binding on the ECJ and its genesis was as an explicit acceptance by the Member States of the ECJ's case law. It would be wrong to assume, therefore, that the Union's respect for fundamental rights is limited to these two sources. In considering Article 6(2) no solution should have the effect of limiting the ECJ from drawing inspiration or guidance from other fundamental rights instruments. It may well be that retaining the wider sentiment of Art 6(2) would ensure that the protection of rights is guaranteed.
- **Justice and Home Affairs.** Under the current Pillar Three structure of the Treaties, the EU system of legal protection presents serious weakness, as Justice and Home Affairs provisions currently provide individuals with only limited access to the ECJ. This situation is unacceptable considering the impact of this policy area on individual rights; such restricted access is likely to be in contravention of fundamental ECHR and Charter rights. The ECJ's general jurisdiction should therefore be extended to the area of Justice and Home Affairs, as recommended by the Convention's working group X on 'Freedom, Security and Justice'.



#### 4. Accession to the European Convention on Human Rights and the strengthening of fundamental rights, external control and credibility of the Union

The Laeken European Council specifically mandated the Convention to consider whether the EU/EC should accede to the ECHR. To date a number of international bodies have expressed the wish to see the Union itself accede to the ECHR, in particular the European Parliament, the European Commission and the Council of Europe. The conclusions of the Charter working group also recommended accession to the ECHR. Accession to the Convention is a necessity once the Charter becomes legally binding. Incorporation and accession are complementary and interlinked; they are not alternatives.

- **Union and not just Community accession to the ECHR.** There is a general consensus that the Union, not the EC should accede to the ECHR. The limited accession of the EC would send a negative signal to EU citizens about the inclusiveness of the EU and the inter-governmental activities of the Member States under the Union banner. Accession of the Union would be necessary in order to ensure that all Union policies are covered by fundamental rights control. Clearly this would require the Union to be granted the requisite express legal personality, as recommended by the Convention's working group III on 'Legal Personality'.
- **Accession as complementary to a legally binding Charter.** Accession provides the best means of achieving the necessary coherence between the ECHR and Community Law. It is a necessary and complementary step in order to ensure legal certainty in the application of those Charter rights based on the ECHR.
- **Coherence in external relations.** There is a growing contradiction between fundamental rights commitments demanded by the Union from third states, for instance, in connection with development aid and bilateral trade agreements and the lack of any external scrutiny of the Union's own actions. At the same time, ratification of the ECHR is a condition of EU membership, when the EU itself is exempt from supervision by the bodies of the ECHR.

- **External control.** Accession would mean that the EU is subject to the same kind of external control in relation to ECHR rights as its Member States are and this would thus increase effective judicial protection for citizens. The international ECHR monitoring system would also be the ideal solution in order to avoid conflict between the ECJ and ECtHR. Another important argument in favour of accession is that the ECtHR is increasingly ruling directly or indirectly on acts of the Union, without the interests of the Union being represented before the ECtHR.
- **Creation of a legal basis for accession.** Given the importance of accession, there should be a clear provision enabling accession to the ECHR within the new Constitutional Treaty, not merely a clause granting legal personality and a redrafted Article 310 TEC. The accession clause should not extend competences to accede to any other international human rights instrument unless the Member States so wish. A declaration could also be included to require active negotiations for accession, not merely that the principle of accession exists.
- **Impact on competences.** The EU should only accede to the ECHR within the limits of its own competences and the accession provisions could specify explicitly that accession does not extend the EU's competences. Accession would therefore not modify the division of competences between the Union and Member States.
- **Impact on autonomy of Community legal order.** Accession to the ECHR would not have any impact on the autonomy of the Community legal order. The ECtHR in Strasbourg will function as a specialist court of scrutiny of the ECHR obligations resulting from accession and not a court superior to the ECJ. The ECJ would retain its role as the EU's Constitutional Court and the sole arbitrator of EU law. In the event that the Court in Strasbourg finds that a right as enshrined by the ECHR has been violated, that Court will not have competence to annul the acts of the Union, nor to impose a remedy. The choice of the remedy to redress the situation would be the choice of the Union institutions or Member States.



- **No modification of Member States individual positions.** Accession would not affect the individual positions of Member States in relation to the ECHR and its protocols. The scope of accession concerns EC Law only and there would no be interference with national law in relation to special reservations, protocols etc.
- **Full accession to the ECHR.** There should be full accession to the ECHR. The idea of ‘functional accession’ would not be suitable. ‘Functional accession’ is a compromise solution which consists in submitting EU institutions to the control mechanism of the ECHR, without the EU becoming a contracting party of the ECHR, and without being involved in the ECHR mechanism. Most importantly it would not be able to take part in the Committee of Ministers deliberations essential for the proper execution of sentences or decision on which party was competent to remedy a breach. ‘Functional accession’ would also deny the EU the possibility of having an EU Judge on the ECtHR. This is a vital issue as the EU judge would represent the specificities of the EU legal system, and seek to ensure the harmonious development of case law of the two systems.
- **Relations between the Courts.** Relations between the two courts would not be hierarchical. Currently, the ECJ is not bound by the ECHR as such, although the ECHR has been a persuasive instrument from which the ECJ draws inspiration and guidance and which the ECJ has found to be of special significance. Without accession there is an increased risk of divergent decisions between the two Courts and the creation of double standards. This is a very real threat, notably in the light of cases on EU issues pending before the ECtHR already declared admissible. An external judicial control mechanism on fundamental rights, such as the ECtHR, would increase the ECJ’s own credibility and legitimacy in the field of fundamental rights protection. The ECtHR would have a subsidiary role, being a specialized court of last resort to be seized after all other legal avenues have been exhausted.

