

Academic Advisory Panel to the National Taskforce for Human Rights Leadership  
Scotland's Future Relationship with the EU and the Development of Human Rights

## Scotland's Future Relationship with the EU and the Development of Human Rights under EU Law

Professor Tobias Lock\*

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### Explanatory Note

This briefing paper is one of a series written by the Academic Advisory Panel to the National Taskforce for Human Rights Leadership, which was established in 2019 in response to the recommendations made in December 2018 by the First Minister's Advisory Group on Human Rights. The aim of the briefing papers is to consider some of the legal complexities involved in translating international human rights treaties into domestic legislation.

For further information, please go to: <https://www.gov.scot/groups/national-taskforce-for-human-rights-leadership/>

### 1. Executive Summary:

- This briefing first outlines the sources of EU fundamental rights law with a specific focus on economic, social, cultural and environmental rights. As far as the EU Charter of Fundamental is concerned it presents the content of those rights and any relevant case law, though the latter is very limited to date.
- The briefing introduces the European Pillar of Social Rights and EU activities planned. While not binding hard law the European Pillar of Social Rights can provide inspiration for the work of the Task Force and will be an important area to watch.
- The briefing then moves to the broader Scottish constitutional context. It explores the legal limits arising from the devolution settlement, which mean that direct transposition of the Charter and of ECJ case law are not possible. Nonetheless, the Scottish Parliament can come up with its own version of the rights *inter alia* protected by EU law. As far as the 'keeping pace power' in the UK Withdrawal from the European Union (Continuity) (Scotland) Bill is concerned, the briefing shows that this is not a substitute for separate keeping pace arrangements for the purpose of human rights protection.
- The briefing identifies the need for effective monitoring of EU law developments to ensure 'keeping pace' can happen. The envisaged National Mechanism should be tasked with this role.

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\* Department of Law, Maynooth University, Ireland, [tobias.lock@mu.ie](mailto:tobias.lock@mu.ie)

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- The briefing finally discusses five challenges arising from EU law which the Task Force needs to be aware of and warns against blindly following EU law as this might endanger the ambition for Scotland to become a human rights leader.
- The Annex to this paper identifies rights (broadly) equivalent to Charter rights in other international human rights instruments.

### **2. Introduction and Background**

This paper addresses various ways (and their limits) in which Scotland could continue to benefit from human rights developments taking place in the European Union (EU) in light of Brexit.

Brexit was one of the factors that motivated the establishment of the First Minister's Advisory Group on Human Rights Leadership. In its recommendations the group noted that EU law – in particular the EU Charter of Fundamental Rights – provided one of two pillars of human rights protection in Scotland, the Human Rights Act being the other pillar.

The scope of the EU Charter is both wider and narrower than that of the Human Rights Act. It is narrower in that the Charter is only binding on Scottish public authorities where they are 'implementing EU law', i.e. where they are carrying out obligations under EU law – e.g. the Scottish Parliament passing legislation to implement an EU Directive or Police Scotland arresting a person following a European Arrest Warrant – or when they are restricting EU rights (e.g. the Scottish Parliament passing legislation on minimum pricing for alcohol).

The Charter is wider than the Human Rights Act in its substantive scope, however, in that it also protects a number of additional rights, many of which can be categorised as economic, social, cultural and environmental rights.

The Advisory Group recommended three guiding principles, which strongly suggest that the *status quo* before Brexit should be preserved and that future developments should be monitored and – where possibly – followed. The three guiding principles are:

1. Scotland should explore ways and means to ensure non-regression from existing guaranteed rights [implying that the rights guaranteed by EU law should continue to be guaranteed];
2. Scotland should explore how not to be left behind and to keep pace with future progressive developments in the EU [implying that Scotland should keep pace with developments at the EU-level so far as possible]; and
3. Scotland should explore how to continue to provide leadership across all human rights [implying that Scotland should strive to surpass achievements at the EU level].

These three principles are also reflected in the Task Force's terms of reference.

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This paper will first provide an overview of the relevant legal framework. In addition to the Charter of Fundamental Rights, it also introduces a more recent development at EU level: the European Pillar of Social Rights proclaimed in November 2017. It then outlines the legal limits to 'keeping pace' arising from the devolution settlement and in particular the Supreme Court's judgment in relation to the Scottish Continuity Bill. It then examines the (still) envisaged 'keeping pace' power contained in the new Continuity Bill introduced in June 2020 and its potential relevance for the work of the Task Force before briefly outlining the functions of the EU's Fundamental Rights Agency.

The paper will then discuss how the three guiding principles can best be realised in light of this legal framework.

### 3. Legal Framework

#### 3.1. EU Law

##### 3.1.1 The EU Charter of Fundamental Rights

The EU Charter of Fundamental Rights is of particular importance with regard to the Advisory Group's Recommendation 1, which envisages an Act of the Scottish Parliament that provides human rights leadership. The main change this Act will bring about relates to the protection of additional – primarily social, economic, cultural and environmental – rights, which cannot be found in the Human Rights Act with which the new Act will co-exist. The following discussion is therefore limited to identifying those Charter provisions that are not already mirrored in the Human Rights Act, i.e. particularly those that can be classed as belonging to the realm of economic, social, cultural and environmental rights.

