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Charter of Fundamental Rights of the European Union



The Question of
Applicability



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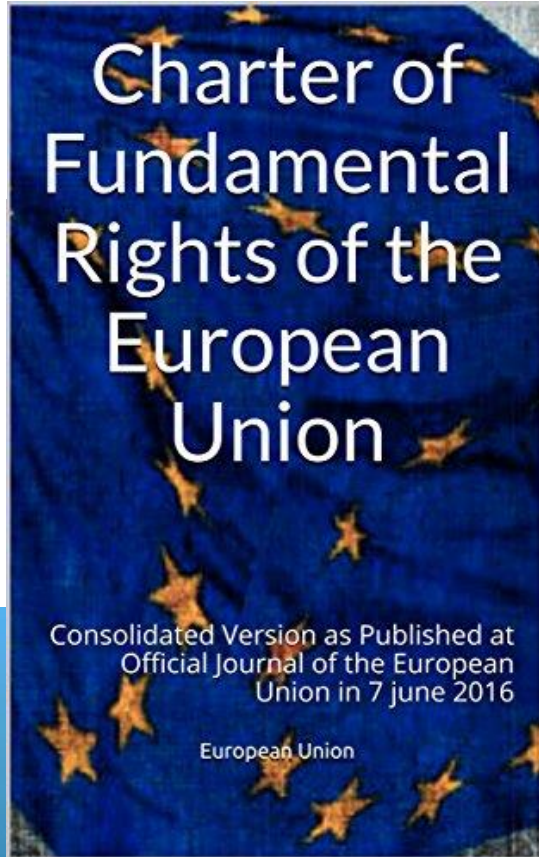
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Introduction

Fundamental rights in the EU and the place of the Charter in the EU legal system



Main sources of fundamental rights in the EU



Charter of
Fundamental
Rights

TEU art.6 (1)

Primary
source



Kopīgās
konstitucionālās
tradīcijas

TEU art.6 (3)

General
principle of law



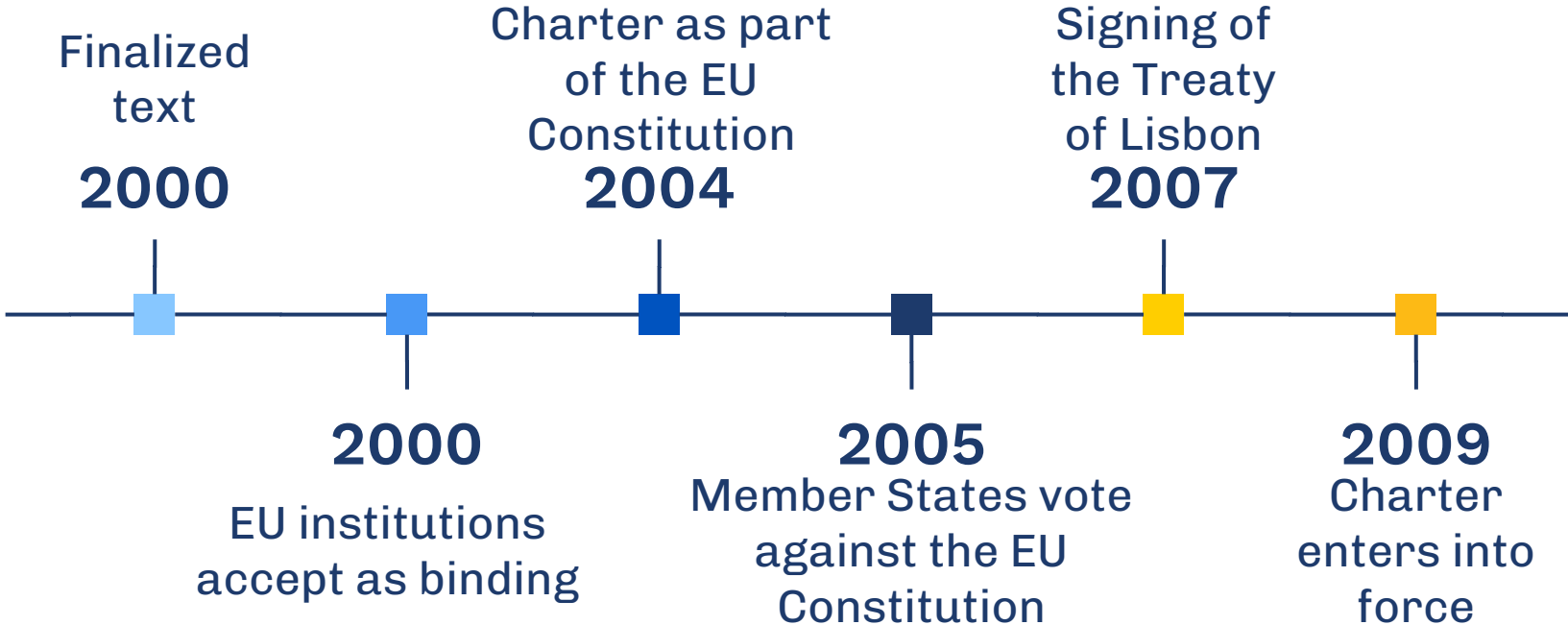
Eiropas
Cilvēktiesību
konvencija

TEU art.6 (3)

General
principle of law



Charter adoption process



The Substance



Rights

Individuals can invoke in courts (direct effect)

Examples:

- Article 2 (Right to life)
- Article 8 (Protection of personal data)
- Article 16 (Freedom to conduct a business)

Principles

Can be used as a tool for interpretation (indirect effect)

Examples:

- Article 25 (The rights of the elderly)
- Article 26 (Integration of persons with disabilities)
- Article 37 (Environmental protection)

02

Charter of Fundamental Rights of the European Union

Consolidated Version as Published at
Official Journal of the European
Union in 7 June 2016

European Union

Scope of Application of the Charter

Who should
apply the
Charter and
when?



