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**Revised operational guidance on taking account of fundamental rights in European
Commission impact assessments**

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INTRODUCTION

The aim of this **operational guidance on taking account of fundamental rights in European Commission impact assessments** (the Guidance) is to ensure that the fundamental rights obligations set out in the [Charter of Fundamental Rights of the European Union](#) (the Charter)¹ are fulfilled as effectively as possible.

The Guidance was first adopted by the Commission in 2011 as one of the measures taken to implement the [2010 strategy for the effective implementation of the Charter of Fundamental Rights by the European Union](#)². In particular, the Guidance was adopted to ensure fundamental rights were a central consideration throughout the Commission's decision-making process.

In December 2020, the Commission adopted a new [strategy to strengthen the application of the Charter of Fundamental Rights in the EU](#)³ (the Charter strategy'). The Charter strategy sets the direction for the Charter's implementation until 2030, with the aim of strengthening the application of the Charter in the EU and ensuring that the Commission's initiatives comply with it. To maintain a high level of compliance with fundamental rights, the Commission made a commitment to update the Guidance to reflect recent landmark case law and best practices derived from its impact assessments.

Using the Guidance

This Guidance is addressed to Commission staff preparing impact assessments and to impact assessment support units. It begins by describing the key context and background, addressing several central questions that may arise when impacts on fundamental rights are assessed.

The Guidance was originally developed as a stand-alone document intended to serve as the primary tool for Commission services to help them take fundamental rights into account in the context of impact assessments. However, the fundamental rights checklist included in the Guidance has been embedded in the Commission's [Better Regulation guidelines and toolbox](#) since 2015. In its [Communication](#) of April 2021, the Commission announced that it would continue to ensure that the economic, social and environmental impacts of policy and legislative initiatives are considered alongside fundamental rights⁴.

The Guidance therefore **complements and further develops [Better Regulation tool No 29 on 'fundamental rights, including the promotion of equality'](#)** by providing additional explanations and concrete examples of how to assess the potential impacts of Commission legislative proposals on fundamental rights⁵.

¹ OJ C 83, 30.3.2010, p. 389.

² Communication from the Commission — Strategy for the effective implementation of the Charter of fundamental Rights by the European Union', [COM\(2010\) 573 final](#) of 19 October 2010.

³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Strategy to strengthen the application of the Charter of Fundamental Rights in the EU, [COM\(2020\) 711 final](#) of 2 December 2020.

⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Better regulation for better results — An EU agenda, [COM\(2015\) 215 final](#) of 19 May 2015.

⁵ Section 2 of Better Regulation Tool No 29 refers to this guidance as a tool developing its fundamental rights checklist.

The second section of the Guidance traces the methodological steps of standard impact assessments and explains how fundamental rights should be taken into account at each step. This section has been updated in the light of experience gained from its application, in particular by inserting recent examples of impact assessments and relevant case law of the Court of Justice of the European Union (the CJEU).

The annexes contain: (i) a summary of the step-by-step methodology explained in Section 2 of this Guidance; (ii) a list of online sources relevant for the assessment of the impact on fundamental rights; (iii) an overview of the rights, freedoms and principles of the Charter; and (iv) instructions for mainstreaming the rights of the child in impact assessments.

The Guidance also complements other Better Regulation tools relating to **specific Charter rights**, namely:

- tool No 30 on ‘Employment, working conditions, income distribution, social protection and inclusion’;
- tool No 31 on ‘Education and training, culture and youth’;
- tool No 32 on ‘Health impacts’;
- tool No 33 on ‘Consumers’;
- tool No 36 on ‘Environmental impacts’.

Further advice and support

DG Justice and Consumers, Unit C.2 ‘Fundamental rights policy’ can support the Commission services and answer any questions on the Guidance and on how to assess the impacts a proposed initiative may have on fundamental rights. The unit can also assist in interpreting the Charter and indicate where to find further relevant information (see also Annex II).

Please contact Unit C.2 as soon as possible when planning an impact assessment and preparing a call for evidence to get help in identifying whether initiatives are likely to raise fundamental rights questions. If that is the case, you should also invite Unit C.2 to the inter-service steering groups.

You can contact Unit C.2 at JUST-C2-CHARTER@ec.europa.eu. It is recommended that you keep your impact assessment support unit informed.

1. KEY CONTEXT AND BACKGROUND

1.1 Why is it necessary to assess impacts on fundamental rights?

The Charter's provisions are addressed to all EU institutions, bodies, offices and agencies. Member States are bound by the Charter *only* when they are implementing EU law⁶. The EU institutions and Member States are obliged to **respect the rights, observe the principles and promote the application of the Charter** in accordance with their respective powers and within the limits of the powers conferred on the EU by the Treaties.

The Treaty of Lisbon accorded the Charter the same legal value as the Treaties. The Charter has therefore been legally binding since 2009. The fundamental rights enshrined in the Charter are not mere abstract values or ethical considerations. Respect for fundamental rights is a **legal requirement** and subject to the scrutiny of the CJEU. It is a **condition of the lawfulness** of EU acts.

The CJEU can declare invalid any provision of EU legislation that does not comply with the Charter⁷. The CJEU requires EU institutions to prove – in the light of the fundamental rights protected by the Charter – that they have carefully considered different policy options and have chosen the most proportionate response to a given problem.

An **impact assessment** is an essential tool for examining different policy options and for demonstrating that, in proposing new EU legislation, the Commission has taken full account of the fundamental rights protected by the Charter. Properly assessing any fundamental rights impacts during the preparatory stages of new legislation will therefore not only help identify the most appropriate solution to a given problem but also strengthen the defence of adopted legislation against legal challenges before the CJEU.

1.2 Is the Charter of Fundamental Rights relevant to all EU policies?

The Charter sets out a number of rights, freedoms and principles recognised by the EU. It is divided into seven titles: 'Dignity', 'Freedoms', 'Equality', 'Solidarity', 'Citizens' rights', 'Justice' and 'General provisions governing the interpretation and application of the Charter'.

These rights, freedoms and principles can be **of relevance to all Commission activities and**

⁶ Article 51 of the Charter. According to the accompanying explanations, Article 51 'seeks to establish clearly that the Charter applies primarily to the institutions and bodies of the Union, in compliance with the principle of subsidiarity. This provision was drafted in keeping with Article 6(2) of the Treaty on European Union, which required the Union to respect fundamental rights, and with the mandate issued by the Cologne European Council'.

⁷ See, for example, Judgment of the Court of Justice of 9 November 2010, *Volker und Markus Schecke GbR and Hartmut Eifert v Land Hessen*, [Joined Cases C-92/09 and C-93/09](#), EU:C:2010:662 where the CJEU, while recognising the principle of transparency, considered that the contested provisions disproportionately interfered with the fundamental rights to the protection of personal data and to private life guaranteed by Articles 7 and 8 of the Charter. See also Judgement of the Court of Justice of 6 October 2015, *Schrems*, Case [C-362/14](#), EU:C:2015:650 where the CJEU invalidated the 'Safe-Harbour' Adequacy Decision, which had allowed data transfers to the US. The validity of the decision was conditional on the Commission finding that the non-EU country concerned provided a level of personal data protection that, while not necessarily identical, was 'essentially equivalent' to that guaranteed in the EU by virtue of Directive 95/46/EC read in the light of the Charter. The CJEU held that the Adequacy Decision did not contain sufficient findings by the Commission on the limits of access by US public authorities to data transferred under the decision or the existence of effective legal protection against interference.

EU policies. For example, the Better Regulation toolbox emphasises how the Commission is committed to taking social rights into account in its impact assessments⁸. The Charter applies to all actions by the EU institutions, both in the territory of the EU and outside in third countries. Annex III to this document provides an overview of the rights, freedoms and principles guaranteed by the Charter.

Particular attention needs to be paid to sensitive proposals and acts – i.e. all legislative proposals, delegated acts⁹ and implementing acts¹⁰ that raise specific issues of compatibility with the Charter or are designed to promote a specific fundamental right under the Charter¹¹.

It is important to note that the Charter does not establish any new powers for the EU and does not extend its competence in any way. Article 51(2) of the Charter and Article 6(1) of the Treaty on European Union (‘TEU’) make this clear.