There are therefore a number of **potential overlaps** between the provisions in the Charter and the substantive rights guaranteed in the prospective Act of the Scottish Parliament. It should be noted that the concrete content of many of the Charter provisions discussed in this section is still being developed. The Charter has only been in force for a little over ten years and the Court of Justice of the EU has not yet had the opportunity to further define the scope and limits of many provisions. Additionally, some of the provisions mirroring economic, social, cultural and environmental rights are not guaranteed as 'rights', but as 'principles' under the Charter. The distinction drawn by the Charter between rights and principles is somewhat idiosyncratic. Article 52 (5) of the Charter suggests that principles require implementation before they become judicially enforceable. And even where they are judicially enforceable, this enforceability is limited to the interpretation and the validity of acts implementing them. It is not yet clear what this limitation means precisely. It is suggested here that the distinction between rights and principles is not particularly relevant for the work of the Task Force, whose main interest is in the substance of these provisions. In due course the Court of Justice will clarify the meaning of the rights and principles contained in the Charter. Their limited justiciability under EU law is a matter that may delay this process, but in view of the Advisory Groups recommendations concerning non-regression and keeping pace this is not a prime concern.

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The following is a list of Charter rights that are of particular relevance to the work of the Task Force:

<p><b>Article 1 – Human Dignity</b></p> <p>Human dignity is inviolable. It must be respected and protected.</p>	<p>The Charter protects human dignity both as a right and as the key principle underpinning the entire Charter.</p> <p>There is some Court of Justice case law mentioning Article 1. As far as the domain of economic and social rights is concerned, the Court of Justice has held that: “human dignity within the meaning of that article requires the person concerned not finding himself or herself in a situation of extreme material poverty that does not allow that person to meet his or her most basic needs such as a place to live, food, clothing and personal hygiene, and that undermines his or her physical or mental health or puts that person in a state of degradation incompatible with human dignity”.<sup>1</sup></p>
<p><b>Article 14 – Right to education</b></p> <ol style="list-style-type: none"> <li>1. Everyone has the right to education and to have access to vocational and continuing training.</li> <li>2. This right includes the possibility to receive free compulsory education.</li> <li>3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.</li> </ol>	<p>Relevant in the context of a <b>right to education</b> as envisaged by the Advisory Group.</p> <p>The provision in the Charter is based on Article 2 Protocol 1 ECHR – which is incorporated into Scots law via the Human Rights Act and the Scotland Act.</p> <p>Article 14 (potentially) goes further than its ECHR equivalent as it expressly spells out that compulsory education must be free of charge (paragraph 2).</p> <p>The right has not yet been further defined by the Court of Justice.</p>

<sup>1</sup> Case C-233/18 *Haqbin* ECLI:EU :C:2019:956, para 46 (in the context of reception conditions for asylum seekers); see also Case C-163/17 *Jawo* ECLI:EU:C:2019:218, para 92.

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<p><b>Article 24 – the rights of the child</b></p> <p>1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.</p> <p>2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.</p> <p>3. Every child shall have 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.</p>	<p>Relevant in the context of <b>further specific rights (rights of children)</b>.</p> <p>Article 24 is one of two provisions in the Charter protecting the specific rights of children. It falls short of fully incorporating the rights of children under the UN Convention on the Rights of the Child. The other provision dealing with the specific rights of children is Article 32 (prohibition of child labour and protection of children at work).</p> <p>In the case law of the Court of Justice the provision has mainly been used to emphasise the importance of the 'best interest of the child' in various contexts, such as the treatment of refugees, family law proceedings, etc.</p>
<p><b>Article 25 – rights of the elderly</b></p> <p>The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.</p>	<p>Relevant in the context of an overarching <b>right to an adequate standard of living</b> (right to protection against poverty and social exclusion) and in the context of a <b>right to take part in cultural life</b>.</p> <p>This right is (partly) based on Article 23 of the revised European Social Charter.</p> <p>It has not been defined further by the Court of Justice.</p> <p>It should be noted that this is the only right to participation in cultural life found in the Charter. The limitation of that right to 'the elderly' stems from the overall purpose of Article 25, which is to ensure the full participation of elderly people in society.</p>

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<p><b>Article 26 – Integration of persons with disabilities</b></p> <p>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.</p>	<p>Relevant in the context of an overarching <b>right to an adequate standard of living</b> (right to protection against poverty and social exclusion), in the context of a <b>right to take part in cultural life</b> as well as <b>further specific rights (rights of persons with disabilities)</b>.</p> <p>Article 26 pursues aims similar to those of Article 25, which can be summed up as combatting social exclusion. It is notable that Article 26 – dealing with the participation of people with disabilities in society – does not expressly mention cultural life, though it is highly likely that ‘social integration’ and ‘participation in the life of the community’ are broad enough to capture participation in cultural life.</p> <p>The Court of Justice has not defined the content of Article 26 further.</p>
<p><b>Article 33 – Family and professional life</b></p> <p>1. The family shall enjoy legal, economic and social protection.</p> <p>2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.</p>	<p>Relevant in the context of the <b>right to social security and social protection</b>. This is particularly true for paragraph 1. Paragraph 2 has a workers’ rights focus and is therefore of less relevance to the work of the Task Force.</p> <p>Paragraph 1 is based on Article 16 of the European Social Charter.</p> <p>The Court of Justice expressly stated that paragraph 2 constituted a ‘fundamental social right’ (case C-222/14 <i>Maïstrellis</i>, para 39). It is open whether – in the Court’s view – this classification is limited to paragraph 2. Given that paragraph 2 can be seen as a mere concretisation of paragraph 1, there are good reasons to assume that paragraph 1 should also be classified in this manner.</p>
<p><b>Article 34 – Social security and social assistance</b></p> <p>1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency</p>	<p>Relevant in the context of an overarching <b>right to an adequate standard of living</b> and the <b>right to social security</b> as envisaged by the Advisory Group.</p> <p>Paragraphs 1 and 3 need to be pointed out in particular. They give a right to social security benefits and social protection as well as a right to social and housing assistance.</p>

