



THE CATHOLIC CHURCH
IN THE EUROPEAN UNION

JUSTICE & FUNDAMENTAL RIGHTS

EU'S COMPETENCES
CHURCH'S VISION
COMECE'S CONTRIBUTION

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Justice & Fundamental Rights

EU's competence



Respect for human dignity, freedom, democracy, equality, the rule of law and for human rights are the values on which the European Union is founded as they “... are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail” (Article 2 TEU). Article 6(3) TEU specifies that fundamental rights, as guaranteed by the

[European Convention for the Protection of Human Rights and Fundamental Freedoms](#) (the *European Convention*) and as they result from the constitutional traditions common to the Member States, constitute *general principles of EU law*. The EU actively promotes and defends fundamental rights both within its borders and in its relations with third-countries. In accordance with Article 67(1) TFEU, the Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States.

With the entry into force of the Treaty of Lisbon, the [Charter of Fundamental Rights of the European Union](#) (the *EU Charter*) acquired binding legal effect and was granted the same legal value as the Treaties. The Charter is a central point of reference for EU policies and initiatives and tellingly mentions human dignity in its Article 1, not just as a fundamental right but also as the very basis of fundamental rights. The Charter is addressed and applies primarily to the EU institutions, bodies, offices and agencies, whereas it concerns the Member States only when they are implementing Union law (Article 51). In so far as the Charter contains rights corresponding to those guaranteed by the European Convention, their meaning and scope must be the same as those laid down by the latter (EU laws can foresee more extensive protection). A process of accession of the EU to the European Convention is ongoing, in accordance with the Treaties. The main goal is that of completing the EU system of protection for fundamental rights, enhancing the coherence in human rights protection in Europe while making the EU directly accountable in front of the Strasbourg Court with regard to all acts, measures or omissions of the Union itself.

Initiatives concerning the respect for the rule of law are also to be followed with interest, on the basis of the [framework](#) adopted by the European Commission in 2014.

EU funding for this area is mainly provided through the [Rights, Equality and Citizenship Programme](#) and the [Justice Programme](#) for the period 2014-2020.

A complementary role is played by the [EU Agency for Fundamental Rights \(FRA\)](#). The current multiannual framework for its activities covers the period 2013-2017.

The Church's vision



According to Catholic Social Teaching, the roots of Fundamental Rights are to be found in the human dignity that belongs to each human being (cf. Pastoral Constitution, [Gaudium et Spes](#), 47). The task set to identify, proclaim and safeguard fundamental rights is one of the most significant attempts to respond effectively to the demands of human dignity (cf. Declaration [Dignitatis Humanae](#), 1).

COMECE's contribution



In dealing with justice and fundamental rights issues, COMECE is supported by its Legal Affairs Commission, composed of experts mandated by the national Bishops' Conferences. Such Commission is chaired by a Bishop and is a forum for reflection, discussion, and exchange of information on EU and national legal developments, and regularly interacts with EU representatives.

COMECE follows justice and fundamental rights policies and initiatives with due rigor. They must have an objective base; they must not be based on any instrumental concept of human dignity. COMECE focuses on the ethical implications and aspects of EU policies and legislation, as well as on the direct impact of some of them on the activities of the Church.

The main areas of EU competence related to the field of justice and fundamental rights are: equality and non-discrimination, data protection, family matters, rights of the child and child protection and EU citizenship.

Equality and non-discrimination

EU's competence



Combating discrimination is identified by Article 3(3) TEU as one of the objectives of the European Union.

Article 19 TFEU empowers the Council to “*take appropriate action*” to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, allowing the EU to act within the areas in which it already has competence by virtue of other Treaty provisions. It does not allow the EU to legislate on non-discrimination in areas where Member States remain competent. Article 19 TFEU provides that the Council acts unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament. Article 21 of the EU Charter contains a general prohibition of discrimination on a number of grounds, which include those mentioned in Article 19 TFEU, but also goes farther, referring to colour, social origin, genetic features, language, political or any other opinion, membership of a national minority, property, and birth.

The EU has adopted various Directives concerning the area of non-discrimination: [Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin](#); [Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation](#); [Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services](#); [Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation](#). In 2008, the Commission presented a [Proposal for a Directive aimed at implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation](#), which is still being discussed in the EU Council. The proposal covers social protection (including social security and healthcare), social advantages, education and access to and supply of goods and other services which are available to the public (including housing).