Following accession, there would be no necessity to create special mechanisms to deal with the relationship between the two Courts.

The EU system should not be treated any differently from national systems where no special relation between national courts and the ECtHR exists. The creation of such a bridging mechanism would affect the status that the ECtHR enjoys and elevate it to a position it does not require. These kinds of mechanisms would also increase the complexity of the procedure and increase the length of proceedings.

The current informal dialogue between the two courts would be strengthened once accession takes place. The relation between the two courts would be one of cooperation and complementarity, enriching each other's case law and creating an interactive relationship. Prior to accession, it could be foreseen that the two courts would increase their collaboration. Over and above the current informal visits, co-operation could be improved to include informing the other Court of relevant cases and entering into dialogue on points of common concern. This could be formalised by creating a joint group made up of the Court Registrars and Presidents. Such a formalisation is especially important given that accession negotiations may take some years.

## **5. Conclusions**

The incorporation of the EU Charter of Fundamental Rights, as a fully binding text, into the future constitutional Treaty of the Union is a necessary political step in the development of the Union. One of the key features of the future Constitutional Treaty should be commitment to fundamental rights and such incorporation will help create a greater sense of ownership by the citizens of the Union. Full incorporation of the Charter will furthermore ensure a move towards a citizens' oriented Union and provide citizens with an extra and tangible level of democratic control of EU acts. The accession by the Union to the ECHR is an equally essential corollary to incorporation.

The original function of the Charter was to make fundamental rights more visible to the citizens of the EU. In this context it is considered of vital importance to the success of the Charter that the rights and obligations it sets out, and the means to have them enforced, be communicated far more widely in present and future Member States. These points must be effectively promoted and explained to



administrators and regulators bound by the Charter, as well as to judges and lawyers who need to make the Charter work. Key to this process will be engaging citizens and civil society. Clearly until full incorporation occurs, the impact of the Charter on national, European and international courts needs to be carefully monitored and analysed.

Fundamental rights cannot be treated as merely another policy area. As a final note of caution, it is necessary to highlight the dangers of political compromises in the area of fundamental rights. A political decision must be taken by the Convention and Member States on the Charter, but it is vital that no compromises are reached that restrict fundamental rights protection merely in the interest of political convenience.

<sup>1</sup> *"The interpretation of legal provisions depends very much on their context and hierarchical position within the fabric of the law. Even if the wording does not change, a structural change could significantly affect its interpretation"*. Opening Address by GIL CARLOS RODRIGUEZ IGLESIAS, President of the European Court of Justice, at the XX FIDE Congress, 31 October 2002.

# ANNEXES

## THE EUROPEAN POLICY CENTRE PROJECT ON THE EUROPEAN CHARTER OF FUNDAMENTAL RIGHTS: SOME INITIAL CONSIDERATIONS

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The Laeken EU Summit of December 2001 set up a Convention to consider, amongst other things, two issues related to the Charter in preparation for the Inter-Governmental Conference of 2004; the incorporation of the Charter into the EU Treaties and/or the accession of the EU to the European Convention of Human Rights (ECHR).

The European Charter of Fundamental Rights is an extraordinary document by all accounts; the content and substance of the Charter; the nature of the document and the statement it makes about the EU; the method by which it came to be. All these issues raise key questions about the direction of the EU vis-à-vis its Member States, its policies, its citizens and other international actors. Much, therefore, hangs on the final fate of the Charter.

The aim of *The European Policy Centre's (The EPC) 'The Europe We Need'* initiative is to assist and advise the Convention by exploring a number of the more fundamental issues raised by the Charter. An EPC Advisory Panel of senior figures from politics, law and academia has begun a discussion of the issue. Below are a series of questions related to the Convention's consideration of the Charter, each posing considerable challenges.

### **Is there the political will to incorporate the draft Charter fully into the Treaties?**

In mandating the original Convention to draft the Charter, the EU Council demonstrated a belief that the EU had reached a sufficient stage in its evolution to commission a text having deep constitutional implications. The solemn declaration of the Charter at the fringes of the



2000 Inter-Governmental Conference in Nice, showed that the Member States accepted the results of the Convention in principle, but had not yet been able to reach a decision on its status. The key issue of the status of Pillar Two and Three of the EU remains. However, if the Member States are not willing to give full effect to the Charter or if they find a weak compromise, what sort of message will this send to EU citizens about their rights?