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<p>or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.</p> <p>2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.</p> <p>3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.</p>	<p>This provision – which is based on Articles 12 and 13 of the European Social Charter – has not yet been interpreted further by the Court of Justice.<sup>2</sup></p>
<p><b>Article 35 – Health care</b></p> <p>Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices.</p> <p>A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities.</p>	<p>Relevant in the context of a <b>right to the enjoyment of the highest attainable standard of physical and mental health.</b></p> <p>This provision is based on Articles 11 and 13 of the European Social Charter. The Charter protects it as a 'principle' and not as a directly enforceable right.</p> <p>It should be noted that Article 35 must be read in the context of other Charter provisions, notably Articles 20 and 21, so that it must be understood as a <b>right to equal access to healthcare.</b></p> <p>The second sentence codifies the precautionary principle in relation to human health. This means, for instance, that when passing legislation on the regulation of pesticides, etc, the legislator must comply with this principle (See Case C-616/17 <i>Blaise</i>, para 42).</p>

<sup>2</sup> Note that it is not (yet) clear which elements of Article 34 contain a right and which contain a principle.

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<p><b>Article 36 – access to services of general economic interest</b></p> <p>The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaties, in order to promote the social and territorial cohesion of the Union.</p>	<p>This provision simply mirrors a provision contained in general EU law.</p> <p>It allows for services of a general economic interest – e.g. health care services, public transport, postal services, energy provision – to be subjected to public service obligations.</p>
<p><b>Article 37 – environmental protection</b></p> <p>A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.</p>	<p>This provision is relevant in the context of Advisory Group’s recommendation to enshrine a right to a healthy environment in Scots law.</p> <p>As is apparent from the wording of Article 37 of the Charter, the provision does not grant such a right. It merely contains an obligations – primarily directed at the EU legislature – to ensure a high level of environmental protection.</p>

**3.1.2 The European Pillar of Social Rights**

The European Pillar of Social Rights was launched in November 2017. It is a soft law instrument i.e. it is not itself legally binding or enforceable. That said, it has been endorsed by all EU institutions – i.e. at the highest political level – and can therefore be regarded as an agenda-setting document. The European institutions pursue the realisation of the Pillar with a mix of instruments: hard law (legislation) as well as soft law (monitoring of Member State performance against set benchmarks, etc). The Pillar of Social Rights is accompanied by a Commission staff document that contains useful explanations and sets out the Commission’s plans to realise the rights contained in the Pillar. The Commission’s legislative plans are – for obvious reasons of competence – confined to areas where the EU has the competence to legislate. This is primarily the case in the area of workers’ rights, etc, which are of less immediate interest to the Task Force. Nonetheless there may be important overlaps with core social rights, especially through the EU Commission’s Access to Social Security Initiative, which aims to improve access to social protection for workers and the self-employed. As this includes access to healthcare and social security – especially for those not in traditional employment relationships, viz. workers in the ‘gig economy’ – there may be a (partial) overlap with devolved competence and thus with the remit of the Task Force.

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The Pillar contains three chapters: equal opportunities and access to the labour market; fair working conditions; and – of particular relevance to the work of the Task Force – **social protection and inclusion**.<sup>3</sup>

The following rights are of interest to the work of the Task Force. They are all part of Chapter III of the Social Pillar. The following table will quote their wording – which may be of interest – and provide some commentary, especially based on the initiatives envisaged by the EU Commission in its Staff Document on the Social Pillar.

<p><b>11 Childcare and support to children</b></p> <p>a. Children have the right to affordable early childhood education and care of good quality.</p> <p>b. Children have the right to protection from poverty. Children from disadvantaged backgrounds have the right to specific measures to enhance equal opportunities.</p>	<p>There is an obvious overlap between 11 a and Article 14 of the Charter (right to education).</p> <p>The initiatives envisaged at the EU level are rather limited given the limits on the EU's competences in the area of education or social policy. The EU Commission is pursuing a reform of various employment-related directives with the aim of achieving a better work-life balance for workers.</p> <p>Additionally, there are plenty of flanking measures (largely not 'hard law') envisaged to combat exclusion of children from disadvantaged backgrounds.</p>
<p><b>15 Old age income and pensions</b></p> <p>a. Workers and the self-employed in retirement have the right to a pension commensurate to their contributions and ensuring an adequate income. Women and men shall have equal opportunities to acquire pension rights.</p> <p>b. Everyone in old age has the right to resources that ensure living in dignity.</p>	<p>This provision builds on Articles 25 and 34 of the Charter (see above).</p> <p>Due to limited competences, there are few concrete legislative initiatives envisaged.</p>

<sup>3</sup> The text of the European Pillar of Social Rights can be found here: [https://ec.europa.eu/commission/sites/beta-political/files/social-summit-european-pillar-social-rights-booklet\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/social-summit-european-pillar-social-rights-booklet_en.pdf).

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<p><b>16 Health care</b></p> <p>Everyone has the right to timely access to affordable, preventive and curative health care of good quality.</p>	<p>This provision is closely related to Article 35 of the Charter.</p> <p>The Union's activities here are limited to facilitating cross-border healthcare and technological assessment.</p>
<p><b>17 Inclusion of people with disabilities</b></p> <p>People with disabilities have the right to income support that ensures living in dignity, services that enable them to participate in the labour market and in society, and a work environment adapted to their needs.</p>	<p>This provision builds on Article 26 of the Charter. It is expressly rooted in the UNCRPD (according to the Commission Staff Working Document).</p> <p>The main Commission initiative in this regard is the European Accessibility Act (Directive (EU) 2019/882). The transposition period for this directive will expire after the end of the Brexit transition period, so that the UK will not be obliged to implement it.</p> <p>A further – still ongoing – Commission initiative relates to the extension of the prohibition of disability discrimination to goods and services as well as to social security and healthcare.</p>
<p><b>18 Long-term care</b></p> <p>Everyone has the right to affordable long-term care services of good quality, in particular home-care and community-based services.</p>	<p>This provision builds on Article 25 of the Charter.</p> <p>Due to limitations on EU competence in this area, the concrete efforts at EU level are limited to flanking measures, such as cross-border care situations or work-life balance proposals that would give employees more flexibility to act as carers.</p>
<p><b>19 Housing and assistance for the homeless</b></p> <p>a. Access to social housing or housing assistance of good quality shall be provided for those in need.</p> <p>b. Vulnerable people have the right to appropriate assistance and protection against forced eviction.</p>	<p>This provision builds on Article 34 (3) of the Charter.</p> <p>The EU's activities are very much limited to soft law activities: monitoring and assessing Member States' efforts in reforming social housing, the accessibility and affordability of housing, etc.</p>