1.3 Strengthening the ‘fundamental rights culture’ at all stages of the legislative procedure

As set out in the Charter strategy, fostering the use of the Charter as a compass for EU institutions is of central importance. The Commission is therefore committed to improving compliance with fundamental rights during the legislative procedure. This applies in particular to the preparatory phases, including consultations, impact assessments and proposal drafting. To this end, the following **principles** apply:

a) The Commission should maintain its general approach to carrying out impact assessments, **assessing any impacts on fundamental rights** and giving them due prominence in the impact assessment reports. This will continue to strengthen the culture of respect for fundamental rights during the preparation of the draft act.

Impact assessments should therefore be used to identify which fundamental rights are likely to be affected, the extent to which the right in question will be interfered with, and whether the interference is necessary and proportionate in terms of policy options and objectives.

b) The fundamental rights aspects of impact assessments should then be **summarised in the explanatory memoranda** of legislative proposals that have a particular impact on fundamental rights.

c) Legislative proposals that have a particular link with fundamental rights must also include **recitals explaining how the proposals comply with the Charter**. The purpose of recitals is to explain the reasoning behind the framing of the act in question and so enable and facilitate judicial review of the act’s compliance with the Charter. The inclusion of recitals is not a mere formality; it reflects in-depth monitoring of a proposal’s compliance with the Charter. Recitals referring to compliance with the Charter are intended to indicate exactly which fundamental rights are concerned. Such recitals can only be inserted in a proposal when properly justified in the explanatory memorandum. This justification depends on the work carried out in the impact

⁸ European Commission, Better Regulation toolbox, Tool No 30, p. 261.

⁹ Article 290 of the Treaty on the Functioning of the European Union (TFEU).

¹⁰ Article 291 TFEU.

¹¹ For criteria for determining the proportionate level of analysis for different types of initiatives, see Better Regulation toolbox, Tool No 12 (impact assessment) and Tool No 45 (evaluation).

assessment.

Example of a summary of fundamental rights aspects in an explanatory memorandum

Proposal for a directive amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims¹²

This proposal was subject to in-depth scrutiny to ensure that its provisions were fully compatible with fundamental rights, particularly the prohibition of human trafficking, torture, inhuman or degrading treatment or punishment, the protection of human dignity and the right to personal integrity, liberty and security, and children's rights.

‘Article 6(1) of the Treaty on European Union states that the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights. **Article 5 of the Charter** explicitly prohibits slavery, forced labour and trafficking in human beings. The proposed measures include legal provisions to adequately respond to the risks relating to this crime and to assist, support and protect the victims.

‘[...] The protection of victims has an impact on other fundamental rights, such as the **protection of human dignity, the right to the integrity of the person, the prohibition of torture and inhuman or degrading treatment or punishment, and the right to liberty and security**. The legislative measures were duly analysed and assessed positively also in the light of the rights of the child, the prohibition of child labour, the rights of persons with disabilities, the right to asylum, the protection against removal, expulsion or extradition, the principle of non-discrimination, and the equality between women and men.

‘The provisions introducing new offences or sanctions, or amending the definition of the crime were thoroughly analysed in the light of the **right to an effective remedy and to a fair trial, the presumption of innocence and the right of defence**, the principles of legality and proportionality of criminal offences and penalties, and the right not to be tried or punished twice in criminal proceedings for the same criminal offence.’

¹² Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, [COM\(2022\) 732 final](#) of 19 December 2022.

1.4 What is the fundamental rights checklist?

The fundamental rights checklist is a list of questions designed to facilitate compliance of new initiatives with fundamental rights. It should be used by all Commission services during the preparatory phase. It was first introduced in the 2010 Charter strategy and has been updated for this Guidance.

Fundamental rights checklist

1. **Which fundamental rights are affected [by this proposal]?**
2. **Are the rights in question absolute rights** (which may not be subject to limitations, such as human dignity and the prohibition of torture) **or not** (i.e. they may be subject to limitations, such as the freedom of expression, which may be restricted under specific strictly prescribed circumstances, e.g. hate speech)?

If, at this stage, it is concluded that the action or measure under examination limits an absolute right, it should be discarded.

3. **What is the impact of the various policy options under consideration on fundamental rights?** Is the impact beneficial (promotion of fundamental rights) or negative (limitation of fundamental rights)?
4. Do the options have **both a beneficial and a negative impact**, depending on the fundamental rights concerned (e.g. a negative impact on freedom of expression and a beneficial one on intellectual property)?

If the analysis indicates that the planned action or measure would have no negative impact on fundamental rights or only positive impacts, there is no need for further analysis under points 5 and 6.

5. Is any potential limitation /negative impact on fundamental rights **provided for by law** in a clear and predictable manner?
6. Would any such limitation or negative impact:
 - genuinely meet an **objective of general interest** recognised by the Union or protect the rights and freedoms of others?
 - be **necessary** to achieve the desired aim?
 - be **proportionate** to the desired aim?
 - **preserve the essence** of the fundamental rights concerned?

The basics of this methodology are further explained in section 2, below.

1.5 How to understand the substantive provisions of the Charter

Dealing with the Charter requires a **basic understanding** of what the different rights imply (see Annex III for an overview of the provisions in the Charter). The [Explanations relating to the Charter of Fundamental Rights](#)¹³ provide guidance on the meaning of the provisions. The Explanations do not have the status of law, but they are explicitly referred to in Article 6(1) TEU and must be given due regard when interpreting the Charter's provisions.

If there is a need during an impact assessment to deepen one's understanding of a certain fundamental right guaranteed by the Charter, one should consult the [case law of the CJEU](#), the [European Court of Human Rights](#) ('ECtHR') and, in some cases, the opinions and general comments of the UN human rights monitoring committees. For relevant online sources, see **Annex II**.

In particular, it is important to remember that **many of the rights in the Charter correspond to rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms** (the ECHR). Article 52(3) of the Charter explicitly provides that the meaning and scope of the Charter rights will be the same in these cases as those laid down in the ECHR. However, the protection granted by the Charter under certain rights may be more extensive than that granted by the ECHR. Guidance on whether individual articles in the Charter correspond to rights in the ECHR can often be found in the Explanations relating to the Charter.

The Charter also protects certain rights not covered by the ECHR, such as the freedom to conduct a business (Article 16), protection in the event of unjustified dismissal (Article 30), consumer protection (Article 38) and freedom of movement and of residence (Article 45).

Examples of relevant case-law interpretation in the assessment of specific rights

CJEU case [Alchaster II](#)¹⁴

The second sentence of Article 49(1) of the Charter provides that no heavier penalty may be imposed than that applicable at the time the criminal offence was committed.

It follows from the CJEU case law that **Article 49 of the Charter contains, at the very least, the same guarantees as those provided for in Article 7 ECHR**¹⁵, which must be taken into account by virtue of Article 52(3) of the Charter as a minimum threshold of protection.

The question referred concerned the application of changes to a licence regime to a person who is sentenced to a determinate term of imprisonment for an offence committed before the entry into force of those changes. It therefore **follows from the case law of the ECtHR** that, for the purposes of the application of Article 7 ECHR, a distinction must be drawn between a measure that constitutes in substance a 'penalty' and a measure that concerns the 'execution' or 'enforcement' of the penalty. Thus, where the nature and purpose of a measure relate to the remission of a sentence or a change in the regime for release on licence, this does not form part

¹³ OJ C 303, 14.12.2007, p. 17.

¹⁴ Judgment of the Court of Justice of 3 April 2025, *Alchaster II*, C-743/24, EU:C:2025:230, paragraphs 23 to 25.

¹⁵ See also, in this regard, Explanations relating to the Charter.

of the ‘penalty’ within the meaning of Article 7¹⁶.

ECtHR case [Verein KlimaSeniorinnen Schweiz and Others v Switzerland](#)¹⁷

The case was brought by a group of Swiss women (the KlimaSeniorinnen) and concerned the dangers posed by inadequate climate policies, particularly the increased health risks from heatwaves. They argued that these infringed their rights under Article 8 (right to respect for private and family life) and Article 6 (right to a fair trial) of the ECHR.

In its judgment, the ECtHR held for the first time that Article 8 ECHR encompasses a right to effective protection by state authorities from the serious adverse effects of climate change.

States have a positive obligation to establish, maintain, and diligently implement a binding and coherent regulatory framework to reduce greenhouse-gas emissions and achieve carbon neutrality, taking due account of their international commitments under the Paris Agreement and the best available scientific evidence. The CJEU found that Switzerland had failed to meet its positive obligations under Article 8 ECHR.

Since Article 7 of the Charter corresponds to Article 8 ECHR, the judgment also clarifies the legal obligations with which both the EU and its Member States must comply by virtue of the Charter.