The Church's vision



The Catholic Church teaches that while individuals are different and this diversity is a positive element, there is a natural equality among them, as they enjoy the same dignity as human persons, created in God's likeness. The Church has called for equality and the eradication of discrimination in many of her documents: “*Since all men possess a rational soul and are created in God's likeness, since they have the same nature and origin, have been redeemed by Christ and enjoy the same divine calling and destiny, the basic equality of all must receive increasingly greater recognition. [...] Every type of discrimination, whether social or cultural, whether based on sex, race, colour, social condition, language or religion, is to be overcome and eradicated as contrary to God's intent*”. ([Gaudium et Spes](#), 29); « *Among the victims of situations of injustice -- unfortunately no new phenomenon -- must be placed those who are discriminated against, in law or in fact, on account of their race, origin, colour, culture, sex or religion. Racial discrimination possesses at the moment a character of very great relevance by reason of the tension which it stirs up both within countries and on the international level... The members of mankind share the same basic rights and duties, as well as the same supernatural destiny. Within a country which belongs to each one, all should be equal before the law, find equal admittance to economic, cultural, civic and social life and benefit from a fair sharing of the nation's riches* ». ([Octogesima Adveniens](#), 16)

COMECE's contribution



COMECE endeavours to support the framing EU equality and non-discrimination laws based on a conceptually sound and balanced legal approach. In this context, in 2010 the COMECE Secretariat put forward a working document titled “Developing fair non-discrimination EU legislation”. COMECE is concerned with equality and non-discrimination laws and policies in all their aspects and multiple implications. The need to avoid instrumentalisations and biased interpretations of the relevant concepts is stressed. The full respect of the fundamental right to freedom of religion in the context of non-discrimination policies is also paramount, as well as that for the limits of EU competences. A special focus is placed on discrimination on grounds of religion. Concerning disabled persons, the need is underlined to take into full consideration the specificity of their situation and this particular ground. The COMECE Secretariat has focused on equality and non-discrimination in its contributions to public consultations on: *“Tolerance and respect: preventing and combating anti-Semitic and anti-Muslim hatred in Europe”*; the future of EU justice policies; the future funding activities in the area of Justice, Fundamental Rights and Equality for the period after 2013; and a possible successor instrument to the Progress Programme 2007-2013.

Data protection

EU's competence



The EU has legislative competence to establish rules concerning the protection of personal data. After having provided that “Everyone has the right to the protection of personal data concerning them”, Article 16 TFEU foresees that the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, “...shall lay down the rules relating to the protection of individuals with regard to the processing of personal data by Union institutions, bodies, offices and agencies, and by the Member States when carrying out activities which fall within the scope of Union law, and the rules relating to the free movement of such data”. The provision also requires that the compliance with such rules be subject to the control of independent authorities.

Article 8 of the EU Charter foresees that everyone has the right to the protection of personal data concerning him or her; that “Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified” and restates that compliance with these rules shall be subject to control by an independent authority.

[Directive 95/46/EC](#) on the protection of individuals with regard to the processing of personal data and on the free movement of such data has been for many years the main piece of EU legislation in the area. It also provided that Member States must prohibit the processing of personal data revealing, *inter alia*, religious or philosophical beliefs, but foresees an exception to it based on certain requirements.

A comprehensive reform process of the relevant EU rules was launched by the Commission in 2012. On this basis, the [General Data Protection Regulation](#) was recently adopted. The Regulation strengthens the provisions concerning Churches. In 2012 the Commission also issued a [Proposal for a Directive on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data](#). This has led to the adoption of a [Directive](#) in 2016.

Other EU texts of relevance are [Regulation \(EC\) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data](#) and [Directive 2002/58/EC on the processing of personal data and the protection of privacy in the electronic communications sector](#) (*e-Privacy Directive*).

A [Directive on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime](#) has been adopted.

The Church's vision



The Church supports and values protection of personal data and has specific and well-developed internal rules on the matter. Data protection laws are important for the Church in relation to the gathering of information disclosing one's religion in various documents and public registers, and with regard to the processing of the data related to her activities (with regard to sacramental records, but also to schools, hospitals and other services provided by her). In some Member States, data transfers from State to Church are essential for the systems of Church tax collection. The Church's understanding of the importance of protection of personal data and privacy is reflected in its internal rules: for example, according to Canon 220 of the Code of Canon Law “No one is permitted to harm illegitimately the good reputation which a person possesses nor to injure the right of any person to protect his or her own privacy”; Canon 486 provides that “All documents which regard the diocese or parishes must be protected with the greatest care” (§ 1)

and that “*In every curia there is to be erected in a safe place a diocesan archive, or record storage area, in which instruments and written documents which pertain to the spiritual and temporal affairs of the diocese are to be safeguarded after being properly filled and diligently secured*” (§ 2).

COMECE's contribution



COMECE devotes special attention to EU initiatives on protection of personal data. Particularly during the build-up to the presentation of the 2012 data protection reform package and in the course of the subsequent phases (also through its Legal Affairs Commission) it has carried out a profound reflection on the implications of the text. Currently intense inter-institutional negotiations on this legislative dossier are being followed with great care. The COMECE Secretariat also contributed to the 2011 consultation on the *Commission's comprehensive approach on personal data protection in the European Union*.