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<p>c. Adequate shelter and services shall be provided to the homeless in order to promote their social inclusion.</p>	
<p><b>20 Access to essential services</b></p> <p>Everyone has the right to access essential services of good quality, including water, sanitation, energy, transport, financial services and digital communications. Support for access to such services shall be available for those in need.</p>	<p>This provision builds on Article 36 of the Charter.</p> <p>The EU possesses competence in some areas that are relevant, especially concerning the environment (clean water), (public) transport, etc.</p> <p>There are thus a number of initiatives – based on competences to regulate the internal market broadly understood – that will be used to ensure access to essential services.</p>

### 3.2 Legal limits arising from the devolution settlement

As far as the desire to keep step with EU law is concerned, there are legal limits arising from the devolution settlement, in particular the European Union (Withdrawal) Act 2018 and the UK Supreme Court's judgment on the Continuity Bill.<sup>4</sup>

The European Union (Withdrawal) Act 2018 is a statute protected – by way of s. 29 and Schedule 4 of the Scotland Act 1998 – from modification by the Scottish Parliament. So far as the work of the Task Force is concerned, the following provisions of the European Union (Withdrawal) Act 2018 in particular cannot therefore be modified:

- s. 5 (4): “The Charter of Fundamental Rights is not part of domestic law on or after exit day.”
- s. 6 (1): “A court or tribunal (a) is not bound by any principles laid down, or any decisions made, on or after exit day by the European Court, and (b) cannot refer any matter to the European Court on or after exit day”.
- Schedule 1, para 3 (1): “There is no right of action in domestic law on or after exit day based on a failure to comply with any of the general principles of EU law”.

As confirmed by the UK Supreme Court,<sup>5</sup> these limits to the legislative powers of the Scottish Parliament mean that an Act of the Scottish Parliament cannot incorporate the Charter of Fundamental Rights into Scots law. Furthermore, it cannot provide for a right of action under Scots law so far as unwritten EU fundamental rights (viz. general principles) are

<sup>4</sup> The UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill, Reference by the Attorney General and the Advocate General for Scotland, [2018] UKSC 64.

<sup>5</sup> Ibid, paras 102 and 108.

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concerned. Finally, it cannot legislate that courts or tribunals are bound by the European Court of Justice's case law on fundamental rights.

However, this does not prevent the Scottish Parliament from enacting its own version of the fundamental rights protected by EU law, in particular the Charter (provided, of course, that it does not transgress any other limits to its legislative powers). It also does not prevent the Scottish Parliament from legislating that developments at EU level (including Court of Justice case law) should be monitored, reported on, and – if desirable – brought into Scots law, e.g. by way of primary or secondary legislation or simply by way of internal directions for public authorities.

Hence the Scottish Parliament's scope for legislative action is not severely restricted by the EU (Withdrawal) Act 2018.

### **3.3 Proposed "keeping pace power" – the UK Withdrawal from the European Union (Continuity) (Scotland) Bill**

The Scottish Parliament passed the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill in March 2018. In a judgment handed down in December 2018 the Supreme Court, however, held that that Bill was largely outwith the Scottish Parliament's legislative competence. Section 13 – on keeping pace with EU developments – was not affected by the Supreme Court's judgment.

In June 2020 the Scottish Government introduced the UK Withdrawal from the European Union (Continuity) (Scotland) Bill ("new Continuity Bill"), which contains a very similar 'keeping pace' provision to the 2018 Bill. It is worth discussing the potential implications of the keeping pace provision for the work of the Task Force.

Section 1 (1) (a) of the new Continuity Bill – entitled 'Power to make provision corresponding to EU law' – provides as follows:

(1) The Scottish Ministers may by regulations—

(a) make provision—

(i) corresponding to an EU regulation, EU tertiary legislation or an EU decision,

(ii) for the enforcement of provision made under sub-paragraph (i) or otherwise 15 to make it effective,

(iii) to implement an EU directive, or

(iv) modifying any provision of retained EU law relating to the enforcement or implementation of an EU regulation, EU tertiary legislation, an EU decision or an EU directive,

so far as the EU regulation, EU tertiary legislation, EU decision or EU directive has effect in EU law after IP completion day [...].