### **Will the Charter create a constitution for the EU?**

Incorporating the Charter into the EU Treaty creates the possibility of propelling the EU into a new legal order. Clearly the political impact of the Charter on the existing EU system needs to be considered as the Charter may certainly have a constitutionalising effect. The Charter provides the opportunity to create a new form of Union and a number of commentators are calling for the EU to be granted a formative constitution. An objective clarification of what is meant by a constitution from a legal, practical and political standpoint needs to be undertaken. Only then can a discussion be had as to whether restructuring the system is desirable, or even politically achievable.

### **How will incorporation affect the EU's existing legal process and architecture?**

One key issue to avoid is the creation of confusion for citizens, courts and the legal profession. Member States legal systems already give effect to many of the rights set out in the Charter. However, one could foresee the need to ensure consistency in the application of these rights; in the context of procedures and remedies available in national courts. Whether national legal systems would need adjustments is worth considering, as this could affect the political will for full incorporation.

In case of incorporation, specific care will need to be taken as to what mechanism is appropriate for individuals to enforce their Charter rights. Is the existing system appropriate from handling fundamental rights cases expeditiously and coherently?

### **International Legal Personality**

One possible effect of incorporation of the Charter into the EU Treaty would be to grant full international legal personality to the EU, which

currently does not exist (although it has been debated that there is limited implied personality). Will the granting of such a capacity and competence to act require the existing EU institutions to re-assess their roles? For example, the Commission and the Council would arguably have an implied obligation to monitor the application of the Charter in EU law, possibly take action for non-implementation and even legislate in order for fundamental rights to be protected. This logic naturally goes against Article 51(2) of the Draft Charter.

Whatever the current position, incorporation of the Charter into the Treaty will require a re-evaluation of the EU's international status, purpose and direction. It may also bring the EU fully within the field of international law; granting it the ability to take a full role in other international organisations, such as the United Nations. Are the Member States willing to go this far?

### **Issues related to the European Convention on Human Rights and Fundamental Freedoms**

Will an EU Charter of Fundamental Rights create conflict with existing human rights protection systems, notably the ECHR? A fully incorporated Charter would place the EU on an equal footing with the ECHR, in terms of the protection of individual rights and one can foresee either divergence in interpretation of these rights (as sometimes occurs) or simply confusion in national courts. Although the Charter expressly seeks to avoid potential clashes of jurisdiction, this does not prevent such a situation from arising. One can also foresee the ECHR ruling on EU issues, and the *Senator Lines* case, currently a case before the European Court of Human Rights (ECtHR) in Strasbourg, could pit the ECHR directly against the EU.

Naturally the relationship between the EU and the Council of Europe, and between the EU's Court in Luxembourg and the ECtHR in Strasbourg depends on the legal status of the Charter vis-à-vis the EU Treaty and how the ECHR issue is dealt with expressly. It is however, one of the most critical questions facing the Convention, as it goes to the heart of the systems of redress available to citizens in Europe.

### **Accession of the EU to the ECHR**

As well as the status of the Charter, the Convention has to consider the question of accession of the EU to the ECHR. The incorporation of the



Charter does not preclude the EU's accession to the ECHR, in fact many see this as complementary. In 1994, the ECJ stated that the EC had no capacity or competence to accede to the ECHR. A Treaty amendment incorporating the Charter could well grant the requisite capacity and competence to enable the accession of the EU to the ECHR (although this would probably not supersede the Member States' individual obligations under the ECHR).

If the Convention advises the 2004 IGC that accession to the ECHR is desirable, a change to the ECHR accession mechanism would be required, as it currently only allows nation states to join. Accession to the ECHR will not only fundamentally change the nature of the EU, it will also require a re-configuration of its institutions to fulfil ECHR obligations. The role of EU members in the ECHR, as well as the role of the ECHR and EU judicial institutions, also requires scrutiny.

### **Related issues**

There are a number of related issues that need to be considered and discussed. For example:

- Does the Charter affect the accession criteria of the candidate states and can they guarantee the rights set out in the Charter?
- In the majority of the EU's Association Agreements, a clause exists making the respect for fundamental rights (although not clearly defined) an essential element of the agreement, whereby breach of this provision activates a sanction, suspension or withdrawal mechanism. Will the EU, which will now have a clear text to abide by, be the focus of retaliatory measures from third states if the Charter is not abided by? Or will the EU be forced to act more regularly, as it will have a clear benchmark to abide by?

The Cologne European Council's criteria of making the Charter of "*overriding importance and relevance*" requires the Convention to focus on the practicalities and applicability of the rights contained in the text. Over the course of 2002 and 2003, *The European Policy Centre's* 'The Europe We Need' initiative will explore a number of the more fundamental issues raised by the Charter, through discussion with stakeholders, workshops and articles.