1.6 What is the role of international human rights conventions?

To further ascertain the meaning and scope of the rights enshrined in the Charter, it is also important to look at **relevant international human rights conventions** that may have a **connection with the right under examination**. These international instruments are also regularly used by the CJEU in its case law¹⁸.

All international instruments relevant to interpreting the scope of the Charter are listed in **Annex II**. Beyond the ECHR, examples include:

- **International instruments**¹⁹ to which **the EU is a contracting party**, namely:
 - United Nations Convention on the Rights of Persons with Disabilities; and
 - Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention);
- **International instruments** to which **all Member States are contracting parties**, such as:

¹⁶ See, for instance, the ECtHR judgment of 21 October 2013, [Del Río Prada v Spain](#), paragraph 83.

¹⁷ ECtHR judgment of 9 April 2024, application No 53600/20.

¹⁸ The CJEU has, in particular, relied on certain international instruments to derive general principles of EU law. See, for example, Judgment of the Court of Justice of 16 January 2024, *WS v Intervyuirasht organ na Darzhavna agentsia za bezhantsite pri Ministerskia sa*, [Case C-621/21](#), EU:C:2024:47, paragraph 46. Furthermore, the CJEU has taken the UNCRPD into account in several cases. See, for example, Judgment of the Court of Justice of 11 April 2013, *Skouboe Werge*, [joined cases C-335/11 and C-337/11](#), EU:C:2013:222, or the Judgment of the Court of Justice of 18 March 2014, *Z. v A Government department and The Board of management of a community school*, [C-363/12](#), EU:C:2014:159.

¹⁹ On the relationship between the Charter and international agreements to which the European Union or the Member States are parties, see Article 53 of the Charter.

- International Covenant on Civil and Political Rights;
- International Covenant on Economic, Social and Cultural Rights;
- Convention on the Elimination of All Forms of Discrimination against Women;
- Convention on the Elimination of Racial Discrimination;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- United Nations Convention on the Rights of the Child;
- the **international conventions listed in Annex II**, such as the International Labour Organization’s fundamental conventions.

1.6.1 The UN Convention on the Rights of Persons with Disabilities

In 2007, the EU signed the [UN Convention on the Rights of Persons with Disabilities](#) (UNCRPD), which entered into force for the EU in January 2011²⁰. Its main objective is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all people with disabilities.

The EU is bound by the UNCRPD to the extent specified in the ‘Declaration of Competence’ annexed to Council Decision 2010/48/EC. The Commission must take the UNCRPD into account in all its actions.

This is a primary objective reflected in the Commission’s [Strategy for the rights of persons with disabilities 2021-2030](#).

Example of a Charter right for which international conventions are particularly relevant

Articles 39 and 40 of the Charter

When interpreting the right to vote and to stand as a candidate in elections to the European Parliament or municipal elections (Articles 39 and 40 of the Charter), the relevant article of the UNCRPD (Article 29 – Participation in political and public life) must be taken into account.

Similar considerations apply, for instance, to the right to respect for private and family life, the freedom to choose an occupation and to engage in work, and the right to education.

²⁰ Council Decision of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities, 2010/48/EC.

1.6.2 Council of Europe Convention on preventing and combating violence against women and domestic violence

In 2023, the EU became a party to the [Council of Europe Convention on preventing and combating violence against women and domestic violence](#) (the Istanbul Convention)²¹. This aims to lay down a comprehensive and uniform set of rules to prevent and combat violence against women and domestic violence. It recognises violence against women as a violation of their human rights and a form of discrimination.

The EU acceded to the Istanbul Convention in respect of matters falling within its exclusive competence, namely those related to the institutions and public administration of the EU²² and to judicial cooperation in criminal matters, asylum and non-refoulement²³.

The EU is now bound by ambitious and comprehensive standards to prevent and combat violence against women and domestic violence within these areas. These standards apply to its activities, including funding, policy and legislative measures.

1.6.3 The UN Convention on the Rights of the Child

In the context of impact assessments, it is also important to take into account the [UN Convention on the Rights of the Child](#) (UNCRC). Article 24 of the Charter protects children's rights in the implementation of EU law and represents the integration of children's rights under the UNCRC into EU law. It is therefore necessary, when interpreting that article, to take due account of those provisions²⁴.

However, Article 24 of the Charter also contains specific features that must be considered when an initiative affects children, directly or indirectly. For more detailed guidance on children's rights, see **Annex IV**.

²¹ Council of Europe Convention on preventing and combating violence against women and domestic violence, OJ L 143I, 2.6.2023, p. 7.

²² Council Decision (EU) 2023/1075 of 1 June 2023 on the conclusion, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to institutions and public administration of the Union, OJ L 143 I, 2.6.2023, p. 1.

²³ Council Decision (EU) 2023/1076 of 1 June 2023 on the conclusion, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to matters related to judicial cooperation in criminal matters, asylum and non-refoulement, OJ L 143 I, 2.6.2023, p. 4.

²⁴ This is asserted in the Explanation of the Charter on Article 24. The CJEU has also acknowledged the need to take the UNCRC into account in several cases. See, for example, Judgment of the Court of Justice of 11 March 2021, *État belge*, [C-112/20](#), EU:C:2021:197, or Judgment of the Court of Justice of 14 December 2021, *V.M.A.*, [C-490/20](#), EU:C:2021:1008.

Rights of the child checklist

a) Assess how the policy will affect children

- Are children directly or indirectly impacted differently than adults? If so, how?
- Does the initiative have a different impact on specific groups of children? If so, is that impact intended or unintended?
- Which rights could be affected?
- What would the impact be?

b) Involve relevant actors

- If your policy options are likely to have a significant impact on children's rights , ensure that the team of the Commission's coordinator for the rights of the child is invited to the Inter-Service Steering Group.
- Consult any relevant international and civil society organisations representing children.
- Consult children on matters that concern them.

Children must always be consulted in a safe, inclusive and meaningful way, so that they can express their views freely, using a language they understand. Pursuant to article 24(1) of the Charter, their views must be taken into consideration on matters which concern them in accordance with their age and maturity. You can find further resources on children's participation on the [Commission's Rights of the Child website](#). For an example of good practice, consult the [EU Children's participation platform](#).

c) Address the gap

- If any of the assessed direct or indirect impacts on children are negative, what must change in order to ensure that the initiative complies with children's rights? How can risks to children's rights be mitigated?
- If any of the assessed impacts are neutral, what changes could be made to improve implementation of children's rights?

Example – assessing impacts in light of children’s rights

Impact assessment accompanying the proposal for a directive on combating violence against women and domestic violence²⁵.

‘Article 24 CFR grants children the right to such protection and care as is necessary for their well-being (...). Both options can be expected to have a **positive impact on these rights** by imposing specific measures to protect and support child victims and witnesses of violence against women and domestic violence. Both options require Member States to handle cases of violence against women and domestic violence in a manner that ensures the best interests of the child, to recognise child witnesses as victims of violence against women and domestic violence and to provide age-appropriate psychosocial counselling, which will positively impact on the right of the child to be heard. Option 2 additionally obliges authorities to ensure that visits of children can take place in surveyed safe spaces outside the home of an alleged perpetrator. Such arrangements would have a **strong positive impact on safeguarding the best interests of the child.**’

1.7 What is the difference between absolute rights and rights subject to limitations?

Some of the Charter’s fundamental rights are guaranteed in **absolute terms**. This means that they cannot be subject to limitations or restrictions. Measures taken by public authorities that *interfere* with a right protected in absolute terms amount to a *violation* (an *infringement*) of that fundamental right.

Only a small number of fundamental rights are guaranteed in absolute terms. The Charter itself does not explicitly list those rights. However, the case law of the CJEU indicates that the following rights are protected in absolute terms:

- human dignity (Article 1 of the Charter);
- the right to life (Article 2 of the Charter);
- freedom from torture and inhuman or degrading treatment or punishment (Article 4 of the Charter);
- freedom from slavery and servitude (Article 5 of the Charter);
- the prohibition of child labour (Article 32(1) of the Charter).

²⁵ Commission staff working document impact assessment report Accompanying the document Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence, [SWD\(2022\) 62 final](#) of 8 March 2022.

Example of an absolute right under the Charter

Case [Dumitru-Tudor Dorobantu](#) ²⁶

The prohibition of torture and inhuman or degrading treatment or punishment, as enshrined in Article 4 of the Charter, is absolute.

This prohibition cannot be balanced against other interests, irrespective of the conduct of the person concerned and in any circumstances, including those relating to the fight against terrorism and organised crime ²⁷.

