



Ministerie van Binnenlandse Zaken en  
Koninkrijksrelaties

# The Charter: lever for change at the national policymaking level?

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Charter as a sleeping beauty?





## Outline

1. EU context
2. National perspective: remaining paradox and knowledge-gap
3. Charter checklist as legislative quality instrument
4. Charter and Dutch policy debate: three examples
5. Outlook



## 1. EU context

- COM Strategy, checklist and annual Reports
- COUNCIL Conclusions on Annual Reports COM (e.g. June 2014); Guidelines on Fundamental Rights Compatibility
- EP Rules of Procedure; (Draft) Report and (draft) opinion (16 April 2015)



## 2. National perspective: remaining paradox & knowledge gap

- PARADOX: lack of clarity about the national applicability of the Charter in *some specific* situations initially led to *general* reluctance to apply it
- KNOWLEDGE-GAP: if the Charter is applicable, why does it matter in the first place? What does it add (to our Constitution, the ECHR) anyway?



### 3. Charter checklist as legislative quality instrument

#### I. Scope of application

- A. Scope of application of the EU Charter of Fundamental Rights on national action
- B. When does a regulation fall within the scope of application of Union law?
- C. When does a regulation not fall within the scope of application of Union law?

#### II. Scope and interpretation

- A. Scope
- B. Interpretation

#### III. Accounting for assessments according to Union fundamental rights

#### APPENDIX: categories of CFR rights

- 1. CFR rights with the same level of protection as an ECHR equivalent
- 2. CFR rights with a further-reaching level of protection than an ECHR equivalent
- 3. CFR rights with no ECHR equivalent
- 4. EU context specific fundamental rights



## 4. Charter and Dutch policy debate: three examples

- *Digital Rights Ireland*
  - National scope of application
  - Substantive requirements and implications for data retention and related legislation
- *Google Spain*
  - Dutch position re. “the right to be forgotten”
  - Court’s reasoning re. other fundamental rights (e.g. freedom of expression and freedom to conduct a business)
- *Melloni*
  - Dutch initiative to include fair trial in the Constitution



Awake! Now what?







## 5. Outlook

- Evaluate application of Dutch Charter checklist
- Continue exchange of experiences and mutual learning
  - Dutch EU presidency high-level seminar on policy application of the Charter of Fundamental Rights, 15 January 2016



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Thank you for your  
attention