



08/07/08

Briefing for the Board of the European Women's Lobby  
July 2008

*The context of Human Rights in the European Union*

**Summary**

The last briefing for the EWL Board regarding human rights in the European Union was given in January 2007. The EU human rights agenda has undergone changes since then, including:

The establishment of the European Union Agency for Fundamental Rights which now is operational;

Increased focus on fundamental rights *within* the EU;

The development of the Lisbon Treaty which, if adopted, will affect EU legislation and policy work in the field of human rights to a large extent.

This briefing offers an update regarding the situation of human rights and the EU, explaining and informing about relevant legislation, policy and the institutional context, focusing on changes since the last update. The aim of the briefing is to help EWL members to follow the ongoing developments and show the arena for possible EWL action in the field of human rights.



## 1. Introduction

The last briefing for the EWL Board regarding human rights in the European Union was given in January 2007. The present document aims to serve as an update in relation to the former briefing, focusing on recent developments of human rights in the context of the EU, including the Charter of Fundamental Rights of the European Union, the Fundamental Rights Agency, human rights within the Union and human rights in the Council of Europe, with a special focus on the EU accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). This briefing explains the recent developments and how human rights are being used, respected and developed in the EU. The overall aim is to help EWL identify how it could develop its contribution to the recent developments of the European human rights agenda.

Today, human rights have come to play a larger role in the EU. Policies and activities still concern third countries to a larger extent than human rights within the Union. However, references to human rights are present in EU documents, especially in art. 6 of the Treaty on European Union<sup>1</sup>. The main European institutions; the Council of European Union, the Commission and the Parliament, all address the issue of human rights in different ways. Other institutional mechanisms interrelate with these, including the Council of Europe as an important actor in the European arena.

## 2. Human rights in the context of the European Union

### 2.1 The Legal Framework

#### 2.1.1 EU law

Art. 6 of the Treaty on European Union (TEU), amended by the Amsterdam Treaty, is the key provision and legal base for the EU's human rights political actions and developments. It states that the EU is founded on the principles of liberty, democracy, human rights, fundamental freedoms and the rule of law. It was further changed in the Lisbon Treaty (Art. 6) to give legal effect to the Charter of Fundamental Rights, and provide for the accession of the EU to the ECHR. Article 6 as amended by the Lisbon Treaty:

*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.*

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<sup>1</sup> The EU Treaty established the Union and set out its objectives. It includes a provision regarding respect for fundamental rights, with special reference to ECHR.



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.*

The Treaty also gives a mandate to the EU to extend the objectives of democracy, rule of law, respect for human rights and fundamental freedoms to the economic, financial and technical co-operation with third countries, i.e. in all its external activities. In addition, human rights, democracy and rule of law are part of the criteria for EU membership laid down in the TEU.<sup>2</sup>

### ***2.1.2 The European Court of Justice, fundamental rights and the relationship to the European Convention on Protection of Human Rights and Fundamental Freedoms***

The European Court of Justice (ECJ) shall respect international law in executing its powers which regards EU Community law. The EU legislation regarding non-discrimination and equality between women and men is rather strong, and offer possibilities for the ECJ to pass judgements in these areas. The ECJ has experienced that EC legislation was infringing upon human rights protected by the ECHR and other international human rights documents of importance. From the rather limited framework of human rights in EU law, the ECJ has played an innovative role in including human rights, especially with reference to the ECHR, in its judgments and thus in non-codified Union law. In practise, the ECJ applies the ECHR, which is explicitly referred to in the EU treaty. As the ECJ started to take ECHR into account in its judgments, a case-law of fundamental rights protection as general principles of Community law based on the constitutional traditions common to the Member States as well as international treaties was established. This is the situation for the EU institutions as well as Member States, when implementing and interpreting Community law.<sup>3</sup> ECJ has besides of the ECHR been willing to discuss the substantive case law of the European Court of Human Rights, which monitors the ECHR (ECtHR). Although the ECHR is the most common document for the ECJ to use, other international documents have also been used in cases before the ECJ.<sup>4</sup>

### ***2.1.3. The Charter of Fundamental Rights of the European Union***

The Charter was adopted as a non-binding bill of right for the EU in December 2000. The Charter sets out a range of civil, political, economic and social rights of EU residents. It stems from the EU Treaty, ECJ case-law, ECHR and Member States constitutional traditions. It consists of 54 articles in 7 chapters: Dignity, Freedoms, Equality, Solidarity, Citizens' rights, Justice and General provisions. **Art. 21 concerns non-discrimination, and art. 23 explicitly address equality between men and women.**

The Charter is addressed to the institutions and bodies of the Union, with respect for the principle of subsidiarity, and the Member States only when implementing European Union law. The EU and the Member States are to respect the rights, observe the principles and promote the application thereof in accordance with their respective powers. However, no new power or task is

<sup>2</sup> TEU art. 49.