# THE CHARTER OF FUNDAMENTAL RIGHTS: A PRELIMINARY ASSESSMENT

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This paper covers some of the key points raised in a number of discussions that *The European Policy Centre (The EPC)* has held on the Charter of Fundamental Rights with national and European officials and European politicians, some of whom were members of the Convention responsible for drafting the Charter or who are members of the current Convention. This included an open debate with Members of the European Parliament, held on 16 April 2002 in Brussels. The following paper offers a preliminary commentary on the issues under discussion, and as such, does not necessarily represent the views of *The EPC*.

We have identified the key questions that are set out below and which we consider lay at the heart of the debate on the Charter:

- What is the added value of the Charter?
- How the Charter should be incorporated into the Treaties? Should the Charter's text be redrafted or incorporated as such in the Treaty?
- Should the Union accede to the European Convention on Human Rights (ECHR)? What would be the relationship between Strasbourg and Luxembourg?
- What provisions need to be improved in terms of legal remedies for better access to justice?

## **1. The Importance of the Charter of Fundamental Rights**

- The Charter establishes for the first time in the Union's history a formal comprehensive catalogue of fundamental rights and therefore the 'inclusiveness' of the Charter is an important factor.



- The added value of the Charter is that it aims to strengthen European citizens' rights and will raise the level of fundamental rights protection across the Union. Citizens will therefore know that there is a basic level of protection across the Union, wherever they choose to travel, live and work, and that these rights will be respected.<sup>1</sup> The incorporation of the Charter within the treaties would put the rights of the individual at the heart of the EU, reinforcing the concept of EU citizenship and thus helping to establish legitimacy to the Union.
- The Charter makes the EU accountable to its citizens. EU Citizens should be able to challenge the legality of acts of the EU institutions and Member States when acting under community law. A binding Charter would ensure that citizens are provided with a system of redress against acts of misadministration or the abuse of power across the whole range of EU activity.
- The Charter can, and already does, also serve as a reference point so that newly drafted legislation is in line with fundamental values and principles.
- A binding Charter will help the Union to develop a more coherent Human Rights policy, not only internally but also externally, thereby addressing the criticism that the EU lacks coherence in its external fundamental rights policies.

## 2. Inclusion of the Charter in the Treaties

- The Charter is already perceived as a legal instrument. The Commission now includes references to the Charter when drafting relevant proposals.<sup>2</sup> The Member States have subscribed to the Charter and this places an obligation on them under the General Principles of Community Law. Indeed, several Advocates General of the European Court of Justice (ECJ) have already referred to the Charter in their Opinions and the European Court is increasingly asked to consider the Charter as a text of reference.<sup>3</sup>

- It is clear that the incorporation of the Charter into the Treaties and the method in which it will be incorporated<sup>4</sup> cannot be decided in isolation from other questions about the mission and role of the Union, such as the question of redrafting the existing treaties, the issue of a European constitution or the status of the Union's Pillar Two and Pillar Three.
- In the context of the revision of the Treaties, the Charter could form a new constitutional chapter in the Treaty. From the point of view of transparency, one could argue that it would be more logical to have the whole document included.<sup>5</sup> Once incorporated, it is the Treaties that will have to be adapted to the content of the Charter.<sup>6</sup>
- The Charter is an essential component for the creation of a credible Area of Freedom, Security and Justice (AFSJ). The Union is firmly committed for the creation of an AFSJ and this goes together with the improvement of the protection of Human Rights and Fundamental Freedoms. This is an area that directly affects the rights of individuals and the Charter has an important role to play in ensuring that fundamental principles are protected. The integration of the present Pillar Three provisions into Pillar One is of crucial significance in this regard.
- Including the Charter fully into the Treaties would eliminate the existing 'pillar structure', making them fully justiciable, and would assist in the possible drafting of a simplified Treaty, comprehensible to citizens. At present, an important part of the rules of the Union are excluded from the supervision of the ECJ, or its jurisdiction is very limited, such is the case of Pillar Three and Pillar Two. A binding Charter would be crucial to redress this situation.
- At a time when the Union is opening up to new Member States, the Charter reaffirms the core values of the Union which Members share. This is a very important sign for Candidate Countries since the Charter is perceived as a commitment from the Union to explicitly proclaim the respect for Human Rights. However, during the drafting of the Charter, it should be noted that certain Candidate Countries were very concerned that two points be born in mind:



firstly, a binding Charter should not restrict the work of Strasbourg and secondly, the Charter should not add any new conditions for membership of the Union to those already agreed.