Other fundamental rights can be limited and measures taken by public authorities that *interfere* with such a right can be *justified* under certain conditions.

Interference will amount to a *violation* of such a right only when the conditions justifying the limitation are not met. The requirements for justified limitations are set out in Article 52 of the Charter.

Article 52 of the Charter

‘Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.’

When applying Article 52 of the Charter, it is necessary to address the following questions from the fundamental rights checklist:

Fundamental rights checklist, point 6

- a) Are the limitations provided for by law and formulated in a **clear and predictable** manner?
- b) Are the limitations necessary to achieve an objective of **general interest** recognised by the EU or to **protect the rights and freedoms of others**?
- c) Are the limitations **proportionate** (i.e. appropriate to attain the objective pursued and not going beyond what is necessary to do this)? Is an equally effective but less intrusive measure available?
- d) Do the limitations **preserve the essence** of the fundamental rights concerned?

The Charter does not explicitly define the term ‘limitation’ within the meaning of Article 52.

In general, any measure or conduct by public authorities (e.g. legislative acts, administrative decisions or government practice) that directly or indirectly undermines the exercise or enjoyment of the rights and freedoms guaranteed by the Charter can be considered a

²⁶ Judgment of the Court of Justice of 15 October 2019, *Dumitru-Tudor Dorobantu*, C-128/18, EU:C:2019:857, paragraphs 62 and 82.

²⁷ Opinion of the Advocate General in Case C-128/18, *Dumitru-Tudor Dorobantu v Generalstaatsanwaltschaft Hamburg*, delivered on 30 April 2019, EU:C:2019:334, point 107.

‘limitation’.

Example of a limitation on fundamental rights

CJEU cases [Digital Rights Ireland](#)²⁸, [Schrems II](#)²⁹ and [Schwarz](#)³⁰.

The collection³¹, use³² or even mere storage³³ of information by public authorities on an individual constitutes data processing³⁴. It therefore qualifies as a limitation on the right to the protection of personal data guaranteed under Article 8 of the Charter³⁵ and requires justification under Article 52(1) of the Charter.

For example, in *Schwarz*, the CJEU assessed whether the processing of fingerprints can be justified. It analysed whether those limitations to Articles 7 and 8 of the Charter:

- *were provided for by law*: the CJEU asserted that the limitation arising from the taking and storing of fingerprints when issuing passports must be considered to be provided for by law, for the purposes of Article 52(1) of the Charter, because those operations are provided for by Article 1(2) of Regulation No 2252/2004;

- *genuinely meet objectives of general interest recognised by the EU or the need to protect the rights and freedoms of others*: the CJEU underlined that Article 1(2) of Regulation 2252/2004 was designed to prevent, among other things, illegal entry into the European Union and thus pursued an objective of general interest recognised by the EU;

- *respected the essence of those rights*: the CJEU explained that it was neither apparent from the available evidence nor claimed that the limitations placed on the exercise of the rights recognised by Articles 7 and 8 of the Charter failed to respect the essence of those rights;

- *were proportionate to the aims pursued by the Regulation*: the CJEU verified whether the measures implemented by the Regulation were appropriate to attaining those aims and did not go beyond what was necessary to achieve them (i.e. whether alternative measures could be considered that would interfere less with the rights recognised by Article 7 and 8 of the

²⁸ Judgment of the Court of Justice of 8 April 2014, *Digital Rights Ireland and Kaertner Landesregierung and others*, joined cases C-293/12 and C-594/12, EU:C:2014:238.

²⁹ Judgment of the Court of Justice of 16 July 2020, *Data Protection Commissioner v Facebook Ireland Limited and Maximilian Schrems* C-311/18, EU:C:2020:559.

³⁰ Judgment of the Court of Justice of 17 October 2013, *Schwarz*, C-291/12, EU:C:2013:670.

³¹ *Ibid.*, footnote 28, paragraph 34. See also Judgment of the Court of Justice of 21 December 2016, *Tele2 Sverige*, [Joined cases C-203/15 and C-698/15](#), EU:C:2016:970, paragraph 62; or Judgment of the Court of Justice of 6 October 2020, *La Quadrature du Net and others*, [Joined Cases C-511/18, C-512/18 and C-520/18](#), EU:C:2020:791, paragraph 105.

³² *Ibid.*, footnote 29, paragraph 121.

³³ *Ibid.*, footnote 30, paragraph 28.

³⁴ Other instances of data processing include: (i) an official census containing compulsory questions about an individual's sex, marital status, place of birth and other personal details; (ii) the recording of fingerprints, photographs and other personal information by the police (even if the police register is secret); (iii) the collection of medical data and the maintenance of medical records; (iv) a requirement by state authorities to reveal details of personal expenditure; (v) records relating to past criminal cases; (vi) information on terrorist activity; and (vii) the collection of personal information to protect national security.

³⁵ See, for example, the ECtHR [Factsheet on personal data protection](#) (updated February 2024) and the Council of Europe's [Guide on Article 8 of the ECHR, Right to respect for private and family life, home and correspondence](#), 28 February 2025.

Charter). After an extensive examination, the CJEU concluded that the taking and storing of fingerprints referred to in Article 1(2) of the Regulation was appropriate in order to achieve the Regulation's aims (including the prevention of illegal entry into the EU), and did not go beyond what was necessary to protect against the fraudulent use of passports.

In light of this, the CJEU concluded that the interference arising from Article 1(2) of the Regulation was justified by the aim of preventing the fraudulent use of passports.

1.8 What is the difference between assessing the impacts on fundamental rights and verifying compliance with fundamental rights?

An impact assessment should be used to identify in general terms which fundamental rights are likely to be affected; the extent to which the right(s) in question will be interfered with; and whether such interference is necessary and proportionate in terms of policy options and objectives.

However, an impact assessment does not include an exhaustive examination of whether a future instrument based on the preferred policy choice would fully comply with fundamental rights.

An impact assessment sets the groundwork for a final legal analysis or 'fundamental rights check', but it does not and cannot replace this³⁶. The assessment of the legal compliance of a Commission legislative proposal with fundamental **rights can only be carried out on the basis of an actual draft act**, which the Commission prepares at a later stage before finalising the proposal.

2. OPERATIONAL GUIDANCE: HOW TO ADDRESS FUNDAMENTAL RIGHTS STEP BY STEP IN COMMISSION IMPACT ASSESSMENTS

Respect for and promotion of the Charter requires consideration of the fundamental rights throughout an impact assessment. To facilitate the work of desk officers, **the Guidance follows the 'key principles and questions of an impact assessment'** contained in Chapter IV of the [Better Regulation Guidelines](#) and addresses in each subsection the fundamental rights aspects that should be taken into account.

A summary of Section 2 can be found in Annex I.

2.1 Initial screening to establish whether fundamental rights could be affected: procedural issues and consultation of interested parties

Impact assessment involves gathering and analysing evidence to support policymaking. In this context, the aim of the initial screening of fundamental rights is to identify the specific fundamental rights affected by the policy choices, the nature of those rights, the nature of the impacts, and the potential limitations, proportionality and necessity of the measures.

Particular care is needed for impact assessments of legislative proposals and implementing and

³⁶ The lead DG must contact the Legal Service as well as DG JUST.

delegated acts³⁷ that may raise issues of compatibility with fundamental rights or that are designed to promote specific fundamental rights. Careful scrutiny is also needed of the possible impacts on fundamental rights of EU agreements with third countries (e.g. in an impact assessment for a negotiating mandate concerning a trade and/or investment agreement)³⁸.

An initial screening of fundamental rights aspects should first check whether absolute rights are likely to be affected, because any policy objectives or options that violate such rights should be avoided from the very beginning (see more details in 2.3.a) and 2.5.a) below). Next, the initial screening should identify whether there are any non-absolute Charter rights that might be limited by the policy options. Through consultation and analysis, the extent to which potential limitations are necessary, proportionate and impossible to replace by a less intrusive alternative will then need to be assessed.

You should take the points listed below into consideration in the initial stages of the impact assessment.

a) If your policy options are likely to raise questions about fundamental rights, you should ensure that colleagues from DG Justice and Consumers are invited to the **Inter-Service Steering Group**. DG Justice and Consumers has a directorate on ‘Rule of law, fundamental rights and democracy’, within which Unit C.2 ‘Fundamental rights policy’ deals with the Charter.

b) The possible implications for fundamental rights should be discussed during **the early-stage preparatory consultations**. This means that you should already highlight any potential fundamental rights aspect in consultation documents (calls for evidence, open public consultations, targeted consultations, communications, etc.), so as to encourage replies that can make a valuable contribution to the impact assessment.