<sup>3</sup> Stauder v. City of Ulm, Case 29/69 (1969). Case 11/70, Internationale Handelsgesellschaft v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel (1970), Case 4/73, Nold v. Commission, para. 13, Case C-219/91 Criminal Proceedings against Ter Voort, Case 222/84 Johnston v. Chief Constable of the RUC (1986), Cases-465/00, 138 and 139/01 Rechnungshof v. Österreichischer Rundfunk (2003), Case 5/88 Wachauf v. Germany (1989).

<sup>4</sup> Case 149/77 Defrenne v. Sabena (1978). European Parliament v. Council C-540/03 (2006), Case T-315/01 Kadi v. Council and Commission (2005), and Case T-306/01 Yusuf and Al Barakaat International Foundation v. Council and Commission (2005).



created for the EC or EU through the Charter (art. 51) and its scope is still quite unclear. Art. 52(2) concern the overlap between existing EC law and the Charter, stating that rights recognised by the Charter, which are based on EC or EU treaties shall be exercised under the conditions, and within the limits, defined by those treaties. The same article states that the meaning and scope of rights of the Charter corresponding to the ECHR, should be the same as laid down by ECHR. At the same time, this does not prevent Union law to provide more extensive protection than the ECHR. Art. 53 seeks to harmonise the interlinked human rights regimes in Europe. It makes clear that the Charter should not be invoked as a pretext to limit the scope of human rights obligations as recognised by Union law, international law and international agreements to which the Union, the Community or all the Member States are party, including ECHR. Rights covered in national constitutions should not be diminished with reference to the Charter.

As the UK and Poland chose to opt out from the Charter, a Protocol on the application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom was developed, limiting the scope of the Charter in relation to the UK and Poland.<sup>5</sup>

Since 2001, any proposal for legislation and any draft document shall first be scrutinised for compatibility with the Charter, and have a link to fundamental rights through a recital formally stating such compatibility.<sup>6</sup> The European Commission has developed measures to ensure compliance with the Charter of Fundamental Rights in its legislative proposals, through the development of a methodology for monitoring.<sup>7</sup> The measures include mainstreaming and impact assessment. Impact Assessment Guidelines were developed in 2005.<sup>8</sup>

Impact assessment as a tool and process has been gradually implemented in the Commission for a few years now, and concerns major initiatives.<sup>9</sup> Monitoring of respect for fundamental rights at consultation stages is to take place through impact assessment and explanatory memorandums.<sup>10</sup> The recital concerning the Charter is to be used where a proposal includes a limitation of a right, which must be justified under art. 52(1) of the Charter, where it concerns difference in treatment to be justified in relation to general principles of equality before law and non-discrimination, and where a proposal aims to implement or promote a fundamental right in particular.<sup>11</sup> Monitoring is to take place internally within the services of the European Commission, with special reference to the Group of Commissioners on Fundamental Rights, Anti-discrimination and Equal Opportunities.<sup>12</sup> The Legal Service of the European Commission has to include the aspect of Charter compliance as an integral part of its work in verifying the legality of Commission acts. To take the fundamental rights dimension more into consideration, the impact checklist in the Revised Impact Assessment Guidelines includes questions related to fundamental rights.<sup>13</sup> Impact assessments should include a picture of individual rights affected by the proposal in question. There should be room for NGOs participation in this process.

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<sup>5</sup> 17.12.2007 EN Official Journal of the European Union C 306/157.

<sup>6</sup> SEC(2001) 380/3.

<sup>7</sup> Communication from the Commission on Compliance with the Charter of Fundamental Rights in Commission legislative proposal. Methodology for systematic and rigorous monitoring.

<sup>8</sup> SEC(2005)791 of 15 June 2005.

