The Kingdom of Spain considers itself a proud member of the European Union. Since our accession in 1986 we are pleased to benefit from the multiple rights of the membership and have always brought our commitment outwardly. We are and always have been willing to invest all our capacities to create a stronger connection between the European countries and to enforce our shared values. Hence we want to work on a strong European fundamental structure for its institutions and also for the fundamental rights of the citizens. Already in 2005 we voted with a strong majority in favor of a EU constitution-treaty.

In terms of digital rights the Kingdom of Spain is one of the forerunners in Europe. Not only is our constitution with the articles 10, 18 IV and 20 I a) and d) forward but also our „ley orgánica de protección de datos" grants principals and rights to natural persons and sanctions infringements. Furthermore, the Spanish Data Protection Agency supervises the compliance of provisions regarding data protection for government agencies as well as for private actors.

Knowing that the protection of data is a controversial and current issue not only in Spain we are happy to discuss it with our European neighbors. Living in the era of globalization we are aware of the dangers citizens are exposed to in the digital world. Consequently, there is a strong need for the European Union as a supranational institution to deal with measures we can take.

We would like to state our position whether the draft of the charter of the digital fundamental rights, presented from the „Zeit- Stiftung" in December 2016, is the right way to achieve the aim of the protection of fundamental rights in the digital world.

Firstly, we want to emphasize that we agree about the necessity of regulation in the digital world. The state and private companies may not collect data without consent or even without the knowledge of the citizens. In general, it is important to grant informational self-determination and security in the digital world.

Secondly we think that the European Union is the right institution (as being supranational) to regulate digital rights. Only if the standards within the European Union are the same we can ensure equal protection and thereby give Union citizens the option of legal action to the European Court of Justice. Additionally, it is a condition to achieve the European Single Market. Focusing on the future one can say that the relevance of data will increase heavily on which the existing fundamental rights charter, as it is interpreted now, is not prepared. The regulatory gap may give the impression of a necessity for a new document.
However, one must consider that infringements of required digital rights more often occur between private actors than between the state and citizens. This leads to the conclusion that the scope of a charter of fundamental rights (which in its underlying purpose shall bind the government agencies) may not even be opened. The draft of the charter of fundamental digital rights affirms validity towards government agencies and privates. Dogmatically we consider this very problematic.

The fact that private actors are on the one hand the ones to protect but on the other hand also the ones to obligate brings up the question if the pursued aim could not be achieved more effectively by European secondary law. On that account, it seems more reasonable to us, to control digital rights with the method of a regulation. Only with secondary law legal consequences can be defined and the protection enforced. The General Data Protection Regulation (GDPR), which was adopted by the European Parliament and the European Council on April 27th, 2016 was very much appreciated by Spain. Yet the GDPR does not serve the protection of digital rights of the citizens sufficiently. We really want to point out our awareness of the need of an enlargement of regulation in the digital world.
Also, the phrasing and the choice of mostly vague words in the draft of the charter are improvable. To enhance a comprehensive understanding of each right a wide interpretation by courts is necessary, which is why we doubt the immediate and prompt application of the charter because of its indefiniteness. Not only the inaccuracies arise difficulties but also does the implemented zeitgeist. The codification of a charter of fundamental rights shall keep the most basic rights and there shall not be a need to change it. Words as for example „big data” and „artificial intelligence“ are rather contemporary than constant.

We want to support a united equal European Union. A charter of fundamental rights should be drafted by a European institution with the participation of every member state. We cannot accept a solo action by German privates and politicians in such an important issue. We would appreciate a common discussion right from the beginning.

All in all, we acknowledge the draft and the associated debate within the EU with this important topic. Nonetheless we disagree with the suggested charter due to its legal character and its implementation.

Spanish representatives:
Lina Fuchs
Charlotte Meister