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 51 (2)

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.



—Article 51 (1)

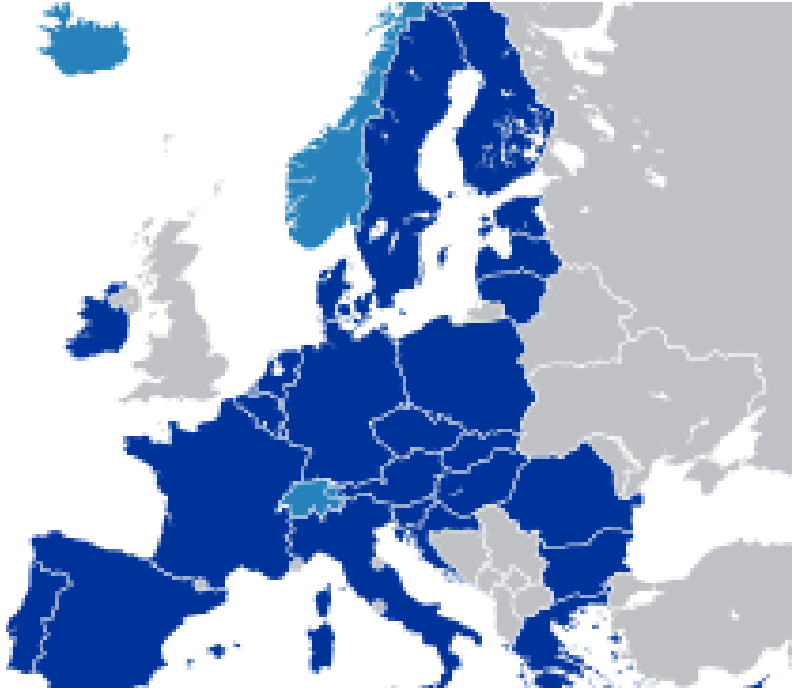
“The provisions of this Charter are addressed to the institutions and bodies of the Union (..)”



- Applies to all EU institutions created by treaties or secondary legislation
- In all cases (including when acting outside the EU legal system)
- Supervision of the CJEU



“The provisions of this Charter are addressed to (..) the Member States only when they are implementing Union law”



- All public authorities and organisations active in the field of public law
- **Does not extend EU competences** under the Treaties
- Duty to respect rights and principles (judicial, executive and legislative branches)
- Duty to promote the application of the Charter



Implementation of the EU Law

- A link to an EU law (not only the Charter)
- The link must be specific
- No need for cross-border element



Implementation of the EU Law



Implementation of primary/secondary EU law

For example, invoking an article of a regulation



Exercising the discretion granted by EU law

When such a discretion is granted by a particular EU law



Relying on an exception to a rule provided by EU law

For example, free movement of goods



Unused field of EU competency??

Charter not applicable!



Duties of courts – direct effect

Direct effect of EU law – for clear, precise norms without preconditions or discretion.

Horizontal and **vertical** direct effect

Charter rights have direct effect, but principles do not have direct effect.

Vertical direct effect for all the Charter rights.

Some rights have horizontal direct effect (Arts. 21, 31(2), 47 – have direct effect; art. 27. – no direct effect):

- a clear obligation for another individual
- the provision is clear and mandatory (no discretion for States)



Other duties of courts



Indirect effect

Interpretation in accordance with Charter rights and principles



Reference for a preliminary ruling from the CJEU

If the Charter regulation is unclear



State responsibility

For non-compliance with the Charter



The Charter is not applicable



EU has competency in the field, but is unused

Although opinions might differ



Voluntary references to EU law in national law



“Goldplating” by national standards

If the EU law does not say otherwise



A national law “interacts” with EU law

Similar personal or substantial scope



03

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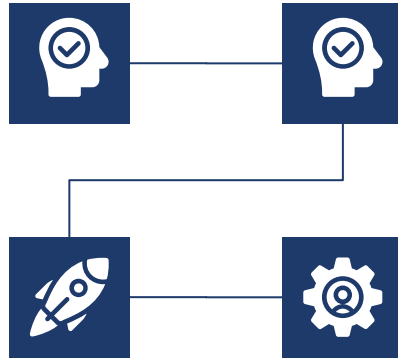
Practical advice



Questions to be asked

Does EU law regulate this area?

Are any freedoms guaranteed by the EU law limited?



Should any particular EU law be applied?

Is the state acting within the discretion guaranteed by EU law?



Useful links

- [Charterpedia](#)
- [FRA E-learning platform](#)
- [Charter Handbook on applicability](#)





THANK YOU!