### 3. Constitutional impact

- The Charter serves as the Bill of Rights for the European Constitution. Once the rights set out in the Charter are included in a European constitutional text, they will become part of peoples' mind-sets and will be seen as the most appropriate and highest values for Europeans.<sup>7</sup>

### 4. Redrafting the Charter

- There is wide agreement that an exercise of redrafting of the Charter would be counter-productive. While it is argued by some that the Charter could have been better drafted from a strictly legal point of view, every clause is the result of an extensive debate and political consensus on the text as a whole. If in some points the Charter seems 'weak', it is because political consensus on a particular point did not exist.<sup>8</sup> However, it is true that the Charter could be improved and Art 53 ('level of protection') was included for this purpose. In relation to this, some solutions have been suggested such as the incorporation into the Treaty of an 'evolutionary clause' that would enable the Charter to be improved in order to meet new requirements.
- Indeed, the discussion on the content of the Charter was the result of a legitimate democratic procedure. Re-opening the debate on the content of the Charter would put in question the consensus already achieved both by the previous Convention and the Heads of State and Government who adopted the Charter in December 2000.
- From a procedural perspective, if the new Convention re-opens the debate on the content of the Charter, the former Convention would be de-legitimised. The Convention system itself could be negatively affected, as this may give a signal to the forthcoming Inter-Governmental Conference to do the same.

## 5. Social Rights

- An innovative feature of the Charter is that it brings economic and social rights together with the more classical political and civil rights. There is a problem of perception with social rights, as it has been argued in the past that they bring with them a significant financial cost, whereas the costs of other kind of rights, such as the right to a fair trial and to defence, are more manageable.
- However, the current status of social and economic rights in the Charter should not pose a problem, as they do not go beyond what the Member States have already accepted and do not create new competences in the social policy field at the level of the Union. The social rights included in the Charter are clearly distinguished and separate from the Union's competences in the social policy domain. The idea that the Charter as such creates increased social costs is therefore misleading. The function of the Charter will be to ensure that the policies of the Union in that field are not in conflict with fundamental rights.

## 6. Accession to the European Convention on Human Rights(ECHR)

- Incorporation and accession to the ECHR are seen by many as one issue as incorporation cannot take place without formal accession to the ECHR. Accession is necessary since there is currently an absence of comprehensive external control on the Union in human rights issues.<sup>9</sup> And European citizens do not have effective protection in bringing complains against the EU institutions directly before the ECHR. Establishing an effective system should not pose fundamental problems, as international human rights supervision already occurs across the EU Member States through the ECHR mechanism. Accession would mean recognising the international monitoring system which already applies to all its Member States.
- However, the accession of the Union to the ECHR might have a negative impact on the process of the Union's integration, as the



European Court of Human Rights (ECrHR) in Strasbourg would not have the same imperatives as ECJ (e.g. European integration). One could foresee certain Member States taking the political decision to take cases to Strasbourg rather than the ECJ.

- A further argument that has been raised against accession is that Union rights could be ruled on by non-EU judges in the ECrHR in Strasbourg, as they may come from different traditions and cultures. However, this is a minor argument. Individuals will have a strong incentive to go to Strasbourg if they feel that their rights can be effectively protected by Strasbourg's Courts, even if these rights are the result of a Union initiative.<sup>10</sup> This would be the case for those legislative acts produced by the Union under Pillar Three and Pillar Two, which are totally or partially excluded from ECJ control. Since the Union will increasingly legislate in those areas, this will also increase the possibilities to go to Strasbourg and therefore to have an impact in the way that those norms are interpreted. Therefore, if the Union does not accede to the ECHR, it will not be possible for the Union to have an influence on Strasbourg case law, whilst Strasbourg may be able to intervene in cases involving Union Law.
- There are certain legal and procedural issues that need to be addressed to allow for the Union's accession to the ECHR, but these can be resolved by creating the appropriate legal basis for the Union and the Council of Europe and is merely a matter of political will.
- The key issue of accession to the ECHR also points to a more general problem, which is the need to clarify relations between the Union and other international instruments such as the Geneva Convention, the International Labour Organisation Conventions, the Charter of Fundamental Social Rights etc. The question of the extent to which the Union should comply with the same international obligations as Member States who are signatories to these instruments remains to be addressed.

## 7. Future relations between the European Court of Justice and the European Court of Human Rights

- The ECJ has been the institution mainly responsible for the Union's process of integration and the ECJ should clearly have the role of interpreting and applying the rights set out in the Charter. One of the main issues to be resolved will therefore be the relationship between the ECJ and the European Court of Human Rights, since there is a risk of conflict between the two courts.<sup>11</sup>
- While tension always exists between two supreme courts (as it does between Member State supreme courts and the ECJ) this should not be seen as insurmountable difficulty. In fact positive competition could emerge between the two Courts, which will improve the protection of fundamental rights, which would benefit Strasbourg. The review of Union rights by Strasbourg could also have a positive influence on judges in courts across member countries of the Council of Europe and speed up the process of democratic development of the wider Europe.
- The existing informal co-operation between the ECJ and Strasbourg will need to be improved. Some form of mechanism is necessary to deal with the relationship between the two Courts. Examples include:
  - The possibility of making preliminary references to the ECJ based on the Charter, could be limited to national courts of last resort.
  - A system of preliminary rulings could be created, in which Luxembourg could refer Human Rights issues on points of law (not on the facts) to allow Strasbourg to provide the authoritative interpretation on ECHR points.
  - Allowing Luxembourg to refer appeals to Strasbourg, if appropriate.