For example, you could then signal which fundamental rights seem affected in the call for evidence (in the preliminary problem definition and policy options).

In these preparatory consultations, you can already give a rough indication of how different fundamental rights could be affected. You can also identify possible objectives of general interest – or needs to protect the rights and freedoms of others that could be relevant when analysing impacts.

Example – public consultation on whistleblower protection, 2018

‘To your mind, what are the benefits of rules obliging public and private sector organisations to protect whistleblowers?’

- Strengthen compliance with the law by public authorities and businesses;
- **Strengthen freedom of expression;**
- Help to improve companies’ economic performance;
- Foster a workplace culture of transparency and accountability?’

³⁷ On criteria for determining the proportionate level of analysis for different types of initiatives, check Tool No 12 (impact assessment) and Tool No 45 (evaluation).

³⁸ If the impact assessment concludes that future EU policy is likely to have a significant positive or negative impact on human rights in a third country, the relevant DGs should be informed of such assessment.

c) When an external contractor is involved in preparing an impact assessment, you should highlight in the **terms of reference** that the contractor will need to: (i) take account of fundamental rights in its work, when relevant; (ii) follow the Better Regulation Guidelines; and (iii) use the relevant tools from the Better Regulation toolbox.

Example of terms of reference

DG MOVE – Terms of Reference - Award of a specific contract under the framework contract for impact assessment and evaluation support studies in the field of transport. Support and preparatory work for a legislative proposal on clean corporate fleets

3. DESCRIPTION OF TASKS

3.1. Impact assessment-related tasks

3.1.2. Analytical phase

Task 4 - Assessment of impacts

[...] Moreover, the contractor shall assess impacts on SMEs, **on fundamental rights**, competitiveness and, where relevant, on gender equality, youth, territories (e.g. urban, rural, cross-border, outermost areas) and regions, non-EU countries, and on essential security interests of the EU (including resilience against hybrid threats), and checking for conformity with the ‘do no significant harm’ and ‘digital by default’ principles. It shall also include any relevant foresight analysis tools.

5. METHODOLOGY TO BE FOLLOWED

[...] As a general principle, the methodology should respect the principles of objectivity, reliability and evidence-based assessment. It should also comply with the requirements of the Better Regulation Guidelines. Where relevant, the Better Regulation Toolbox and additional direction for assessing sectoral (e.g. SMEs and micro-enterprises, sectoral competitiveness) or **specific impacts (social impacts, impacts on fundamental rights) shall be taken into account.**

d) Several stakeholders working in the field of fundamental rights can provide valuable input during the consultation phase. These include **civil society organisations** specialising in fundamental rights, health, development and environmental and social issues more generally³⁹.

European social partners and social dialogue committees should be consulted about the initiatives with the social implications, i.e. the impacts on the social rights guaranteed in the Charter⁴⁰. If your policy options are likely to affect the right to an effective remedy and to a fair trial, you should involve the associations representing the **legal professions** (e.g. judges, lawyers and prosecutors). Contact information for these associations can be found on the [e-](#)

³⁹ See, e.g. [EU Civil Society Contact Group](#) and various [European CSO networks](#) promoting social inclusion, gender equality and defend the rights of people exposed to discrimination. Also [A thriving civic space to protect fundamental rights - European Commission](#).

⁴⁰ Please contact [EMPL Social Dialogue Unit](#) in case you need more information.

[Justice portal](#).

During the consultation phase, you can also leverage the expertise of **relevant EU agencies and bodies**. For example, you can consult the [European Data Protection Supervisor](#) (EDPS) if the proposal is expected to have significant data protection impacts and the usual informal and mandatory formal consultations at a later stage are not considered sufficient⁴¹. You can also draw on the extensive data collected by the [Statistical office of the European Union](#) (Eurostat), the [European Union Agency for Fundamental Rights](#) and the [European Institute for Gender Equality](#).

2.2 Problem definition

a) In the problem definition section, you should describe the nature and scale of the problem (including for fundamental rights) and provide evidence. In doing so, you should bear in mind that the **Charter places legal limits on the EU's right to act**.

Practical advice

For example, a requirement arising from a fundamental right (e.g. the prohibition of the death penalty) cannot be considered a 'problem'. In such circumstances, the Charter effectively prevents the EU from taking action in a particular policy area.

Better Regulation Tool No 29 emphasises that fundamental rights aspects may be relevant both in defining the problem and in analysing the impacts. This is particularly the case when the EU intends to act to protect individuals against interferences with their fundamental rights or when an act is designed to promote specific fundamental rights.

b) For initiatives that are likely to raise multiple concerns, you should **identify the relevant fundamental rights likely to be affected at the beginning of the 'problem definition' section**. This will allow you to include relevant aspects relating to fundamental rights in the 'analysis of impacts' section, where you can properly discuss the degree of interference with these rights and the principle of proportionality. However, you should keep in mind that the identification of the affected fundamental rights may also depend on the specific policy options proposed and measures planned, and may therefore vary from one policy option to another.

Example 1 – problem definition considering impact on fundamental rights

Impact assessment accompanying the proposal for a regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act)⁴²

'The use of AI can have a significant impact on virtually all fundamental rights as enshrined in the EU Charter of Fundamental Rights.

⁴¹ For further guidance on the procedure and timing of consulting the EDPS, see [Consultation of the European Data Protection Supervisor \(sharepoint.com\)](#).

⁴² Commission staff working document impact assessment Accompanying the Proposal for a regulation on the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain union legislative acts, [SWD\(2021\) 84 final](#) of 21 April 2021.

‘AI use can be positive, promoting certain rights (e.g. the right to education, healthcare) and contributing to important public interests (e.g. public security, public health, protection of financial interests). It can also help reduce some adverse impacts on fundamental rights by improving the accuracy or efficiency of decision-making processes and addressing biases, delays or errors in individual human decisions.

‘On the other hand, AI used to replace or support human decision-making or for other activities such as surveillance **may also infringe upon individuals’ rights**. This is not a flaw of the technology per se, but the responsibility of the humans who are designing and using it and who must ensure these violations do not happen in the first place. If breaches of fundamental rights do happen, these can also be very difficult to detect and prove, especially when the system is not transparent. This challenges the effective enforcement of the existing EU legislation aimed at safeguarding fundamental rights, as listed in section 1.3.

‘While it remains difficult to quantify the real magnitude of the risks to fundamental rights, a growing amount of evidence suggests that Union citizens might be affected in an increasingly wide range. Moreover, **a growing body of case law and legal challenges to the use of AI breaching fundamental rights is also emerging across different Member States.**’

Example 2 – problem definition considering impact on fundamental rights

Impact assessment accompanying the proposal for a Council regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood⁴³

‘Where authorities in one Member State refuse to recognise parenthood established in another Member State, the child’s rights derived from parenthood may be denied. [...] Non-recognition of a child’s parenthood also has **negative consequences on the child’s fundamental rights**, in particular the rights to respect for private and family life, and to non-discrimination.

‘Given that, under the Charter, the ECHR and the UNCRC, children have a right to have a relationship with each of the persons with whom they have an effective family life, it is **contrary to the fundamental rights guaranteed under Article 7 and 24 of the Charter to deprive them of the relationship with one of their parents** because their parenthood was established in another Member State. Indeed, as a general rule, the best interests of children entail maintaining family unity, as well as their right to maintain on a regular basis a personal relationship and direct contact with both their parents, unless that is contrary to their interests.

‘In addition, severing the parenthood links of children with their parents in cross-border situations may also have a **negative impact on the child’s right to an identity**, including on its nationality (when in national law nationality is based on ius sanguinis) and – in spite of the clear CJEU case law – a surname’.

⁴³ Commission staff working document impact assessment report Accompanying the document Proposal for a Council Regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood, [SWD \(2022\) 391 final](#) of 7 December 2022.

2.3 Objectives

Depending on the nature of the problem and the policy context, respect for fundamental rights may be presented as **one of the general or specific/operational objectives**⁴⁴. This will ensure that the relevant aspects will be consistently addressed from the perspective of these objectives at every stage of the impact assessment (link between objectives and problem analysis, identification of policy options, assessment and comparison of options, future monitoring and evaluation activities)⁴⁵.

If the nature of the problem and the policy context do not require respect for fundamental rights to be included as a general or specific/operational objective, it is still necessary to ensure that the objectives that are set are consistent with other EU policies and general objectives, such as respect for fundamental rights⁴⁶.

