To the attention of:

Rule of Law and Democracy Section

Office of the United Nations High Commissioner for Human Rights

CH-1211, Geneva 10,

Switzerland

registry@ohchr.org

Vienna, 12 May 2017

Subject: Submission in relation to draft guidelines on the implementation of the right to participate in public affairs

Dear Rule of Law and Democracy-team,

Responding to letter dated 23 March, I am pleased to submit brief references on behalf of the European Union Agency for Fundamental Rights (FRA) – a statutory human rights body of the EU providing expert advice to the EU institutions and its Member States.

The European Union has since 2000 a Charter of Fundamental Rights which is legally binding since December 2009 – and applicable within the scope of implementation of EU law (thus not applicable in all contexts). The Charter covers the full range of rights, from civil and political to economic and social, in all 50 substantive rights divided under 6 Titles:

1. Dignity
2. Freedoms
3. Equality
4. Solidarity
5. Citizens’ rights
6. Justice

The Charter explicitly includes some ‘modern’ rights, such as freedom to conduct a business (Article 16) and data protection (Article 8) but it also contains some rights of relevance to the participation in public affairs that could be useful for the OHCHR to consider in the preparation of the draft guidelines. These are the following, which all fall within Title V, Citizens’ rights:

1. “Right to vote and to stand as a candidate at elections to the European Parliament” (Article 39) – the provision also requires direct universal suffrage in free and secret ballot.
2. “Right to vote and to stand as a candidate at municipal elections” (Article 40) – this is specified to be in the Member State in which they resides and under the same conditions as the nationals of that state
3. “Right to good administration” (Article 41) – All persons have the right to have all their “affairs handled impartially, fairly and within a reasonable time” by the EU.
4. “Right of access to documents” (Article 42) – persons or companies residing or registered in the EU have the right to access to documents from any of the three EU institutions (Parliament, Council, Commission).

Whereas the mentioned fundamental rights are addressed to the EU itself, the Court of Justice of the European Union has developed a general principle of law requiring also the EU Member States to guarantee good administration whenever they are implementing EU law. This is highly relevant as the most of EU law is implemented by the Member States and not centrally through EU institutions.

EU Primary law explicitly addresses the participation in public affairs (see the Articles provided below) and the EU administration carries out public consultations before developing policies and legislation (see e.g. <https://ec.europa.eu/info/consultations_en>).

Article 10 of the Treaty on European Union (TEU) underlines that:

1. “The functioning of the Union shall be founded on representative democracy.
2. Citizens are directly represented at Union level in the European Parliament. Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens.
3. Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.
4. Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union.”

Article 11 TEU states that:

1. “The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.
2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.
3. The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.
4. Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.”

Also, national Parliaments play a relevant role in the EU system. Apart from the important fact that EU legislation is transposed by national parliaments into national law, Articles 5 (3) and 12 TEU highlight additional functions of the parliaments. See in this context also Protocol No 1 on the role of national Parliaments in the European Union, protocol No 2 on the application of the principles of subsidiarity and proportionality and Articles 69, 70, 71, 81 (3) of the Treaty on the Functioning of the EU.

Last but not least the EU’s Agency for Fundamental Rights is addressing aspects of the right to participate in public affairs. Since the EU is a Party to the UN Convention on the Rights of Persons with Disabilities (CRPD), it is bound by Article 29 on participation in political and public life. FRA has collected data from across the 28 EU Member States, which show how the right to political participation of persons with disabilities set out in Article 29 of the CRPD is respected, protected, promoted and fulfilled in the EU. FRA – who is part of the monitoring framework under Article 33 CRPD – is developing and populating indicators on the right of people with disabilities to political participation. More information in this regard is available here: <http://fra.europa.eu/en/publication/2014/right-political-participation-persons-disabilities-human-rights-indicators>.

Kind regards,

Jonas Grimheden