<sup>9</sup> COM(2002) 276 final.

<sup>10</sup> COM(2005)172 final para. 9.

<sup>11</sup> COM(2005)172 final para. 22.

<sup>12</sup> COM(2005)172 final para. 25.

<sup>13</sup> COM(2005)172 final para. 25, para. 17 - 19.



## 2.2 The Policy Framework

EU policies on human rights concern mainly externally focused policies. The key instruments here are related to EU external relations: Common Foreign and Security Policy (CFSP); human rights and development cooperation; Lomé Convention and the Cotonou agreement; human rights clauses in bilateral EU treaties; Action Plans in the framework of the European Neighbourhood Policy, EU Guidelines on Human Rights, Démarches and Declarations, Human Rights Dialogues with Third Countries and Activities Funded under the European Initiative for Democracy and Human Rights (EIDHR).<sup>14</sup> It moreover includes EU election observation missions, Conflict prevention and crisis management operations, in the framework of the European Security and Defence Policy (ESDP) and joint positions in the international institutional context.

*News in the policy framework:*

EU Guidelines on Human Rights: the newest guidelines concern the **Promotion and Protection of the Rights of the Child (2007)**. The guidelines on the **Death Penalty** and on **Torture and other cruel, inhuman or degrading treatment or punishment** have been updated in 2008.

Funding mechanism: the **European Instrument for Democratisation and Human Rights**.

## 2.3 The Institutional Framework

In this part, the institutions will be presented in relation to their specific work on human rights.

### 2.3.1 The Council of the European Union

The body responsible within the Council of the European Union is the General Affairs and External Relations Council. Javier Solana was designated **High Representative for the Common Foreign and Security Policy (CFSP)**, Secretary-General of the Council of the European Union. His task is to assist the Council in foreign policy matters. The fact that the EU is based upon and defined by universal principles of liberty and democracy, respect for the rule of law, human rights and fundamental freedoms means that this commitment also is inherent in the CFSP. Following the Lisbon Treaty, a new High Representative for the Union in Foreign Affairs and Security Policy, also Vice-President of the Commission, will increase the impact, the coherence and the visibility of the EU's external action. A European External Action Service will support the High Representative.<sup>15</sup>

The European Council in December 2004 decided to create the position of **Personal Representative of the Secretary-General/High Representative on Human Rights** in the area of CFSP. On 29 January 2007, Mrs Riina Kionka was appointed. Her post is described as “*a contribution to the coherence and continuity of the EU Human Rights policy, with due regard to the responsibilities of the Commission*”.<sup>16</sup> Her appointment meant a change in the Council's approach to human rights, by combining the responsibility for human rights in the Council Secretariat with the responsibility of the Personal Representative. Thus, she represents SG/HR Solana in matters related to human rights, and is working on the issues of EU human rights policy within the Council: mainstreaming

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<sup>14</sup> The EC Treaty art 177, art. 181a art 11 EU treaty.

<sup>15</sup> [http://europa.eu/lisbon\\_treaty/glance/index\\_en.htm](http://europa.eu/lisbon_treaty/glance/index_en.htm).

<sup>16</sup> Extract from the Presidency Conclusions, European Council, Brussels 16/17 December 2004.



of human rights into ESDP and CFSP, human rights dialogues and consultations, implementation of the EU guidelines, and EU human rights policy in the UN, CoE and OSCE.

Under the Council of the European Union, a **Working Group on Human Rights** (COHOM) was set up in 1987. Its mandate was extended in 2003, and it now has under its mandate all human rights aspects of the external relations of the EU.

The General Affairs and External Relations Council is also responsible for adopting a “**EU Annual Report on Human Rights**”. The 2007 report has been jointly prepared by the Presidency of the European Union, the European Commission, and the General Secretariat of the Council. The report comprises information in many areas, and includes developments within the EU, actions undertaken within the policy framework described above, and thematic issues such as women’s rights and gender equality. The report also includes country-focused issues and analysis of the effectiveness of EU Actions and Instruments.<sup>17</sup>

A **EU Human Rights Forum** was put in place following a decision in 1998. The aim of the Forum is to strengthen dialogue with civil society in relation to human rights. The Portuguese Presidency organised the 9<sup>th</sup> EU Human Rights Forum in December 2007.