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The keeping pace power in the new Continuity Bill is rather complex. The following characteristics are particularly noteworthy:

- The power is confined to replicating EU legislation in Scots law. This means that any developments that are non-legislative in nature, in particular developments in case law (interpretation of Charter rights, for instance), soft law developments (e.g. under the European Pillar of Social Rights) or policy developments are not covered. The powers contained in the Bill are so-called Henry VIII powers as they allow the Scottish Government to 'make any provision that could be made by an Act of the Scottish Parliament'.<sup>6</sup>
- The keeping pace power is furthermore limited to the competences of the Scottish Parliament under the Scotland Act. This means that it will probably have only limited applicability as far as the work of the Task Force is concerned: first, the EU itself does not possess far-reaching legislative powers in the field of economic and social rights (broadly conceived); and where it does, in particular in employment law, the Scottish Parliament's powers are fairly limited. Hence the main area where the 'keeping pace' provision would overlap with the work of the Task Force is in the field of environmental rights (additionally, on the specific environmental provisions in the Bill see below).
- The exercise of the keeping pace power is in the discretion of the Scottish Ministers. This includes both a discretion as to whether EU law developments should be followed at all; and if so, there is some discretion as to what elements to omit (in paragraph 2) in order to adapt the law to the Scottish context.
- The power under the new Continuity Bill is furthermore time-limited: it is meant to last for an initial 10 years with the option of further five year extensions. This is considerably longer than the time-limit in the original Bill (three years). Judging from the legislative history of the original Bill where the Scottish Government originally proposed a longer time-limit, there is a realistic chance that the 10 year time limit will be amended during the passage of the Bill.
- The new Continuity Bill furthermore contains an interesting development concerning **EU environmental law**. According to section 9 it maintains the guiding principles on the environment – found in Article 191 (2) TFEU and also protected by Article 37 of

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<sup>6</sup> See section 1 (6) of the Bill.

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the Charter of Fundamental Rights<sup>7</sup> – in Scots law. According to section 10 (1) of the Bill, 'Scottish Ministers must, in developing policies (including proposals for legislation) have regard to the guiding principles on the environment'.

Assuming that the keeping pace power is not amended substantially in the parliamentary process, one can therefore conclude that:

- a) there will probably only be little practical overlap with whatever the Task Force will recommend;
- b) the time-limit on the power means that the Task Force needs to consider its own mechanisms to ensure that Scotland is not left behind any progressive developments at the EU level.
- c) Section 10 of the Bill (concerning the guiding principles on the environment) is a noteworthy example of a 'due regard' clause within the broad remit of the Task Force even though it falls short of the ambitions of the Advisory Group's recommendation to provide for duties to comply.

### **3.4 An institutional dimension: the EU Fundamental Rights Agency**

The EU's Fundamental Rights Agency (FRA) has the role to provide EU institutions and Member States with "assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights".<sup>8</sup> The FRA acts independently and helps to safeguard the rights contained the EU Charter of Fundamental Rights by: collecting and analysing data, providing evidence on rights, identifying trends and collecting and analysing comparable data, helping with better law-making and implementation, supporting rights-compliant policy responses and by strengthening cooperation and ties between fundamental rights actors.

Full participation in the FRA is limited to EU Member States, but it is open to candidate countries and countries with which the EU has concluded an association agreement. While Scotland is part of the UK, the former option is perhaps unrealistic. Yet it is relatively likely that the EU and the UK will conclude an association agreement to regulate their future relationship, which would mean that the UK could be given an observer status at the FRA. Importantly, that observer status could only be granted to the UK and not to Scotland.<sup>9</sup>

If the UK decides not to ask for observer status, then Scotland's options of direct and formal interaction with the FRA are very limited. However, the FRA is actively engaged in exchanges

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<sup>7</sup> See the Explanations to the Charter in respect of Article 37.

<sup>8</sup> See Article 2 of Regulation 168/2007 establishing the European Union Agency for Fundamental Rights [2007] OJ L53/1.

<sup>9</sup> See Article 28 of the Regulation which mentions 'countries' with which an association agreement has been concluded.

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with other international organisations active in the field of human rights, notably the Council of Europe, the OSCE and the United Nations. Furthermore, much of the FRA's work is in the public domain and can be easily accessed. Thus any monitoring of EU developments on the part of Scotland should include the monitoring of FRA activities.

### **3.5 Influence of future EU-Scotland relationship**

The future relationship between the EU and Scotland is difficult to predict. Obviously, if Scotland became independent it could decide to join the EU or, failing that, formulate its own relationship with the EU.

For as long as Scotland is part of the UK, however, the baseline of Scotland's relationship with the EU is determined by the overall EU-UK relationship. At the time of writing it is not yet clear whether the EU and UK negotiators will be able to agree an agreement on the future relationship or whether the relationship will – at least temporarily – be based on general international law rules (i.e. without a 'deal').

If an agreement is concluded, it will probably take the form of an association agreement under EU law – which would open up possibilities to collaborate with EU agencies, such as the FRA. The precise content of the agreement is, of course, difficult to predict. The EU's negotiating directives envisage that the UK commits to continued membership of the European Convention on Human Rights as a pre-requisite for cooperation in the fields of criminal law and security. Furthermore, the EU envisages that the UK signs up to so-called 'level playing field' obligations, which include the continued adherence to EU workers' rights and labour law standards. Whether these commitments will be part of the future relationship agreement – and if so which precise form they will take – is however unclear given that the UK does not wish to make these kinds of commitments. It should be noted that there are no demands on part of the EU that the UK sign up to social rights beyond workers' rights.

In conclusion, the overall EU-UK relationship will have few implications for the work of the Task Force.

## **4. Discussion**

### **4.1 Identification of essential features to be included in the guidance to facilitate the rights and their content:**

On the basis of the Advisory Group's three guiding principles, which are also reflected in the Task Force's terms of reference, it is suggested that the *status quo* of EU law should be regarded as a baseline for the Task Force's work. This means that in order to achieve the aim of **non-regression** the Task Force should recommend that **as a minimum the rights contained in the Charter** should be guaranteed by the envisaged Act of the Scottish Parliament.

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EU law does not, however, guarantee the full gamut of economic, social, cultural and environmental rights. The Charter often only guarantees them as so-called principles, i.e. not directly enforceable and justiciable rights. This is for example particularly obvious where environmental protection is concerned: Article 37 of the Charter merely obliges the EU institutions to guarantee a high level of protection, but it does not give any individual an enforceable right. For these reasons a mere transposition of into Scots law – a 'copy and paste job' – would not achieve the ambition of human rights leadership.

