POSITION PAPER OF THE

European Parliament

Concerning the Charter of Digital Fundamental Rights of the European Union

Due to its rapid growth and development, the digital world has taken a fundamental role within our society. Social media, forms of artificial intelligence and cloud storage have become parts of our daily life. While these developments include many advantages, they also pose a threat to the fundamental rights of the citizens of the European Union. Therefore, the European Union and its member States must safeguard the rights of their citizens in the most adequate and effective fashion. This must be done by regulating the collection and usage of information by state organs and private entities. In light of the European unity and understanding the high importance of such regulations, a "*Charter of digital fundamental rights of the European Union"* was drafted and introduced.

I. General position concerning a charter for digital fundamental rights of the European Union

The European Parliament welcomes the aspiration for a charter of digital fundamental rights of the European Union (the Charter) as part of European primary law. It is the contention of the Parliament that the adequate and effective protection of the digital rights of the European citizens is of the utmost importance. The European Union must make itself capable of counteracting new threats emerging from technological development in the digital age. The members of the Union are united in their shared core values, including the protection and realization of fundamental rights. Due to the high level of an individual's vulnerability when it comes to virtual data, the European Union has already taken measures of protection. In 2016, the General Data Protection Regulation was passed, which is directly enforceable vis-a-vis State organs and private entities.[1] These rights are based on Articles 1, 7, 8, 11, 14, 21, 47 and 52 of the Charter of Fundamental Rights of the European Union (CFR)[2]. It is the strong belief of the Parliament that including further digital fundamental rights into the primary law of the European Union by means of the Chater will guarantee additional protection to citizens, as all European directives and regulations must be compatible with primary law. Moreover, the Charter would make it more evident for citizens which rights they are endowed with. Therefore, the European Parliament fully supports the Charter.

However, in order to create legal certainty for citizens, the relationship between the Charter and the CFR must be addressed. Rights, which are already appropriately protected under the

[1] Regulation (EU) 2016/679 of the European Parliament and the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repelling directive 95/64/EC (General Data Protection Regulation).
[2] Official Journal of the European Union [2007], C 303/1.

CFR, shall not be reiterated in the Charter. This change is necessary to prevent the misconception that fundamental rights, including but not limited to Articles 1, 7, 8, 11, 14, 21, 47 CFR, do not already apply in the digital sphere.

II. Specific position concerning a Charter for digital fundamental rights of the European Union

1. Private entities

The European Parliament explicitly welcomes that private entities are directly addressed by the Charter, specifically in Articles 1 (3) and 5 (4). It is the contention of the Parliament that the easy access of private entities to data and the lack of regulation of such usage may constitute a significant threat to the digital rights of the citizens of the European Union. These rights must be safeguarded in the most adequate and effective fashion. The regulation of such data usage must counteract any misuse for commercial purposes in a legally precise manner and must aim to establish appropriate virtual behaviour of users.

However, private entities possibly infringing rights are themselves safeguarded by the CFR and the Charter. Therefore, the Charter must clearly stipulate which Articles apply to private entities and how their rights are appropriately taken into consideration. The Parliament suggests a title to be added which enumerates all Articles applying to private entities. These include but are not limited to Articles 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 18, 19, 22 of the Charter. This enhances legal certainty for those private entities subjected to the Charter.

2. Prevention of digital harassment

Due to virtual anonymity and the widespread reach of the internet, the power of digital discrimination and hate speeches is multiplied. Thus, digital harassment requires regulation. Article 5 (2) of the Charter is of outstanding importance to create a cyber space, which safeguards the rights and freedoms of all citizens. However, the relationship between freedom of expression and the prevention of digital harassment must be determined in the Charter itself. This determination must recognize the outstanding importance of the freedom of expression to a democratic society. Otherwise, the Charter risks the failure of protecting also those individuals voicing their opinions online. The Parliament strictly opposes all forms of censorship.

3. Changes to specific provisions

Furthermore, the European Parliament finds the wording of Article 8 (2) of the Charter misleading. It is the strong belief of the Parliament that fundamental rights apply in all areas. Therefore, the wording "in areas in which fundamental rights apply" shall be removed from the wording of said Article.

Regarding Article 18 of the Charter, the European Parliament suggests to clarify that this not only includes the right to obtain erasure from a controller of personal data but must also include a legal obligation of controllers to ensure that third controllers erase data if so requested by the concerned individual.

4. Applicability of the Charter

The Parliament welcomes that as opposed to Art 51 (1) 1 CFR, the Charter is binding to member State organs in any given situation, even when applying only national law. The Parliament believes that this is an essential measure to assure the appropriate protection of the individuals. Lastly, the European Parliament submits to change Art 23 (3) of the Charter. The Charter must be applicable whenever processing activities are aimed at offering goods or services to data subjects in the Union, irrespective of whether the undertaking was operated within the territory European Union. Without such applicability, private entities could easily evade their legal obligations by moving their operations to States not parties to the Union. This would defeat the purpose of subjecting private entities directly to the Charter.