EU acts in **International Fora** as the Sessions of the UN General Assembly, The United Nations Human Rights Council, The Council of Europe, and OSCE.

Regular contacts concerning human rights are maintained by the Secretariat of the Council with the European Parliament and with the European Commission. The Secretariat of the Council also maintains dialogue with representatives of civil society who are invited to address the Council's Human Rights Working Group. Within the Council and Commission is development of instruments regarding fundamental rights mainstreaming and impact assessment taking place, as described above.

### ***2.3.2 The European Parliament***

The defence of human rights in the world is a priority of the European Parliament. In the work of the Parliament, there is a division between **human rights - which concern third countries**, and is under the mandate of the Subcommittee on human rights (DROI), and **fundamental rights - which concern rights within the European Union**, where the Civil Liberties, Justice and Home Affairs Committee (LIBE) is responsible.

The **Subcommittee on human rights** (DROI) was established on 28 July 2004 within the Committee on Foreign Affairs (AFET). It is currently chaired by H el ene Flautre (FR, Group of Greens/European Free Alliance). Its responsibilities are described in the AFET Committee's mandate: "*Issues concerning human rights, the protection of minorities and the promotion of democratic values in third countries. In this context the committee is assisted by a subcommittee on human rights.*"<sup>18</sup>

The European Parliament issues each year a **report on the human rights situation in countries outside the European Union**, and another on respect for **fundamental rights**

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<sup>17</sup> [http://www.consilium.europa.eu/cms3\\_fo/showPage.asp?id=970&lang=en&mode=g](http://www.consilium.europa.eu/cms3_fo/showPage.asp?id=970&lang=en&mode=g).

<sup>18</sup> <http://www.europarl.europa.eu/activities/committees/homeCom.do?language=EN&body=DROI>.



**within the Union.** The external human rights report is discussed in DROI before being adopted by the Foreign Affairs Committee and then sent to plenary for adoption by the Parliament. The rapporteur appointed for the 2007 report was Marco Cappato (IT, ALDE).

Following the division between work relating to human rights in third countries and within the Union, different reports are being made regarding rights within and outside the EU. Now, a report on the situation of Fundamental Rights in the EU 2004-2007 is in progress under the LIBE committee. The rapporteur is Giusto Catania (IT, GUE/NGL). He organised a hearing for civil society in mid-October 2007 regarding the report, which will focus on some priority areas.

Amongst the **responsibilities of the EP LIBE Committee** are: 'the protection within the territory of the Union of citizens' rights, human rights and fundamental rights, including the protection of minorities, as laid down in the Treaties and in the Charter of Fundamental Rights of the European Union; measures to combat all forms of discrimination other than those based on sex or those occurring at the workplace and in the labour market; the establishment and development of an area of freedom, security and justice; and the determination of a clear risk of a serious breach by a Member State of the principles common to the Member States'.<sup>19</sup>

### ***2.3.3 The European Commission***

The Commissioner responsible for human rights is Benita Ferrero-Waldner, External Relations and European Neighbourhood Policy. Within the Commission, the Fundamental Rights, Anti-discrimination and Equal Opportunities Group exist. It deals with issues under the competence of DG Employment, Social Affairs and Equal Opportunities (including gender issues) and under the competence of DG Justice, Freedom and Security, in addition to other subjects. Its mandate is to "*develop policy and ensure the coherence of action taken by the Commission in the areas of fundamental rights, combating discrimination, equal opportunities, equality between women and men, and the social integration of minorities; and to ensure that the gender equality dimension (or the dimension of equality between women and men) is taken into account in the framework of all relevant Community policies and actions, in accordance with article 3, paragraph 2 of the Treaty.*"<sup>20</sup>

An independent financing instrument - **European Instrument for Democracy and Human Rights** - replacing the former programme European Initiative for Democracy and Human Rights - was established in 2006 and entered into force on 1 January 2007. It provides a total amount of EUR 1 104 million for the period from 2007 to 2013. The new EIDHR: "*complements Community assistance provided through bilateral development cooperation by contributing to the development and consolidation of democracy and the rule of law, and of respect for human rights and fundamental freedoms in non-EU countries.*" It also aims to provide assistance in situations where there are no development cooperation links to the European Community. Assistance aims to support civil society.<sup>21</sup>

### ***2.4 Human Rights in the European Neighbourhood Policy***

The European Neighbourhood Policy (ENP) was developed in the context of the EU's 2004 enlargement, with the **objective of avoiding the emergence of new dividing lines between the enlarged EU and its neighbours and in so doing strengthening stability, security and well-being** for all concerned. It was first set out in the ENP Strategy Paper.<sup>22</sup> The central

<sup>19</sup> <http://www.europarl.europa.eu/activities/committees/homeCom.do?language=EN&body=LIBE>.

