

Simulation of the EU Fundamental Rights Convention



Position Paper of the Republic of Estonia

regarding

The Draft of a Charter of digital fundamental rights of the European Union

Recognizing the fundamental change that the advance and expansion of digital technologies caused, causes and will cause in every aspect of our modern lives, we believe it is an urgent necessity that these new circumstances are taken into account when it comes to the protection of fundamental rights.

In view of the increasing digitization in all spheres of life, we acknowledge the rise of new challenges and legal questions. This applies in particular when fundamental rights are at stake. Therefore, the state of Estonia welcomes the idea of a charter of fundamental rights

We see the opportunities and risks of the digital era, but we weigh the upsides much higher than the potential detriments. The Charter should not be led by a fear of the advancement of recent technologies. It should recognize the huge positive impact of the digitization for the society.

The digitization can facilitate citizens interactions with the state using electronic solutions. Our citizens use e-services like e-Voting, e-Tax, e-Business, e-Banking, e-Tickets and e-School, among others.

Therefore, we should not question the technology itself, but the way it is used. The Charter should function as a legal framework to ensure that digitization can benefit all citizens in the European Union equally. The great accomplishment of the fundamental rights protection on the EU level should be transitioned into this current and future era of digitization.

Statement of Position

The digitization will continue in every sphere of life. Therefore, it is our duty today to provide a charter that remains effective and beneficial despite the constant change this era brings. In the last couple of years we have seen technological progress and the rise of innovative technologies of unimaginable extent. Nonetheless, the Charta is meant to persist many decades. For this reason, it is unfavourable to focus on current technologies and concrete debates. Therefore, **Art. 2 p1** should be erased.

For the charter to be enforceable vis-à-vis private individuals, as laid down in **Art. 1 p3** of the draft, would be an absolute novelty in the tradition of European Charters of fundamental rights. We are not convinced that this step is neither necessary nor practical but think that our traditional understanding of fundamental rights as rights that citizens have vis-à-vis their state has proven as effective and should be continued. Following this line of thought, **Art. 5 p3** of the draft should read "State agencies shall be required to enforce paragraphs 1, 2 and 3."

We highly emphasize the rights laid down in the **Articles 2, 3, 4** and **5**. Despite some of these rights already being part of existing law (as is **Article 10**) we appreciate the emphasis on these also in the digital sphere, as they protect values absolutely fundamental for our understanding of humanity and democracy. However, we think **Article 5 p3** is worthy of discussion, especially how such steps could look like and whether it should be the task of the state to provide such a forum for discussion.

Estonia appreciate the principles laid down in the **Articles 7** and **8**. However, **Article 8** is worthy of discussion, especially the precise relationship between those two Articles (i.e. **Article 7** and **Article 8 p1**) and the exact content of **Article 8 p2**.

We welcome the ratio of the **Articles 9, 10** and **11**.

Considering, that Estonia uses an e-voting system since 2005, we affirm the idea of **Article 14**, that complies with our national legislation. Voting via SMS or the internet should be possible, but should never be the only option possible. The use of new digital technologies should not prevent anyone from participating in the public sphere.

Noting the importance of access to the internet in order to participate actively in a digitalized society, we emphasize the importance of **Article 15**. Since the adoption of our national Telecommunications Act in 2000, internet services are universally available to all subscribers regardless of their geographical location and at a uniform price.

We are emphasizing the value set out in **Article 16**.

We confirm the importance of digital education (**Art. 20**), whereas we think **Article 17** and **21** are worthy of discussion. **Article 17** simply names states objectives. These are already sufficient covered through the national Constitutions and the existing legislation. It is not an internet-specific right.

A right to request erasure of personal data is already included in the General Data Protection Regulation (Article 17). This protection is sufficient, a broader scope of protection as laid down in **Article 18** is not necessary. A general right to be forgotten goes beyond what is necessary for an effective data protection and is also unprecedented in the “analogue-sphere”.

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