The (non-binding) European Pillar of Social Rights uses rights-language throughout and could therefore serve as a better role model in the work of formulating rights as they might appear in legislation.

### **4.2 Discussion of the merits and drawbacks of any alignment with future developments at the EU level**

As far as the Advisory Group's second guiding principle – keeping pace with developments elsewhere – is concerned, an obvious place to look to is the EU.

The **merits** of this approach are fairly obvious: Scotland would not miss out on important developments and Scotland would – in rights terms – not be worse off than if it had continued to be in the EU.

Keeping pace with EU law developments brings with it certain **challenges**, however, which – if not responded to well – may lead to counterproductive results.

First, there is the practical challenge of keeping up-to-date with EU law developments. These developments happen in numerous places and are not necessarily coordinated. Case law developments require a constant monitoring of the judgments by the European Court of Justice and the General Court of the EU. Legislative developments require a monitoring of EU legislative processes and in particular of the European Commission's agenda given that the European Commission is the sole initiator of legislation at the EU level. Soft law developments are mainly driven by the European Commission. Due to their nature – expressed in benchmarks and 'softer' language - they are harder to identify, which requires an additional monitoring effort. Finally, developments at the Member State level – where the vast bulk of human rights enforcement and implementation is taking place, are particularly hard to track. This is where the work of the FRA might become invaluable.

The **second challenge** is that EU law developments are often not solely motivated by human rights concerns. The EU is not a human rights organisation. It protects human rights, but this is not its main function. Other considerations – such as economic development; security; appeasing certain pressure groups – also have influence over the EU's policy agenda. This is already apparent in the Charter itself, where the at times watered down versions of economic, social, cultural and environmental rights were motivated by extrinsic factors.

This leads to the **third challenge** which is to avoid contradiction with the third of the guiding principles: the provision of leadership. EU law developments may not always be progressive

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– or at least not as progressive as they could be. If Scotland wants to be a leader in human rights development, then any EU law developments should be treated as the minimum standard to be followed, but there should always be the ambition to explore whether Scotland could provide better protection. Hence keeping pace should not stall Scotland's leadership ambitions.

The **fourth challenge** in this regard is how the ambition to keep pace with EU law developments can best be coordinated with the 'keeping pace' provision in the re-drafted Continuity Bill. The discussion above already pointed both to the time-limited character of the keeping pace clause and to its limitation to legislative developments at EU level, which means that the Task Force should formulate its own proposals in this regard both for monitoring and for the actual process of keeping pace. Additionally, the Task Force should be aware of the challenge that following EU law legislative developments can sometimes mean a sub-optimal and under-ambitious realisation of fundamental rights goals so that there is a potential tension between the envisaged clause in the re-worked Continuity Bill and anything the Task Force may recommend.

The **fifth challenge** relates to effective monitoring. This could best be achieved by tasking the envisaged National Mechanism (Advisory Group recommendation No 4) with also monitoring developments at the EU level. It will also be important to work out how Scotland would react to developments at other levels: should there be a clause akin to section 1 of the new Continuity Bill, i.e. a clause that would give the Government powers to pass secondary legislation? The drawbacks of such a solution are obvious: there would be Government discretion, the process would not be transparent, and the formulation of fundamental human rights should be the responsibility of the legislature. Hence a reporting duty to the Scottish Parliament would seem more appropriate. This could be coupled with a right to legislative initiative.

## 5. Conclusions and Recommendations

On the basis of the above discussions, the following recommendations are made:

1) While the Task Force should ensure that the economic, social, cultural and environmental rights found in the EU Charter of Fundamental Rights continue to be guaranteed, the Task Force should aim to go beyond the Charter. The provisions in the Charter are tailored to the specific EU law context and a mere transposition (copy&paste) into Scots Law cannot be recommended. The European Pillar of Social Rights can serve as a more suitable source of inspiration in this regard. Going beyond the Charter would also help achieve Scotland's leadership ambitions in the field of human rights protection.

2) While the devolution settlement prevents a direct incorporation of the EU Charter of Fundamental Rights and direct reliance on EU Court of Justice case law, the Scottish Parliament can – and should – still enact its own version of the rights currently guaranteed under EU law.

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3) The Task Force should make adopt its own tailored recommendations for keeping pace with developments at the EU level. The 'keeping pace' provision envisaged by the new Continuity Bill is not a suitable substitute as it suffers from too many limitations, such as a time-limit; a limitation to legislative developments; and a limitation in terms of scope.

4) The Task Force should task the envisaged National Mechanism with monitoring developments at the EU level. The monitoring activities should cover legislative developments; case law developments; soft law developments; as well as developments in the EU Member States, which are best monitored by following the activities of the EU Fundamental Rights Agency. The National Mechanism should be obliged to report on these developments to the Scottish Parliament on a regular basis.