If relevant to the specific policy context, you should explain how this consistency is ensured.

Example 1 – fundamental rights as specific policy objectives

Impact assessment accompanying the proposal for a directive amending Directive (EU) 2015/413 facilitating cross-border exchange of information on road-safety-related traffic offences⁴⁷

‘S[pecific] O[bjective] 3: Strengthen the protection of fundamental rights of non-resident offenders, including alignment with new EU rules on personal data protection

‘The Charter of Fundamental Rights of the EU gives [...] the right to the protection of personal data (Article 8), the right to an effective remedy and to a fair trial (Article 47) and the right of defence (Article 48(2)). It also provides for equality before the law (Article 20). Member States should protect these rights, also in the case of presumed non-resident offenders. The right to an effective remedy and to a fair trial implies that a certain amount of relevant information is given to the presumed offender within a reasonable timeframe in a language which he/she can understand. The information provided should also allow the presumed offender to check whether an information letter/penalty notice he/she receives is genuine or not. Data protection rules should be aligned with the GDPR and the LED.’

⁴⁴ See also Tool No 15 ‘How to set objectives’.

⁴⁵ See Impact Assessment Guidelines, p. 28.

⁴⁶ See Better Regulation toolbox, Chapter IV, p. 35.

⁴⁷ Commission staff working document impact assessment report Accompanying the document Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2015/413 facilitating cross-border exchange of information on road-safety-related traffic offences, [SWD\(2023\) 126 final](#) of 1 March 2023.

Example 2 – fundamental rights as specific policy objectives

Impact assessment accompanying the proposal for a regulation on preventing the dissemination of terrorist content online⁴⁸

‘4.2.5. Safeguard against the risk of erroneous removal of legal content and ensure protection of fundamental rights

‘A fifth specific objective is to provide for appropriate measures to safeguard against erroneous removal of legal content and **ensure the effective exercise of fundamental rights online.**’

Example 3 – fundamental rights as specific policy objectives

Impact assessment accompanying the proposal on a single market for digital services (Digital Services Act) and amending Directive 2000/31/EC⁴⁹

‘4.2.3. Empower users and **protect fundamental rights, and freedom of expression** in particular

‘Closely linked to the second specific objective, a modern online governance needs to place citizens at the centre and **ensure that their fundamental rights and consumer rights are promoted.** The aim of this objective is to ensure clear and proportionate responsibilities for authorities as well as private companies, to safeguard freedom of expression online by establishing rules that do not inadvertently lead to the removal of information that is protected by the **right to freedom of expression and that speech is not stifled or dissuaded online.** In particular, this objective seeks to enhance user agency in forming opinion and understanding their informational environment and enhance the protection of other fundamental rights such as the right to an effective remedy and to a fair trial, non-discrimination, protection of personal data and privacy online, rights of the child, etc.’

2.4 Policy options

a) Not all policy options that could meet the objectives and tackle a problem are permitted under the Charter. As explained in [Tool No 16 of the Better Regulation toolbox](#), a **policy option may be discarded at an early stage if it is inconsistent with other general EU policy objectives.**

b) Accordingly, **policy options that would clearly violate or constitute a disproportionate and unnecessary interference with fundamental rights should be abandoned.** Here is an example of a policy option that was discarded because it would have seriously undermined fundamental rights.

Example of discarded options breaching fundamental rights

⁴⁸ Commission staff working document impact assessment Accompanying the document Proposal for a Regulation of the European Parliament and of the Council on preventing the dissemination of terrorist content online, [SWD \(2018\) 408 final](#) of 12 September 2018.

⁴⁹ Commission staff working document impact assessment Accompanying the document Proposal for a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC, [SWD\(2020\) 348 final](#) of 15 December 2020.

Impact assessment accompanying the proposal for a regulation on standards on preventing the dissemination of terrorist content online⁵⁰

‘Options discarded at an early stage:

‘1. Transformation of the Recommendation on measures to effectively tackle illegal content online into binding rules across all types of illegal content

‘In this option, the provisions of the Recommendation would be made legally binding. However, preliminary assessment against the set objectives points to an unnecessary and disproportionate intervention, and raises concerns in particular as regards the necessity to establish generalised requirements for proactive measures to detect and remove all types of allegedly illegal content, amounting to a general monitoring of the content uploaded by users of hosting services.

[...] Hence, to date, such policy option is not suited for a ‘one size fits all intervention’ and **does not appear necessary and proportionate and would not justify a potential interference with fundamental rights**, in particular, with freedom of expression and information, data protection and freedom to conduct a business and compliance with the existing legal framework, in particular the E-Commerce Directive.’

c) If your policy options include several measures, you need to **assess the impact on fundamental rights of each relevant measure**, with due regard to the proportionate analysis principle ([Tool No 12 of the Better Regulation toolbox](#)). You also need to explain these measures in sufficient detail. Without a clear understanding of the proposed measures, you will not be able to identify the key elements of the proportionality assessment and find the most appropriate solution. For example, if your legislative option consists of legislative amendments to an existing directive, you need to assess the fundamental rights impact of each of those amendments.

Example of an analysis of all policy options in terms of their compliance with fundamental rights

Impact assessment accompanying the proposal for a directive amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims⁵¹

‘**All policy options are expected to have a positive impact on fundamental rights**, as they all contribute to preventing and fighting trafficking in human beings, and to protecting the victims of the crime, which is prohibited by the Charter. [...]

‘Nevertheless, P.O.2 and P.O.3 would **have a higher impact than P.O.1, due to the fact that they are legally binding and impose further obligations** on the Member States in

⁵⁰ Commission staff working document impact assessment Accompanying the document Proposal for a Regulation of the European Parliament and of the Council on preventing the dissemination of terrorist content online, [SWD \(2018\) 408 final](#) of 12 September 2018.

⁵¹ Commission staff working document impact assessment report Accompanying the document Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, [SWD\(2022\) 425 final](#) of 19 December 2022.

criminalising certain conducts, which are particularly harmful for the victims. Moreover, P.O.2 and P.O.3 would both keep the gender-specificity of the current text of the Directive and address forced marriage as a form of exploitation that affects mostly women and girls. P.O.2 and P.O.3 do not provide for provisions specifically targeting any specific group, such as persons with disabilities or asylum seekers. It is sufficient that groups are not adversely affected by, and that their position is taken into account as part of, the proposed legislative measures.

‘It could be argued that stricter measures, e.g. to consider the use of technology to commit one of the elements of the offence as an aggravating circumstance (legislative measure 1, sub-option (ii)) or to criminalise as many forms of exploitation as possible (legislative measure 2, sub-option (ii)), would be more beneficial when it comes to the safeguarding of fundamental rights. However, [...] stricter criminal law approaches do not necessarily result in better protection of fundamental rights, as they are sometimes more difficult to apply in practice. Legislative measure 5, sub-option (ii) would increase the protection of victims as compared to the baseline. At the same time, it would not go beyond the threshold of ‘knowledge’ therefore respecting the usual required level of participation under criminal law. Therefore, **P.O.3 is considered to have the highest impact on fundamental rights**’.

2.5 Analysis of impacts

a) Fundamental rights are diverse and **cut across all policy fields**. The analysis of the impact on fundamental rights should therefore be **integrated into every section of the impact analysis** – rather than treated as a separate category distinct from ‘the economic, social and environmental impacts’ section.

Example

The impact of a measure on the right to property or the right to conduct a business is directly linked to its economic impact.

Similarly, issues relating to social rights guaranteed by the Charter (in particular in Articles 12, 27, 28 and 31) are directly linked to social impact.

Using a fourth category of impact assessment for fundamental rights could lead to unnecessary repetition in these cases. Furthermore, the impact on fundamental rights must be assessed against one of the three key criteria of impact assessment (effectiveness, efficiency and coherence), which must be used to compare and rank the options.

The ‘Key Questions’ section in [Tool No 18 of the Better Regulation toolbox](#) will help you to identify which heading to use.

b) It is often **very difficult** (and sometimes impossible) to **quantify an impact on fundamental rights**. Instead, **such impacts need to be assessed qualitatively**.

Practical advice

In some limited cases, it may be possible to quantify an impact on fundamental rights. For example, the impact of a measure on the right to property or the right to conduct a business could be expressed quantitatively as a loss of income. A projected quantifiable reduction in the gender pay gap could be presented – with some caveats – as a positive impact on equality between women and men (Article 23 of the Charter) ⁵².