<sup>20</sup> [http://ec.europa.eu/employment\\_social/gender\\_equality/gender\\_mainstreaming/gender/commgroup\\_en.html](http://ec.europa.eu/employment_social/gender_equality/gender_mainstreaming/gender/commgroup_en.html).

<sup>21</sup> [http://www.consilium.europa.eu/uedocs/cmsUpload/2007.5997-EN-EU\\_annual\\_report\\_on\\_human\\_rights\\_2007.pdf](http://www.consilium.europa.eu/uedocs/cmsUpload/2007.5997-EN-EU_annual_report_on_human_rights_2007.pdf).

<sup>22</sup> COM(2004) 373 12.05.2004.

element of the ENP is bilateral Action Plans between the EU and each partner, setting an agenda of political and economic reforms. The Action Plans cover a wide scope of issues. Human Rights are covered under the human dimension; People-to-people Programmes and Agencies, which aim to encourage cultural and educational exchange, civil society development, public health and the respect for human rights. So far, Action Plans have been concluded with Israel, Jordan, Moldova, Morocco, the Palestinian Authority, Tunisia and Ukraine (2005), with Armenia, Azerbaijan and Georgia (2006), and with Egypt and Lebanon in 2007. Relations with Russia are developed through a Strategic Partnership covering four “common spaces”.

The implementation of the action plans is monitored by subcommittees, and for some countries, by specialised subcommittees on human rights and democratisation. The European Commission also issues periodic reports on progress. A second set of progress reports on implementation of the ENP in 2007, were adopted on 3 April 2008.<sup>23</sup> As part of its report on implementation, in December 2006 and again in December 2007, the Commission made proposals as to how the policy could be further strengthened. Implementation is supported through various forms of EC-funded financial and technical assistance.<sup>24</sup>

### ***2.5 The European Union Agency for Fundamental Rights***

The EU Monitoring Center against Racism and Xenophobia (EUMC) was created as an independent body in 1997. In 2003, the Council decided to extend the remit of the EUMC, to be converted into the European Union Agency for Fundamental Rights (FRA), with a wider scope of intervention. A final decision on this new EU body was reached in December 2006, and the FRA was established in 2007.<sup>25</sup> Due to the development of the FRA, the former Network of independent experts on fundamental rights, that monitored the EU Charter on Fundamental Rights and fundamental rights in the Member States, no longer exists. The objective of the FRA is to provide institutions and authorities of the EU and its Member States, when implementing Community law, with assistance and expertise relating to fundamental rights.<sup>26</sup> The point of reference for its mandate are fundamental rights as referred to in art. 6(2) TEU and as reflected in the Charter of Fundamental Rights. The FRA focuses on the situation of fundamental rights in the EU and its Member States. The FRA consists of a Management Board (one independent person from each Member State, one independent person appointed by the Council of Europe and two Commission representatives); the Executive Board; a Scientific Committee (consisting of eleven independent persons); and a Director, Morten Kjaerum who took up his position in June 2008. The Agency is based in Vienna and carries out its tasks independently. It cooperates with national and international bodies and organisations, in particular with the CoE.

The **tasks of the FRA** include information, data collection and dissemination; raising public awareness about fundamental rights; carrying out and encourage scientific research and surveys; promoting dialogue with civil society; establishing a network through a Fundamental Rights Platform; formulating and publishing conclusions and opinions to the EU institutions and the Member States when implementing Community law; publishing an annual report on fundamental rights in the EU, and thematic reports based on its research and surveys, also highlighting examples of good practice. On the other hand, FRA is not competent to examine individual

<sup>23</sup> [http://ec.europa.eu/world/enp/documents\\_en.htm#3](http://ec.europa.eu/world/enp/documents_en.htm#3).

<sup>24</sup> [http://ec.europa.eu/world/enp/index\\_en.htm](http://ec.europa.eu/world/enp/index_en.htm).