Family matters

EU's competence



The EU has no competence to intervene on its Member States' substantive family law.

Direct EU competence concerns the adoption of measures on family law with cross-border implications (Article 81(3) TFEU). As a rule, unanimity is foreseen in the Council for the approval of such instruments, whereas the European Parliament is simply consulted.

An example of legislative text adopted with reference to Article 81(3) TFEU is [Council Regulation \(EU\) No 1259/2010](#) on an enhanced cooperation in the area of the law applicable to divorce and legal separation. Two Regulations based on the same provision have also been adopted under an "[enhanced cooperation](#)" concerning patrimonial regimes for international couples ([matrimonial property regimes](#) and [property consequences of registered partnerships](#)). A [Regulation](#) on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union has also been adopted. The text should be complemented by an as yet not presented proposal on the mutual recognition of the effects of civil status records between Member States. A [proposal](#) for the review of Council Regulation (EC) No 2201/2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility has been introduced.

The EU Charter proclaims that everyone has the right to respect for his or her private and family life, home and communications (Article 7). It also states that the right to marry and the right to found a family is to be guaranteed in accordance with the national laws governing the exercise of these rights (Article 9). It provides for the family to be protected at the legal, economic and social levels (Article 33).

Family relationships and family life come into play in EU legislative texts in various areas (e.g. [Directive 2012/29/EU on establishing minimum standards on the rights, support and protection of victims of crime](#), [Directive 2010/41/EU on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity](#), [Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States](#)).

Concerning family policies, the process of [revision](#) of the so-called 'Maternity Leave Directive' has not succeeded and the European Commission will elaborate an alternative approach. The EU has adopted a [Directive 2010/18/EU](#) on implementing the revised Framework Agreement on parental leave.

The Church's vision



The centrality of the family - fundamental cell of society - is strongly emphasised by the Church, with reference inter alia to:

- The fact that the family is born of the intimate communion of life and love founded on the marriage between one man and one woman ([Compendium of the Social Doctrine of the Church](#), 211)
- The right to the free choice of their state of life and thus to marry and establish a family or to remain single ([Charter of the rights of the Family](#), Art. 1),

- The right freely to establish a family, to have and to rear children through the responsible exercise of one's sexuality ([Centesimus Annus, 47](#)) and
- The right to live in a united family and in a moral environment conducive to the growth of the child's personality ([Centesimus Annus, 47](#)).

Catholic Social Teaching also affirms that “*the public authorities must do everything possible to ensure that families have all those aids- economic, social, educational, political and cultural assistance-that they need in order to face all their responsibilities in a human way*” ([Apostolic Exhortation Familiaris Consortio, 45](#)).

COMECE's contribution



Concerning family matters, COMECE advocates for policies and measures that genuinely support the family, while insisting on respect for the competences of the Member States. In this framework, COMECE also liaises with family organisations, supporting them (e.g. [FAFCE](#) the Federation of Catholic Family Associations in Europe). In this policy area, the COMECE Secretariat has published documents such as “*A Family Strategy for the European Union, An encouragement to make the family an EU priority*” (2004) and a “*Proposal for a Strategy of the European Union for the Support of Marriage and Family*” (2007). The COMECE Secretariat has contributed to the public consultation on “*Possible action to address the challenges of work-life balance faced by working parents and caregivers*”. It has also focused inter alia on family matters in its contributions to public consultations on: the future of EU justice policies; the future funding activities in the area of Justice, Fundamental Rights and Equality for the period after 2013; the theme “*Less bureaucracy for citizens: promoting free movement of public documents and recognition of the effects of civil status records*”.

Rights of the child and child protection

EU's competence



The promotion of the protection of the rights of the child is one of the objectives of the Union (Article 3(3) TEU). Concerning the external dimension of EU actions, Article 3(5) of the TEU provides that *“In its relations with the wider world, the Union shall... contribute to... the protection of human rights, in particular the rights of the child...”*.

The EU Charter foresees at Article 24 that children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely, and such views shall be taken into consideration on matters which concern them in accordance with their age and maturity. Moreover the child's best interests must be a primary consideration in all actions relating to children (whether taken by public authorities or private institutions). Finally, every child has the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

An important achievement was attained with the adoption of [Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography](#). The Commission is closely monitoring its implementation at the national level. Relevant references on child protection also appear in Directive 2010/13/EU (Audiovisual Media Services Directive), which is undergoing a [review](#).

The European Commission is supporting ‘integrated Child Protection Systems’ and the proposal for the review of [Council Regulation \(EC\) No 2201/2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility](#) also has implications for the rights of the child.