## 8. Access to Justice and ‘Level of Protection’

- A document on its own does not improve protection. It is key that a technical debate concerning the Charter does not obscure the true function of the Charter which is to improve citizens’ rights and, most importantly, that the Charter is accompanied by effective access to justice and legal remedies. The question is how far these rights are justiciable and which European and national courts are best equipped to rule on these questions.
- Citizens should have the possibility of access to the courts and a review of existing procedures is necessary. Currently there is a gap in fundamental rights protection at Union level. Individuals can only go to the ECJ under the ‘direct action’ procedure (Art. 230 of the Treaty establishing the European Community). However, access to this procedure is very restricted.<sup>12</sup> Apart from accession to the ECHR, which would give individuals the possibility of going to Strasbourg, another possible solution could include allowing the European Ombudsman or another body to be allowed to refer a particular question to the ECJ and act as filter mechanism (e.g. for ‘class actions’). Whatever procedures are introduced, it will be important to provide the ECJ with the ability to rule efficiently on these questions and also to grant effective remedies.

- <sup>1</sup> In this regard, the need to publicise the Charter more widely, to allow citizens to understand what it effectively means and how they can have their rights upheld is an exercise yet to be undertaken by the Union’s institutions or the Member States. Training national judges and lawyers (similar to the UK’s training programme on the recent Human Rights Act) should be considered.
- <sup>2</sup> The European Ombudsman has also referred to the Charter in his decisions, as did the Wisemen’s Report on Austria, following the election of the FPÖ.
- <sup>3</sup> As of May 2002 there have already been 14 ECJ cases where the Charter was raised. However, for the first time, on 30 January 2002, in *Mobile Telekommunikation Service v. Commission*, the European Court of First Instance made an explicit reference to the Charter in a European judgement. See also the CFI Judgment of 3 May in *Jégo-Quéré et Cie v. Commission*.
- <sup>4</sup> E.g. referring to it in Article 6(2) of the Treaty on European Union, including it as a Protocol or Declaration, inserting it fully in a redrafted text.

- 5 There would, however, have to be some redrafting of the Charter to remove certain formal aspects, such as the existing recitals or horizontal provisions, without affecting the substance of the text.
- 6 For example it would be necessary to examine the possible overlap of certain articles of the Treaties with those of the Charter.
- 7 There is, however, some confusion arising from the term 'constitution', as this tends to be linked to the concept of statehood. However, the term 'constitution' does not necessarily imply 'statehood' and this needs to be discussed more fully.
- 8 E.g. it is not possible for the Union to go further in the right to asylum when there is currently no political consensus within the EU to do so.
- 9 In fact, it appears that the European Court of Human Rights has taken the approach that so long as the Union institutions guarantee effective ECHR protection it will not intervene in Union matters, but retains the right to do so (see *Matthews v. The United Kingdom*). How the ECtHR deals with the case of *DSR-Senator Lines GMBH v. Member States of the EU*, currently before Strasbourg, will be critical in this regard.
- 10 See further MATHEW HEIM 'Unfinished Business: The European Charter Of Fundamental Rights, The European Court of Justice and The European Convention of Human Rights' in *The EPC, Challenge Europe*, 21 September 2001.
- 11 Currently, the ECJ tends to follow ECHR principles and has begun to apply Strasbourg case law. However, in some cases the ECJ has interpreted some rights differently and on certain occasions has gone even further than Strasbourg. See also footnote 7 above.
- 12 However, see Opinion Of Advocate General Jacobs delivered on 21 March 2002, Case C-50/00 P; *Unión de Pequeños Agricultores v Council of the European Union*, which argues forcefully for a re-opening of the current 'direct and individual concern' rules to allow wider access to the ECJ under Article 230 TEC. This Opinion should now be read in the context of the recent CFI Judgment of 3 May in *Jégo-Quéré et Cie v. Commission*.



# THE CHARTER OF FUNDAMENTAL RIGHTS: REDRAFTING AND INCORPORATION

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The 1999 Cologne European Council, which set in train the drafting of the European Charter of Fundamental Rights, stated that once a text was agreed the European Council would consider "whether and, if so, how the Charter should be integrated into the treaties". What is clear is that the political decision on whether the Charter should be incorporated is linked to the fundamental question of the redrafting of the Treaties, the direction of the Union and, of course, whether the Union should accede to the European Convention of Human Rights. Below are a number of policy issues relating to these questions.

## 1. Revising and Redrafting the Charter; preliminary observations

There is considerable debate about whether, and to what extent, the text of the Charter should be revised or redrafted, on mainly three fronts; a cleaning up exercise, reviewing substantive provisions and technical amendments.

