



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from: Presidency
to: Working Party on Fundamental Rights, Citizens Rights and Free Movement of Persons

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Subject: Charter of Fundamental Rights of the European Union

DRAFT COUNCIL CONCLUSIONS

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Article 2 of the Treaty on European Union, **whereby** the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities;

Having regard to Article 6 of the Treaty on European Union, pursuant to which the Charter of Fundamental Rights of the European Union has become legally binding; and to the progress obtained by the incorporation of the Charter into the EU primary law marking a new milestone for enhancing the EU's values, human rights, fundamental freedoms and principles;

Whereas the European Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter 'the European Convention on Human Rights');

Whereas fundamental rights, as guaranteed by the European Convention on Human Rights and as they result from the constitutional traditions common to the Member States, constitute general principles of the Union's law;

Whereas the Charter applies to the institutions, bodies, offices and agencies of the Union, and therefore all their acts, legislative or non-legislative, must be in full conformity with the Charter;

Whereas the Charter applies to the Member States only when they are implementing Union law;

Having regard to the Protocol on the application of the Charter to Poland and to the United Kingdom;

Having regard to the Commission Communication of 20 October 2010 on the strategy for the effective implementation of the Charter of Fundamental Rights by the European Union;

Having regard to the European Parliament resolution of 15 December 2010 on the situation of Fundamental Rights in the European Union (2009) – Effective implementation after the entry into force of the Treaty of Lisbon;

Having regard to the Council conclusions of 25 February 2011 on the role of the Council of the European Union in ensuring the effective implementation of the Charter of Fundamental Rights of the European Union

Welcomes

1. the first Annual Report from the Commission on the Application of the EU Charter of Fundamental Rights (hereinafter ‘2010 Report’); which delivers for the first time a pragmatic overview of the most relevant information illustrating the application of the Charter;
2. the commitment taken by the Commission to present annual reports monitoring progress on the enforcement of the Charter in the areas where the Union has powers to act;
3. the Commission’s intention to offer by these reports an opportunity for an annual inter-institutional exchange of views with the Council and the European Parliament on the application of the Charter.

Underlines

4. its own responsibility for the application of the Charter as well as for informing the citizens on the matter;
5. the importance of the establishment of a Permanent Working group responsible for Fundamental Rights, Citizens Rights and Free Movement of Persons (FREMP)
6. its readiness to engage in an exchange of views on the application of the Charter;
7. therefore that it finds it essential to express itself in this regard, as well as to highlight actions and initiatives taken in 2010 regarding each chapter of the Charter from the part of the Council.

BETTER INFORMING THE CITIZENS ABOUT THE SCOPE OF THE CHARTER

Recalls

8. that citizens’ expectations about the enforcement of the Charter are high, in 2010, the Commission received more than 4,000 letters from the general public regarding fundamental rights;
9. that the requests and complaints of the citizens frequently reflect misunderstandings about the purpose of the Charter emerging from the fact that it does not apply to all situations in which fundamental rights are at issue in the European Union.

Stresses

10. its commitment to make a common effort to better inform citizens about the scope of application of the Charter without prejudice to the competences of the Member States;
11. that where the Charter applies in matters, strengthening the dialogue between EU institutions and national bodies involved in the enforcement of fundamental rights improves the effective protection of citizens;
12. that where the Charter does not apply, fundamental rights continue to be guaranteed at national level according to the national constitutional systems having extensive national rules on fundamental rights;
13. that citizens who consider that their fundamental rights have been breached shall be granted access to practical information on the legal remedies existing in the Member States.

DIGNITY

Takes note

14. that fundamental rights under chapter ‘Dignity’ of the Charter, such as human dignity, right to life, right to the integrity of the person, prohibition of torture and inhuman or degrading treatment or punishment, as well as the prohibition of slavery and forced labour constitute the real basis of all fundamental rights;
15. that in 2010 several important steps were taken in the EU to strengthen the protection of these fundamental rights;
16. that in 2010 the Council adopted a Decision supplementing the Schengen Borders Code as regards the surveillance of the sea external borders, which, inter alia, also contains guarantees for respecting the prohibition of inhuman or degrading treatment regarding migrants intercepted at sea.