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**Annex: Charter rights and their equivalents/sources of inspiration**

Charter provision	European Pillar of Social Rights	(revised) European Social Charter	International Covenant on Economic, Social and Cultural Rights	Other sources
<p><b><u>Article 1 Human dignity</u></b></p> <p>Human dignity is inviolable. It must be respected and protected.</p>			<p><b><u>Preamble</u></b></p> <p>Recognizing that these rights derive from the inherent dignity of the human person,</p>	<p><b><u>Preamble UDHR</u></b></p> <p>Whereas <b>recognition of the inherent dignity</b> and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,                  [...]                  Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, <b>in the dignity and worth of the human person</b> and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,</p> <p><b><u>Article 1 UDHR</u></b></p> <p><b>All human beings are born free and equal in dignity and rights.</b> They are endowed with reason and conscience and should act</p>

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				towards one another in a spirit of brotherhood.
<p><b><u>Art 14 Right to education</u></b></p> <p>1. Everyone has the right to education and to have access to vocational and continuing training.</p> <p>2. This right includes the possibility to receive free compulsory education.</p> <p>3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.</p>	<p><b><u>Article 1</u></b></p> <p>Education, training and life-long learning</p> <p>Everyone has the right to quality and inclusive education, training and life-long learning in order to maintain and acquire skills that enable them to participate fully in society and manage successfully transitions in the labour market.</p>	<p><b><u>Article 10</u></b></p> <p>The right to vocational training</p> <p>With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake:</p> <p>1 to provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped, in consultation with employers' and workers' organisations, and to grant facilities for access to higher technical and university education, based solely on individual aptitude;</p> <p>2 to provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employments;</p> <p>3 to provide or promote, as necessary:</p> <p>a. adequate and readily available training facilities for adult workers;</p>	<p><b><u>Article 13</u></b></p> <p>1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.</p> <p>2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:</p> <p>(a) Primary education shall be compulsory and available free to all;</p>	<p><b><u>Art 2 Prot 1 ECHR</u></b></p> <p>Right to education</p> <p>No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.</p>

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		<p>b. special facilities for the retraining of adult workers needed as a result of technological development or new trends in employment;</p> <p>4 to provide or promote, as necessary, special measures for the retraining and reintegration of the long-term unemployed;</p> <p>5 to encourage the full utilisation of the facilities provided by appropriate measures such as:</p> <p>a. reducing or abolishing any fees or charges;</p> <p>b. granting financial assistance in appropriate cases;</p> <p>c. including in the normal working hours time spent on supplementary training taken by the worker, at the request of his employer, during employment;</p> <p>d. ensuring, through adequate supervision, in consultation with the employers' and workers' organisations, the efficiency of apprenticeship</p>	<p>(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;</p> <p>(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;</p> <p>(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;</p> <p>(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.</p> <p>3. The States Parties to the present Covenant undertake to</p>	
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		and other training arrangements for young workers, and the adequate protection of young workers generally.	<p>have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.</p> <p>4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.</p>	
<p><b><u>Art 24 The rights of the child</u></b></p> <p>1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in</p>	<p><b><u>Article 11 Childcare and support to children</u></b></p> <p>Children have the right to affordable early childhood education and care of good quality.</p>	<p><b><u>Article 17 - The right of children and young persons to social, legal and economic protection</u></b></p> <p>With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment</p>		<p><b><u>Convention on the Rights of the Child</u></b></p> <p><b><u>Article 3</u></b></p> <p>1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of</p>

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<p>accordance with their age and maturity.</p> <p>2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.</p> <p>3. Every child shall have 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.</p>	<p>Children have the right to protection from poverty. Children from disadvantaged backgrounds have the right to specific measures to enhance equal opportunities.</p>	<p>which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:</p> <p>1. a. to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;</p> <p>b. to protect children and young persons against negligence, violence or exploitation;</p> <p>c. to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;</p>		<p>law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.</p> <p>2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.</p> <p>3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.</p> <p><b>Article 9</b></p> <p>1. States Parties shall ensure that a child shall not be separated from his or her parents against their will,</p>
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		<p>2. to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.</p>		<p>except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.</p> <p>2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.</p> <p>3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.</p> <p>4. Where such separation results from any action</p>
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				<p>initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.</p> <p><b><u>Article 12</u></b></p> <p>1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.</p>
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				<p>2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.</p> <p><b><u>Article 13</u></b></p> <p>1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.</p> <p>2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:</p> <p>(a) For respect of the rights or reputations of others; or</p> <p>(b) For the protection of national security or of public</p>
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				order (ordre public), or of public health or morals.
<p><b><u>Art 25 The rights of the elderly</u></b></p> <p>The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.</p>	<p><b><u>Article 15 Old age income and pensions</u></b></p> <p>Workers and the self-employed in retirement have the right to a pension commensurate to their contributions and ensuring an adequate income. Women and men shall have equal opportunities to acquire pension rights.</p> <p>Everyone in old age has the right to resources that ensure living in dignity.</p> <p><b><u>Article 18 Long-term care</u></b></p> <p>Everyone has the right to affordable long-term care services of good quality, in particular home-care and community-based services.</p>	<p><b><u>Article 23 – The right of elderly persons to social protection</u></b></p> <p>With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:</p> <p>– to enable elderly persons to remain full members of society for as long as possible, by means of:</p> <p>a. adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;</p> <p>b. provision of information about services and facilities available for elderly persons and their opportunities to make use of them;</p> <p>– to enable elderly persons to choose their life-style freely and to lead independent lives</p>	<p>Article 15</p> <p>1. The States Parties to the present Covenant recognize the right of everyone:</p> <p><b>(a) To take part in cultural life;</b></p> <p>(b) To enjoy the benefits of scientific progress and its applications;</p> <p>(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.</p> <p>2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.</p> <p>3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.</p>	

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		<p>in their familiar surroundings for as long as they wish and are able, by means of:</p> <p>a. provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;</p> <p>b. the health care and the services necessitated by their state;</p> <p>– to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.</p>	<p>4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.</p>	
<p><b><u>Art 26 Integration of persons with disabilities</u></b></p> <p>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.</p>	<p><b><u>Article 17 Inclusion of people with disabilities</u></b></p> <p>People with disabilities have the right to income support that ensures living in dignity, services that enable them to participate in the labour market and in society, and a work environment adapted to their needs.</p>	<p><b><u>Article 15 –The right of persons with disabilities to independence, social integration and participation in the life of the community</u></b></p> <p>With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in</p>		