A [Directive](#) on procedural safeguards for children who are suspects or accused persons in criminal proceedings has been adopted in 2016.

The Church's vision



The Church is particularly attentive to the position of children in the family and in society. Some of the most relevant passages concerning the theme include the following: *“In the family, which is a community of persons, special attention must be devoted to the children by developing profound esteem for their personal dignity, and great respect and generous concern for their rights. This is true for every child, but it becomes all the more urgent the smaller the child is and the more it is in need of everything, when it is sick, suffering or handicapped”*. (John Paul II, [Apostolic Exhortation Familiaris Consortio](#), 26); *“No country on earth, no political system can think of its own future otherwise than through the image of these new generations that will receive from their parents the manifold heritage of values, duties and aspirations of the nation to which they belong and of the whole human family. Concern for the child, even before birth, from the first moment of conception and then throughout the years of infancy and youth, is the primary and fundamental test of the relationship of one human being to another”* (John Paul II, [Address to the General Assembly of the United Nations, 2 October 1979](#)).

COMECE's contribution



COMECE has constantly followed EU actions aimed at the protection of children and the safeguarding of their rights. It has emphasised that a holistic approach to the rights of the child must be adopted, highlighting their family dimension and the fact that they cannot be considered separately from the needs of the child and from the rights of parents. COMECE stresses the primacy of the role of guidance that the mother and the father share with regard to their children, and their unique and privileged position in respect of the protection of the child's best interests. It also underlines that the harmonious and full development of the personality of the child and the protection of her/his psychological integrity must receive particular attention. The COMECE Secretariat has focused, inter alia, on rights of the child and child protection in its contributions to public consultations on: "*Directive 2010/13/EU on audiovisual media services (AVMSD) - A media framework for the 21st century*"; the future of EU justice policies; future funding activities in the area of Justice, Fundamental Rights and Equality for the period after 2013; and with its "*Proposal for a Strategy of the European Union for the Support of Marriage and Family*" (2007).

EU citizenship

EU's competence



In accordance with Article 20 TFEU, EU citizenship is conferred on every national of a Member State and is additional to, while not replacing, national citizenship. The right of the citizens of the EU and their family members to move and reside freely, subject to certain conditions, within the territory of the EU, is the foundation of EU citizenship. The main reference text in this regard is [Directive 2004/38/EC](#) on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

The EU Charter refers to a number of key citizens' rights in Articles 39-46: the rights to vote and to stand as a candidate at EP elections as well as at municipal elections, the right to good administration, the right of access to documents, of referral to the Ombudsman of the Union and to petition the European Parliament, the right of freedom of movement and of residence and the right to diplomatic and consular protection.

The EU marked the twentieth anniversary of the establishment of EU citizenship by devoting the European Year 2013 to the theme.

The Church's vision



The Church presents incisive positions on the theme of citizenship, stressing the importance of both rights and duties related to it and the essential role of each citizen in society:

Hence, the will to play one's role in common endeavors should be everywhere encouraged.

Praise is due to those national procedures which allow the largest possible number of citizens to participate in public affairs with genuine freedom. Account must be taken, to be sure, of the actual conditions of each people and the decisiveness required by public authority. If every citizen is to feel inclined to take part in the activities of the various groups which make up the social body, these must offer advantages which will attract members and dispose them to serve others ([Gaudium et spes](#), 31)

The characteristic implication of subsidiarity is participation, which is expressed essentially in a series of activities by means of which the citizen, either as an individual or in association with others, whether directly or through representation, contributes to the cultural, economic, political and social life of the civil community to which he belongs. Participation is a duty to be fulfilled consciously by all, with responsibility and with a view to the common good ([Compendium of the Social Doctrine of the Church](#), 189)

COMECE's contribution



In the area of EU citizenship, COMECE stresses, inter alia, the link between citizenship and democracy and the importance of active citizenship. A correct balance between rights and duties of EU citizens is also fostered. Especially in the context of the European Year 2013, the topic of EU citizenship has been reflected upon. In this setting, COMECE organised together with its ecumenical partners and the BEPA (European Commission) a Dialogue Seminar on this subject. The High-level meeting between the EU institutions and religious leaders was also devoted to it in 2013.

COMECE has published various documents linked with EU citizenship, such as:

- A Europe of Values, The ethical Dimension of the European Union
- “Building a better European home” Declaration of the COMECE Bishops in view of the the European Elections 4-7 June 2009
- “Declaration by the COMECE Bishops – European Elections 2014”
- Contributions to public consultations on the future of EU justice policies (2013) and on future funding activities in the area of Justice, Fundamental Rights and Equality for the period after 2013 (2011).



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