### **‘Communitarising’ the text of the Charter**

Some Member States argue that the text of the Charter needs tidying-up, due to the fact that the text, resulting from a political compromise, is drafted in an insufficiently clear manner for incorporation into the Treaties. It is also true that the text does not reflect concepts or terms necessarily known in Community law and there is some argument for ‘communitarising’ the wording of the text to make it fit into the existing Treaty. The sagacity of such an exercise must be questioned, as it could clearly affect the interpretation of some of the Charter rights and therefore their content. However, as we will see below, whether or not this task should be undertaken depends on the future legal status of the Charter.

## **Reopening the text of the Charter**

There are also calls for the re-opening of the Charter regarding certain types of rights, notably social rights, whose scope is currently unclear and which has engendered considerable controversy. As the EPC noted in its Preliminary Assessment of the Charter, there is a general agreement that any redrafting of the Charter, short of the technical amendments required for incorporation into the Treaty, would put in question the consensus so carefully achieved in the first Convention.<sup>1</sup> This argument is also valid for a ‘communitarising’ exercise. It is also clear, on the other hand, that some Member States, notably the UK, are already concerned about the Solidarity Chapter in the Charter and would be fundamentally opposed to amending or strengthening substantive social rights.

### **Technical revision**

There is little doubt that some redrafting may be necessary, in order to allow the Charter’s legal status, whatever form this could take, to sit in the constellation of the Union treaty structure. This would first require amending some of the Charter’s horizontal clauses. However, while this can primarily be seen as a technical exercise, the extent of this will naturally depend on what exact legal status the Charter is eventually granted and how it will be anchored into the Treaty. Secondly, such technical amendments will be subservient to a number of more fundamental considerations; the impact that incorporation could have on existing Treaty rights; the impact the Charter could have in a redrafted Treaty text and; the effect the Charter could have on the Union, if it forms part of a new constitutional text. These issues are discussed in more detail below.

## **2. The Future of the European Union and the Charter**

It appears that there is an increasing number of Member States who are formally or informally in favour of the incorporation. A group of those see the Charter as a new constitutional chapter in the Treaty, requiring not only incorporation but the re-adjustment of the Treaty around the Charter. The status of the Charter as a core Union text and the nature of a redrafted Treaty has been considered by the Convention on the Future of Europe. There are also official calls for the Charter to be given



a legally binding status, which does not necessarily imply incorporation.

Another, smaller, group of Member States still need to be convinced that incorporation is the right step to take, let alone set up a constitutional structure to the Treaties. These tend to prefer reverting back to the original wording of the Cologne European Council, so that the Charter be retained as a political declaration *"in order to make their overriding importance and relevance more visible to the citizen"*, in conjunction to strengthening citizens' rights in the existing Treaties. It is clear too that some of these Member States, wary of the Charter, see accession to the European Convention of Human Rights as preferable to the problems that the incorporation of the Charter into the Treaties could bring.

Naturally accession to the European Convention of Human Rights may come in tandem with granting a legal status to the Charter, which may temper the level of incorporation.

The question of the Charter's impact on the future of the Union, and its perception as the core of a European constitution, is therefore not merely a packaging exercise or a political interpretation of eventual incorporation. There is likely to be heated debate, even about the wording used to describe the Charter. It may be therefore that an interim solution, such as incorporation through the classic methods of a Protocol or Declaration, would allow for unanimity between the Member States.

All these tensions<sup>2</sup> will need to be resolved before the debate on the technicalities of incorporation are addressed.

### 3. Granting Legal Status to the Charter

There are several means of granting legal status to the Charter, each suited to a particular goal. We have seen that the Charter has the potential for being many things; a political declaration, a catalogue of existing rights, the core bill of rights in an EU constitution, the heart of an EU as a human rights organisation. And there are others, which include retaining the Charter as an inter-institutional agreement or form of international convention. However, the expectation of a large

number of Member States, Union institutions and commentators is that some form of legal status will be granted.

Ostensibly the choices are a reference to the Charter in Article 6(2) of the Treaty on European Union (TEU), a Protocol or Declaration on the Charter annexed to the Treaties, or inserting it fully into the Treaty text, setting out a bill of rights, and requiring a new Treaty structure. Each brings with it a unique series of political, legal and technical issues<sup>3</sup>, which are far from straight forward.

### **Classic Integration into the Treaty**

Set out below are a number of considerations on options available following the classic methods of amending the Treaties.