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		<p>the life of the community, the Parties undertake, in particular:</p> <p>1 to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private;</p> <p>2 to promote their access to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialised placement and support services;</p> <p>3 to promote their full social integration and participation in the life of the community in</p>		
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		particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure.		
<p><b><u>Art 32 Prohibition of child labour and protection of young people at work</u></b></p> <p>The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.</p> <p>Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.</p>		<p><b><u>Article 7 – The right of children and young persons to protection</u></b></p> <p>With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:</p> <p>1 to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;</p> <p>2 to provide that the minimum age of admission to employment shall be 18 years with respect to prescribed occupations regarded as dangerous or unhealthy;</p> <p>3 to provide that persons who are still subject to compulsory</p>	<p><b><u>Article 10 (3)</u></b></p> <p>3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.</p>	<p><b><u>Article 32 Children's Rights Convention</u></b></p> <p>1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.</p> <p>2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:</p>

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		<p>education shall not be employed in such work as would deprive them of the full benefit of their education;</p> <p>4 to provide that the working hours of persons under 18 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training;</p> <p>5 to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances;</p> <p>6 to provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day;</p> <p>7 to provide that employed persons of under 18 years of age shall be entitled to a minimum of four weeks' annual holiday with pay;</p> <p>8 to provide that persons under 18 years of age shall not be employed in night work with the exception of certain</p>		<p>(a) Provide for a minimum age or minimum ages for admission to employment;</p> <p>(b) Provide for appropriate regulation of the hours and conditions of employment;</p> <p>(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.</p>
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		<p>occupations provided for by national laws or regulations;</p> <p>9 to provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control;</p> <p>10 to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.</p>		
<p><b><u>Art 33 Family and professional life</u></b></p> <p>1. The family shall enjoy legal, economic and social protection.</p> <p>2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.</p>		<p><b><u>Article 16 – The right of the family to social, legal and economic protection</u></b></p> <p>With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.</p>	<p><b><u>Article 10</u></b></p> <p>The States Parties to the present Covenant recognize that:</p> <p>1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free</p>	

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			<p>consent of the intending spouses.</p> <p>2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.</p> <p>3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.</p>	
<b><u>Art 34 Social security and social assistance</u></b>	<b><u>Article 12 Social protection</u></b>	<b><u>Article 12 – The right to social security</u></b>	<b><u>Article 9</u></b>	

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<p>1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.</p> <p>2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.</p> <p>3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.</p>	<p>Regardless of the type and duration of their employment relationship, workers, and, under comparable conditions, the self-employed, have the right to adequate social protection.</p> <p><b><u>Article 19 Housing and assistance for the homeless</u></b></p> <p>a. Access to social housing or housing assistance of good quality shall be provided for those in need.</p> <p>b. Vulnerable people have the right to appropriate assistance and protection against forced eviction.</p> <p>c. Adequate shelter and services shall be provided to the homeless in order to promote their social inclusion.</p>	<p>With a view to ensuring the effective exercise of the right to social security, the Parties undertake:</p> <p>1 to establish or maintain a system of social security;</p> <p>2 to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security;</p> <p>3 to endeavour to raise progressively the system of social security to a higher level;</p> <p>4 to take steps, by the conclusion of appropriate bilateral and multilateral agreements or by other means, and subject to the conditions laid down in such agreements, in order to ensure:</p> <p>a. equal treatment with their own nationals of the nationals of other Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake</p>	<p>The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.</p> <p><b><u>Article 11</u></b></p> <p>1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.</p>	
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		<p>between the territories of the Parties;</p> <p>b. the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Parties.</p> <p><b><u>Article 30 – The right to protection against poverty and social exclusion</u></b></p> <p>With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:</p> <p>a. to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;</p>		
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		<p>b. to review these measures with a view to their adaptation if necessary.</p> <p><b><u>Article 31 – The right to housing</u></b></p> <p>With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:</p> <p>1 to promote access to housing of an adequate standard;</p> <p>2 to prevent and reduce homelessness with a view to its gradual elimination;</p> <p>3 to make the price of housing accessible to those without adequate resources.</p>		
<p><b><u>Art 35 Health care</u></b></p> <p>Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and</p>	<p><b><u>16 Health care</u></b></p> <p>Everyone has the right to timely access to affordable, preventive and curative health care of good quality.</p>	<p><b><u>Article 11 – The right to protection of health</u></b></p> <p>With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed inter alia:</p>	<p><b><u>Article 12</u></b></p> <p>1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.</p> <p>2. The steps to be taken by the States Parties to the present</p>	

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<p>implementation of all the Union's policies and activities.</p>		<p>1 to remove as far as possible the causes of ill-health;</p> <p>2 to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;</p> <p>3 to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.</p> <p><b><u>Article 13 – The right to social and medical assistance</u></b></p> <p>With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:</p> <p>1 to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;</p>	<p>Covenant to achieve the full realization of this right shall include those necessary for:</p> <p>(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;</p> <p>(b) The improvement of all aspects of environmental and industrial hygiene;</p> <p>(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;</p> <p>(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.</p>	
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		<p>2 to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;</p> <p>3 to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;</p> <p>[...]</p>		
<p><b><u>Art 36 Access to services of a general economic interest</u></b></p> <p>The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaties, in order to promote the social and territorial cohesion of the Union.</p>	<p><b><u>Article 20 Access to essential services</u></b></p> <p>Everyone has the right to access essential services of good quality, including water, sanitation, energy, transport, financial services and digital communications. Support for access to such services shall be available for those in need.</p>			
<p><b><u>Art 37 Environmental protection</u></b></p> <p>A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of</p>				

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the Union and ensured in accordance with the principle of sustainable development.				
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