<sup>25</sup> Council Regulation (EC) No 168/2007 of 15 February 2007.

<sup>26</sup> Article 2 of the Regulation.



complaints and doesn't have regulatory decision-making powers; or power to monitor the situation of fundamental rights in the EU countries for the purposes of Art. 7 of the TEU (the clause which suspends a Member State's rights upon serious and persistent breaches the principles on which the Union is founded (liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law) or deal with the legality of Community acts and legal transposition by the Member States.<sup>27</sup>

The **Multi-Annual Framework for the FRA** was adopted by the Justice and Home Affairs Council in February 2008, setting out the thematic areas of work for the FRA 2007-2012.<sup>28</sup> These are: a) racism, xenophobia and related intolerance; b) discrimination based on sex, race or ethnic origin, religion or belief, disability, age or sexual orientation and against persons belonging to minorities and any combination of these grounds (multiple discrimination); c) compensation of victims; d) the rights of the child, including the protection of children; e) asylum, immigration and integration of migrants; f) visa and border control; g) participation of the EU citizens in the Union's democratic functioning; h) information society and, in particular, respect for private life and protection of personal data; and i) access to efficient and independent justice. There are limitations regarding sex discrimination, where references are made to the future European Gender Institute, which the EWL has stressed in its work concerning the FRA. The EWL has also argued about the importance of a strong transversal gender equality perspective in all thematic areas and activities of the FRA.

### **3. Council of Europe and European Convention for the Protection of Human Rights and Fundamental Freedoms**

#### ***3.1 Council of Europe***

The Council of Europe (CoE) has 47 member states. The fundamental values of CoE are human rights, rule of law and pluralistic democracy. The bodies of CoE are as follows: Parliamentary assembly (PACE): ECtHR, Committee of Ministers, Commissioner for Human Rights, Secretary-General, Director General of Human Rights, and Congress of Local and Regional Authorities. The Commissioner for Human Rights was appointed in 1999 as an independent non-judicial institution to promote and ensure human rights, with the mandate to promote education in and awareness of human rights, identify shortcomings in the law and practise of CoE member states, and address recommendations and opinions to governments. The Commissioner conducts on-site visits, organise seminars and publish recommendations. The Commissioner is elected by the PACE from a list drawn up by the Committee of Ministers, with a term of office for 6 years. The CoE has developed a large range of documents on human rights law, some examples are ECHR with its Protocols, European Social Charter and the Convention on Action against Trafficking in Human Beings. CoE is working in the areas of gender equality, mostly through its Gender Equality and Anti-trafficking Division. The main areas of work for CoE in this field are gender mainstreaming; women and men in political and public decision making; violence against women; trafficking in human beings and conflict prevention and peace building. The CoE Convention on Actions against Trafficking in Human beings entered into force in 2008, and includes a chapter on the protection and right of the victims of trafficking.<sup>29</sup>

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<sup>27</sup> <http://www.fra.europa.eu/fra/index.php>.

<sup>28</sup> Council Decision (2008/203/EC) implementing Regulation (EC) No 168/2007 as regards the adoption of a Multi-annual Framework for the European Union Agency for Fundamental Rights for 2007-2012.

<sup>29</sup> [http://www.coe.int/t/dg2/trafficking/campaign/Docs/Convntn/CETS197\\_en.asp#TopOfPage](http://www.coe.int/t/dg2/trafficking/campaign/Docs/Convntn/CETS197_en.asp#TopOfPage).



### ***3.2. The European Convention on Human Rights and Fundamental Freedoms***

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) was adopted by CoE in 1950 to protect human rights and fundamental freedoms. ECHR established the European Court of Human Rights (ECtHR) in Strasbourg as the main judiciary body interpreting and implementing the Convention. It deals with individual and inter-state complaints. The decisions of the Court are legally binding, however it should not be seen as a 4<sup>th</sup> instance, meaning that ECtHR does not act as a court of appeal in relation to national courts. The Court has the power to award just satisfaction. States have a duty to follow judgments of ECtHR with the sanction of suspension from membership in the CoE.

Art. 14 of ECHR concern **non-discrimination** in relation to the rights set out in ECHR. Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (OP 12) to ECHR covers non-discrimination even outside the rights covered by ECHR since it covers any “right set forth by law”. OP 12 entered into force in 2005.