- A reference to the Charter in Article 6(2) TEU

In the first instance, a reference to the Charter in Article 6(2) is a logical place for the Charter, as Article 6(2) falls within the general provisions of the Treaty on which the principles of the Union are based. Yet this raises a number of issues:

- Under its current status, Article 6 is not binding, so that without express redrafting Pillars 2 and 3 would be excluded from the full jurisdiction of the European Court of Justice (ECJ). Therefore a reference in Article 6 would not preclude an additional political Declaration of the Charter in the Treaty.
- The future role of the ECJ would be considerable as regards the application of the Charter to the EC Treaty. Article 6 is currently a reaffirmation by the Member States of those principles which the ECJ has held fundamental to the Union, and from which it draws guidance and inspiration. If Article 6 remains non-enforceable, the Member States would be signalling their acceptance of the '*status quo*'; that the development of fundamental rights protection should continue through ad hoc jurisprudence of the European Courts.

In effect, the Member States would be delegating the exact legal effect of the Charter to the European judiciary.



- Inclusion through a Declaration

If the Charter was annexed to the Treaty through a Declaration, the full text (with some technical changes) could be included. There would be little change to the Charter's status, as a Declaration would maintain its, albeit reinforced, political status. This would be in line with the initial indications of the Cologne Council to promote and highlight existing rights. Even as a political declaration however, the Charter would continue to have some legal impact, which we have already seen developing through the ever more confident jurisprudence of the European Courts on the Charter.

- Inclusion through a Protocol

Under Article 239 of the Treaty Establishing the European Communities (TEC), Protocols annexed to the Treaty form an integral part of the Treaty and have the same legal status and force as all other treaty provisions. Clearly, the Union Treaty would need a similar provision, if the Charter were to have an impact on all the Union treaty provisions. In order to avoid confusion substantial technical redrafting would be necessary to deal with the situation where Charter provisions reflect, but do not mirror exactly, existing Treaty rights.

### **Insertion into the existing Treaty text**

If the Charter is to form part of the constitutional structure of the Union, as a bill of rights at the forefront of the Union construction, existing Treaty provisions would become subservient to the Charter rights and would have to be amended to fit its text. Furthermore, Article 52(2) where the Treaty limits the scope of the Charter, would also need redrafting. Other changes would include the need to grant express legal personality to the Union (notably if accession to the ECHR is to take place) and to set out the exact role of the ECJ (notably vis-à-vis the ECHR court), as well as any further enforcement procedures necessary to improve individuals' access to justice.

### **Delegating the Question of the Charter's Status**

The possibility of the Member States delegating the question of the status of the Charter to the ECJ, by requesting a formal Opinion from

the ECJ, has also been mooted. This would allow for the issue of a constitution for the Union to be left for a future Inter-Governmental Conference and give time for the European judicial organs to set an interpretative framework around the Charter. It is true that the decision on the extent of the Charter's legal status will affect direction and nature of the Union. Yet it is necessary to consider, prior to agreeing on the Charter's legal status, what the future of the Union is to be and whether the Charter is key to achieving that aim. The Cologne European Council, which set the Charter process in motion, created a situation by setting up the Convention with the task of drawing up a charter, without having any consensus amongst the Member States as to what the Charter should ultimately be. This mistake should not be repeated; agreement on the Charter's legal status, and any necessary attending amendments, should not take place until there is agreement on the role that Charter is to play in the future of the Union.

<sup>1</sup> *"Every clause is the result of an extensive debate and political consensus on the text as a whole (...) Indeed, the discussion on the content of the Charter was the result of a legitimate democratic procedure."* The European Policy Centre, *The Charter of Fundamental Rights: A preliminary Assessment*, EPC Working Paper, 13 May 2002

<sup>2</sup> The issues, which the Member States will have to consider, also depend on the solutions that the Convention identifies in many other areas. As a result the debate ranges over a wide area and some Member States may see the form of incorporation as a bargaining chip on other issues, such as the question of Pillar Two and Three.

<sup>3</sup> It is clear that *"the weaker the legal status accorded to the Charter, the less apparent the inconsistencies, incompatibilities, tensions or overlaps with provisions of the EC Treaty...."* GRAINNE DE BURCA, *Human Rights: The Charter and Beyond*, Jean Monnet Working Paper No. 10/01, Jean Monnet Center, NYU School of Law.



## The EPC Project on the European Charter of Fundamental Rights

*The European Policy Centre* launched in 2001 a major initiative entitled *The Europe We Need* aiming at making a substantive contribution to the process of European integration, culminating in the next stage of EU enlargement in 2004. A key part of this initiative concerns the rights of European Citizens, focusing on the European Charter of Fundamental Rights. *The EPC* is pleased that, through NEF (Network of European Foundations for Innovative Cooperation), the Compagnia di San Paolo, the King Baudouin Foundation and the European Cultural Foundation agreed to support this work.

*The EPC* has launched a thorough analysis and debate on the issues raised by the Charter. To this end *The EPC* also set up an Advisory Panel to guide its work on the Charter debate. Discussion and consultation took place with members of the European Parliament, European Commission officials, Members of the Convention and of its Charter Working Group, judges from the European Court of Justice and the European Court of Human Rights, The Council of Europe Legal Service and with representatives of Member States. The results of these discussions and various working papers are available on [www.theepc.be](http://www.theepc.be).

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