By contrast, it is not possible to quantify or monetise the impact on every child's right (enshrined in Article 24 of the Charter) to maintain a personal relationship and direct contact with both parents on a regular basis.

You can find further guidance on how to compare and rank options that have both quantifiable and non-quantifiable impacts in [Tool No 18 of the Better Regulation toolbox](#).

c) When **analysing the impact of different policy options on fundamental rights** you should follow the fundamental rights checklist in Section 1:

- clearly identify all the fundamental rights affected by each policy option.
- consider whether these rights are absolute or may be limited.
- determine whether the impacts of the various policy options on the fundamental rights identified are positive (promoting fundamental rights) or negative (restricting fundamental rights).
- assess whether the options have both a positive and a negative impact, depending on the rights concerned.
- if there is a negative impact, assess whether the limitation complies with the principles of proportionality and necessity and respects the essence of the right concerned.

Practical advice

If your policy option has a negative impact on one fundamental right while benefiting another, you should follow the usual methodological steps described in Section 1 of this Guidance.

Your starting point should always be the *specific measure* proposed in your policy option. It is this *specific measure* that needs to be assessed in relation to *each individual* fundamental right involved. There is no need to engage in an *abstract* discussion about which fundamental right should take precedence over another.

⁵² Commission staff working document impact assessment accompanying the document Proposal for a Directive of the European Parliament and of the Council to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms, [SWD\(2021\) 41 final](#) of 4 March 2021.

d) If a policy option has a **negative impact** on fundamental rights, consider the following points:

- **Consider and identify any necessary safeguards** to ensure that the negative impact does not amount to a violation of these fundamental rights. For instance, you could include a requirement that any limitations on the fundamental right in question should be regulated (i.e. in the proposed legislation) in a clear and predictable manner.
- When developing **effective safeguards**, you should elaborate on their nature and content. This will ensure that the impact assessment provides concrete guidance for drafting the legislative proposal and for its subsequent legal assessment. Merely mentioning general safeguards is not sufficient.

Example – analysis of impacts on fundamental rights and mitigating measures

Impact assessment accompanying the proposals for an amending Regulation as regards enforcement of passenger rights in the Union and a regulation of the European Parliament and of the Council on passenger rights in the context of multimodal journeys⁵³

‘Impacts on fundamental rights

‘Article 38 of the Charter of Fundamental Rights of the European Union (the Charter) stipulates that Union policies shall ensure a high level of consumer protection.

‘Both options related to enforcement (problem area 1) are expected to contribute to a high level of consumer protection, by making it easier for consumers to exercise their passenger rights, by introducing standardised forms for reimbursement and compensation claims and making them aware of the possibility to use Alternative Dispute Resolution bodies to settle their disputes with transport operators.

‘[...] Furthermore, it follows from Article 21(1) of the Charter that any discrimination based on grounds of disability shall be prohibited, while Article 26 of the Charter states that the Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

‘Both options related to enforcement (problem area 1) introduce standardised complaint and **reimbursement forms that would be fully accessible for persons with disabilities and reduced mobility**’.

- **Provisions limiting the fundamental rights need to be drafted in a clear and predictable manner.** Any limitations should be sufficiently precise to avoid arbitrary decisions by public authorities when they implement them. They must be understandable and transparent to the persons concerned and formulated with sufficient precision to enable them to reasonably foresee – if necessary, with appropriate guidance – the consequences of

⁵³ Commission staff working document impact assessment report accompanying the documents Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EC) No 261/2004, (EC) No 1107/2006, (EU) No 1177/2010, (EU) No 181/2011 and (EU) 2021/782 as regards enforcement of passenger rights in the Union Proposal for a Regulation of the European Parliament and of the Council on passenger rights in the context of multimodal journeys, [SWD\(2023\) 386 final](#) of 29 November 2023.

a given action.

The **legislative proposal must specify with sufficient clarity the scope of any discretion granted to the authority** and the detailed rules for exercising such discretionary power. Even if no legal text is available at the time of the impact assessment, it is important to consider at this stage **whether it would be feasible to include such a provision** in the proposed EU legislation.

Example – how to identify and balance positive and negative impacts on fundamental rights

Impact assessment accompanying the proposal for a regulation on establishing a framework for interoperability between EU information systems (borders and visa) and on establishing a framework for interoperability between EU information systems (police and judicial cooperation, asylum and migration)⁵⁴

‘The proposed interoperability solutions are complementary components to existing systems. As such, they would not alter the balance already ensured by each of the existing central systems as regards their impact on fundamental rights.

‘Nevertheless, interoperability does have the potential of having an additional, indirect impact on a number of fundamental rights. Indeed, the correct identification of a person has a **positive impact on the right to respect for private life, and in particular the right to one’s identity** (Article 7 of the Charter), as it can contribute to avoid identity confusions (i.e. the right to good administration). On the other hand, **the collection of biometric data can interfere with the person’s right to dignity** (in particular, where it is perceived as humiliating) (Article 1). [...]

‘The proposed interoperability components (and notably those under option 3) offer the opportunity to adopt **targeted preventive measures to enhance security**. As such, they can contribute to the protection of people’s right to life (Article 2 of the Charter), which also implies a positive obligation on authorities to take preventive operational measures to protect an individual whose life is at risk, if they know or ought to have known of the existence of an immediate risk, as well as to uphold the prohibition of slavery and forced labour (Article 5).

‘The two-step law-enforcement access method of option 3 would lower the impact on the presumption of innocence compared to today’s’ situation of fully accessing a central system after authorisation. In the **first step, no personal data or additional data will be retrieved. Only in a targeted second step would actual data be retrieved**’.

⁵⁴ SWD (2017) 351 final.

2.6 Comparing the options

a) When comparing the different options, you must consider the specific nature of the impacts on fundamental rights and **avoid aggregating different types of impact**, as this could lead to a distorted result.

Practical advice

For example, if you have determined that a particular policy option would have such a negative impact that it would *violate* (i.e. restrict without justification) children's rights (Article 24 of the Charter)⁵⁵, this negative impact cannot be offset by a positive impact on another fundamental right or by other impacts. This is a legal consequence of the obligation to uphold fundamental rights.

Example – comparing different options

Impact assessment accompanying the proposal for a directive amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims⁵⁶

‘All policy options are expected to have a positive impact on fundamental rights, as they all contribute to preventing and fighting trafficking in human beings, and to protecting the victims of the crime, which is prohibited by the Charter. They also strengthen the protection of other fundamental rights enshrined in the Charter, including the right to human dignity (Article 1), the right to the integrity of the person (Article 3) and in particular the prohibition of making the human body and its parts a source of financial gain (Article 3(c)), the prohibition of inhuman or degrading treatment or punishment (Article 4), prohibition of slavery and forced labour (Article 5), the right to liberty and security (Article 6) and the rights of the child (Article 24). The gender-specific and child sensitive approach is integrated in and streamlined throughout all the measures proposed in the policy options, which contributes to promoting the principle of equality (Title III of the EU Charter), in particular equality between women and men (Article 23).

‘Nevertheless, **P.O.2 and P.O.3 would have a higher impact than P.O.1**, due to the fact that they are legally binding and impose further obligations on the Member States in criminalising certain conducts, which are particularly harmful for the victims. Moreover, P.O.2 and P.O.3 would both keep the gender-specificity of the current text of the Directive and address forced marriage as a form of exploitation that affects mostly women and girls. [...]

‘[...] Therefore, P.O.3 is considered to have the **highest impact on fundamental rights**’.

⁵⁵ Provided the option has not been discarded at an early stage (see Section 2.4). For a specific analysis on how to assess impacts on Article 24 of the Charter, see Section 1.6.3 and Annex IV to this document.

⁵⁶ Commission staff working document impact assessment report accompanying the document Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, [SWD\(2022\) 425 final](#) of 19 December 2022.

b) When selecting a preferred option, you should identify and **consider the options with the least negative impact on fundamental rights**. This does not mean that you must always choose the policy option that has no, or only positive, impacts on fundamental rights. As explained in Section 1 and above, legitimate objectives of general interest can justify limitations on fundamental rights.

However, if you can establish that **two policy options are equally effective** in achieving the objective but have different negative impacts on fundamental rights, all else being equal, **the least intrusive option should be duly considered**.

Similarly, if you are considering a proposal or an act aiming to promote a specific fundamental right and there are two policy options that are potentially equal in terms of their overall impact, the one with the **greater positive impact on fundamental rights should be duly considered**.