### ***3.3 Relationship EU – European Convention for the Protection of Human Rights and Fundamental Freedoms***

It is a criterion for membership in the EU to be a member of the Council of Europe. All of the EU Member States have ratified the ECHR, and thus have access to the ECtHR. To a certain extent, the ECHR is an integral part of the human rights agenda in the EU, which in turn has had an impact on the EU's own human rights instruments, primarily the Charter of Fundamental Rights of the European Union. This can be seen in the way the ECJ has used the ECHR and case-law from ECtHR in its judgments. There have already been some cases before ECtHR which concern and challenge EU legislation and measures. As described above, the ECJ already uses the ECHR and the case-law of ECtHR as general principles of the EU, in its judgments.

*A Protocol relating to art. 6(2) of the Treaty of the European Union on the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms*, underlines the preservation of the characteristics of the Union and Union law. It states that the agreement to accede the ECHR shall ensure that accession of the Union shall not affect the competences of the Union or the powers of its institutions, nor the situation of Member States in relation to the European Convention, in particular in relation to the Protocols thereto.<sup>30</sup>

In parallel to this, the ECHR now allows for accession by the EU to the Convention. This means that the EU, as the community, can ratify the ECHR. Such an accession is under preparation within the EU, and the EU will be party to the ECHR. You find more information about this below. Upon accession of the EU to the ECHR, openings are made for ECtHR to review EC acts from a human rights perspective. There are examples of how this might look:

- Where a European Directive leaves room for choices of implementation in Member States, or where it concerns an international agreement freely entered into by a Member State, a challenge can be brought before the ECtHR against the implementing state, which still is responsible, as a state, for any violation of ECHR.<sup>31</sup>
- Where an EU act leaves no discretion in implementation to the Member States, the state will be presumed to have acted in compatibility with the ECHR, as long as the EU

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<sup>30</sup> 17.12.2007 EN Official Journal of the European Union C 306/155.

<sup>31</sup> *Cantoni v. France*, App. No 17862/91 (ECtHR 1996) and *Matthews v. UK*, App. No. 24833/94 (ECtHR1999).



control system overall provides an equivalent level of protection of human rights as provided by the ECHR.<sup>32</sup>

- If an EU act, not subject to implementation in Member States but adopted by an autonomous EU institution, an applicant (person turning to the ECtHR claiming a rights violation) is likely to need to bring an action against all Member States collectively, as the author of the act in question.<sup>33</sup>

#### 4. Conclusions and Suggestions for EWL Action

To date, the development and expansion of the human rights agenda at EU level is an outward looking policy, focusing primarily on foreign affairs and in particular the Common Foreign and Security Policy. However, the commitment to the “rule of law, democracy, respect for human rights and fundamental freedoms” also concerns the EU within its borders. Recent developments such as the Charter and its legal status following the Lisbon Treaty; the creation of the Fundamental Rights Agency, and the coming accession of the EU to ECHR will increase the aspect of human rights within the EU. A strong gender equality perspective should be mainstreamed in these activities, and the EWL could work to ensure this. New issues that could be considered by the EWL regarding its role in relation to human rights include the following:

1. Follow the work of and liaise with the Fundamental Rights Agency, asking for mapping and data collection regarding women's rights. Take part in the FRA cooperation with Member States.
2. Follow the implementation of the Charter's articles on equality between women and men and non-discrimination.
3. Follow and take part in the development of Impact Assessment of fundamental rights in EU.
4. Lobby towards states of our members to ratify Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms to ECHR which covers non-discrimination in relation to any “right set forth by law”.
5. Monitoring and input to European Parliament reports on human rights in the world and fundamental rights within the Union.
6. Follow the work of the Council of ministers relating to human rights, following and contribute to the Working Group on Human Rights, participate in the EU Human Rights Forum and influence EU actions in relation to international organisations as the UN, CoE and OSCE, to ensure a gender perspective in these.

A role for EWL involvement in relation to greater gender awareness and gender analysis of the human rights agenda in the EU exists, and due to the development taking place, this involvement is becoming even more important.

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<sup>32</sup> *Bosphorus v. Ireland*, App. No. 45036/98 (ECtHR 2006).

<sup>33</sup> *DSR Senator Lines v. Commission*, Case C-364/99.



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