Example – summary assessment of the impact of a preferred policy option on fundamental rights

Impact assessment accompanying the proposal for a directive amending Directive 2009/38/EC as regards the establishment and functioning of European Works Councils and the effective enforcement of transnational information and consultation rights⁵⁷

‘Coherence:

‘Policy Area 1: Option 1a is coherent with the general principles of legal clarity and equal treatment, and **employees’ right to information and consultation expressed in Article 27 CFR** and Principle 8 of the [European Pillar of Social Rights]. By removing the exemptions from the scope, employees of all Union-scale undertakings would be entitled to request the establishment of an EWC, in line with the revised Directive, while having the choice to continue with the voluntary agreement.

‘[...] Policy Area 2: All options in this policy area are **coherent with Article 27 CFR** and Principle 8 of the Pillar. Option 2c is most conducive to increasing balanced representation of men and women in the EWC context, and thus most **coherent with Article 23 CFR**, Article 6(2)(b) of the Directive and the Commission’s Gender Equality Strategy, which aims to mainstream the gender perspective into different policy areas. Therefore, option 2c is most coherent overall.

‘Policy Area 3: All options in this policy area are **coherent with Article 27 CFR** and Principle 8 of the Pillar. They aim to address the lack of clarity of the concept of transnational matters and limit the scope for dispute. Both options 3b and 3c require a reasoned response by management to the EWC’s opinion, reinforcing an effective dialogue, so giving expression to **Article 27 CFR** and Principle 8 of the Pillar. On the other hand, option 3c, which substantially expands this concept, is **less coherent with the relevant EU *acquis***, which requires that employees and their representatives be guaranteed information and consultation at the relevant level of management and representation, according to the subject under discussion.

⁵⁷ Commission staff working document impact assessment report accompanying the document Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/38/EC as regards the establishment and functioning of European Works Councils and the effective enforcement of transnational information and consultation rights, [SWD\(2024\) 10 final](#) of 21 January 2024.

‘[...] Unlike the other options, option 3c imposes a new mandatory requirement of prior authorisation where management withholds potentially harmful information. This requirement could lead to significant delays in companies’ decision-making, which would also not be coherent with Article 1(2) of the Directive and may interfere with the freedom to conduct a business enshrined in Article 16 CFR. It is also not coherent with the existing national laws on the matter, as none of the Member States has thus far used the option to impose such a requirement. [...]

‘Policy Area 4: Options 4a and 4b would be coherent with the existing provisions of the Directive and relevant general EU law principles concerning sanctions, remedies and access to justice. They are also aligned with the principle of effective company decision-making (Article 1(2) of the Directive) and the freedom to conduct a business (Article 16 CFR), as they do not introduce specific binding enforcement measures that could interfere with companies’ ability to implement the necessary management decisions quickly.’

2.7 Monitoring and evaluation

In line with the Better Regulation Guidelines⁵⁸, the Charter should be taken into account throughout the policy cycle. This means that the **impact on fundamental rights should be considered also during monitoring and evaluation of an existing EU legal instrument or policy**, particularly for instruments likely to have a significant impact on fundamental rights. You should therefore consider, starting at the impact assessment stage, what arrangements could be developed for monitoring and evaluating whether fundamental rights are complied with. This includes **carefully planning data collection and identifying possible indicators** for monitoring and evaluating fundamental rights impacts. In doing so, it is also important to establish a baseline, i.e., a starting point, to allow evaluators to measure change.

Indicators could include the number of complaints about alleged violations of fundamental rights lodged with the competent authorities (including courts) and the outcomes of those complaints. If your instrument aims to promote a fundamental right, indicators could measure progress towards that goal (for instance, a reduction in inequalities between women and men in areas such as employment and pay⁵⁹, or a decline in perceived discrimination⁶⁰). In some cases, this will require incorporating a specific obligation into the legislative proposal.

Example 1 of a mechanism to monitor respect for fundamental rights

Impact assessment accompanying the proposal for a regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast)⁶¹

‘6. MONITORING AND EVALUATION

⁵⁸ Chapter V of the Better Regulation Guidelines and Tool No 43.

⁵⁹ For example, by identifying developments in the gender pay gap. The European Commission Joint Research Centre created the [Gender Equality Strategy Monitoring Portal](#), to track the policy objectives set out in the 2020-2025 Gender Equality Strategy.

⁶⁰ For relevant data, see, for instance, the [European Union Minorities and Discrimination Surveys](#) (EU-MIDIS) conducted by the European Union Agency for Fundamental Rights.

⁶¹ Commission staff working paper impact assessment accompanying document to the Proposal for a Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters (Recast), [SEC\(2010\) 1547 final](#) of 14 December 2010.

‘(...) In most Member States, there is no systematic collection of statistical data on the application of the Regulation, making it very difficult to measure how the Regulation affects cross-border litigation. The Commission will therefore include in the proposed Regulation a requirement for Member States to provide information on the application of the Regulation in practice, **notably on the number of recourses to the special review procedures created to safeguard the defendant’s fundamental rights and on the outcome of these procedures.**’

Example 2 of a mechanism to monitor respect for fundamental rights

Impact assessment accompanying the proposal for a directive on combating violence against women and domestic violence⁶²

‘8. How will actual impacts be monitored and evaluated?’

‘[...] **The lack of monitoring and insufficient enforceability with regard to victims of violence against women and domestic violence is one of the key weaknesses identified in the application of the EU legal framework.** Even though data indicate that this kind of violence is prevalent in all Member States, more comparable data, including on underreporting of these crimes, is needed to assess changes in prevalence rates and the effectiveness of the proposed measures.

‘In this respect the provision regarding data collection will offer regular, comparable and, as for administrative data, also timely data. [...]’

‘The preferred policy option will introduce further harmonisation in the collection of disaggregated administrative data (including from law enforcement agencies, the judiciary, social and health services) at regular intervals based on the ongoing work by EIGE, and the obligatory regular survey coordinated at EU level (following up on the EU-survey on violence against women and domestic violence coordinated by Eurostat).’

⁶² Commission staff working document impact assessment report accompanying the document Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence, [SWD\(2022\) 62 final](#) of 8 March 2022, referring to the EU survey on gender-based violence against women and other forms of inter-personal violence (EU-GBV) - wave 2021.

3. EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

The explanatory memorandum for a legislative proposal that has an impact on fundamental rights **must include a summary explaining how fundamental rights obligations have been met** and, in particular, identify all the fundamental rights aspects covered by the impact assessment.

You are strongly encouraged to include these aspects in the executive summary of the impact assessment. The executive summary is a good place to explain, for instance, why any limitations on fundamental rights in the preferred option are justified in terms of necessity and proportionality.

Example 1 of an executive summary

Executive summary of the impact assessment report accompanying the proposal for a regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of measures and cooperation in matters relating to the protection of adults⁶³

‘3.1 Benefits of the preferred option

‘Adopting common rules and closer cooperation within the EU would ensure continuity of the support for vulnerable adults in cross-border situations for all purposes. It would guarantee their equal access to justice, ensure they can manage their assets or property abroad, and ensure that their medical care is continued. In addition, the recognition of the arrangements made in advance (powers of representation) would safeguard their autonomy and avoid the need to go to court. The preferred option would thus have a **positive impact on the protection of the fundamental rights of vulnerable adults in cross-border situations and other positive legal impacts**. Policy option 4 would be the most effective in addressing the problems of legal uncertainty, costly and lengthy proceedings, and the non-recognition of protection measures and powers of representation abroad. This option would therefore best achieve the policy objectives of the initiative.’

Example 2 of an executive summary

Executive summary of the impact assessment report accompanying the proposal for a directive of the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities⁶⁴

⁶³ Commission staff working document executive summary of the impact assessment report accompanying the document Proposal for a Regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of measures and cooperation in matters relating to the protection of adults and proposal for a Council Decision authorising Member States to become or remain parties, in the interest of the European Union, to the Convention of 13 January 2000 on the International Protection of Adults, [SWD\(2023\) 156 final](#) of the 31 May 2023.

⁶⁴ Commission staff working document executive summary of the impact assessment report accompanying the document Proposal for a Directive the European Parliament and of the Council establishing the European Disability Card and the European Parking Card for persons with disabilities, [SWD\(2023\) 291 final](#) of 6 September 2023.

‘Strong positive effects on fundamental rights are expected, namely freedom of movement (Article 45 of the EU Charter of Fundamental Rights (EUCFR)), integration of persons with disabilities (Article 26 EUCFR) and non-discrimination (Article 21 EUCFR). The initiative would ensure greater social inclusion and integration of persons with disabilities compared to the baseline.’