FREEDOMS

Underlines

17. that in view of the recent challenges affecting our societies, the Council is even more committed to strike a proper balance between individual liberties, such as the protection of personal data, the respect for private and family life, the right to marry and the right to found a family, the right to property, as well as the security of the citizens which are long-standing values of the EU;
18. that in order to achieve this balance, with a view to addressing in a more effective way the challenges to EU internal security, the Council invited the Commission to submit to the co-legislators of the EU by the end of 2011 an annual report on the achievements and progress made within the framework of the Internal Security Strategy;
19. that on the other hand, remaining committed to guarantee the protection of personal data, in its conclusions the Council declared its support to initiatives aimed at ensuring a higher level of awareness and protection for individuals;
20. that as part of the rights to self-expression of the individual, guaranteeing the freedom of expression and information, of assembly and of association, of the arts and sciences, freedom of thought, conscience and finally religion, which can be manifested alone or in community is crucial to the Council, which hereby confirms its attachment to these fundamental freedoms;
21. that in order to enable citizens to fulfil their aspirations in terms of their professional life, the Council guarantees the freedom to choose an occupation and right to engage in work, to conduct a business, and the right to education.
22. that in 2010 the Council adopted conclusions on the social dimension of education and training inviting the Member States to ensure wider access to high quality education and care, vocational training, higher, and adult education and in general to strengthen the social dimension of education and training systems;

23. that the Council reaffirms that fundamental rights are universal, and therefore intends to guarantee the right to asylum, and the protection in the event of removal, expulsion or extradition for non-EU citizens in accordance with international standards. The Council recognizes the Commission's efforts in this field.

EQUALITY

Stresses

24. that the respect for prohibition of discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation as well as nationality is one of the founding values of the European Union which are common to the Member States.
25. that the Council attributes utmost importance to preserve cultural, religious and linguistic diversity of people living in the European Union and adopted conclusions on the role of culture in combating poverty and social exclusion, inviting the Member States and the Commission to mobilise the potential of culture for peaceful co-existence to combat stereotypes and prejudice against particular social and cultural groups experiencing poverty or social exclusion.

Acknowledges

26. that equality before the law, and equality between women and men is a fundamental value of the European Union;
27. that gender equality policies are vital to economic growth, prosperity and competitiveness;
28. that the Council with the adoption of the European Pact for Gender Equality for the years 2011-2020, reaffirmed its commitment to fulfil EU ambitions on gender equality as mentioned in the Treaty and in particular to close the gender gaps in employment and social protection, including the gender pay gap, promote better work-life balance for women and men throughout the life-course, so as to enhance gender equality, increase women's participation in the labour market and contribute to meeting the demographic challenges, as well as combat all forms of violence against women in order to ensure the full enjoyment by women of their human rights.

Underlines

29. that recognizing the need to protect the most vulnerable persons, the Council adopted conclusions on active ageing in 2010 to protect the rights of the elderly inviting the Member States to highlight the benefits and opportunities that the economic and social participation of older women and men would provide to society;
30. that in order to promote the integration of persons with disabilities the Council adopted a code of conduct which sets out internal arrangements for the implementation by and representation of the European Union relating to the UN Convention on the rights of persons with disabilities;
31. that the Council also adopted conclusions on advancing Roma Inclusion aiming at advancing the full inclusion of the Roma by guaranteeing their legal rights and promoting their social and economic integration (within the framework of the decisions and recommendations made by the EU institutions);
32. that the protection of the rights of the child remains a priority for the Council, which welcomes the initiatives of the Commission on the new rules to fight sexual abuse of children and child pornography, as well as the protection of unaccompanied minors in the EU.

SOLIDARITY

Reaffirms

33. that currently one of the biggest challenges before the EU is improving its competitiveness, and increasing employment is one way to move forward.
34. that in this context the Council will pay particular attention to the respect of the rights relating to labour, such as the workers' right to information and consultation within the undertaking, the right of collective bargaining and action, the right of access to placement services, protection in the event of unjustified dismissal, as well as fair and just working conditions, as well as to reconcile family and professional life.
35. that concerning the prohibition of child labour and protection of young people at work, in 2010 the Council reaffirmed its commitment to the prohibition of child labour and the protection of young people at work. The Council adopted conclusions on the integration youth on the labour market;

36. that in this context, the sustainability of safe and equitable pension system is a key factor from the point of view of the sustainable public finances. The Council's determination is reflected in 2010, to be followed by its reaction to the Green Paper on Pensions in June 2011.

Underlines

37. that in order to further reconcile competitiveness and social protection, the Council adopted conclusions on the Social dimension in the context of an integrated Europe 2020 Strategy which reflects its full readiness to deploy its expertise on social inclusion and social protection policies to contribute to the successful implementation of the Europe 2020 Strategy;

38. that in the context of health care, in 2010 the Council adopted conclusions on Equity and Health in All Policies, inviting the Member States to further develop their policies and actions to reduce health inequalities and to participate actively in sharing good practice, taking into account the need for action across all relevant policies;

39. that a precondition for competitiveness and prosperity is the access of citizens to services of general economic interest, and a sufficient level of environmental protection. Guaranteeing consumer protection also contributes to the well-being of the citizens.

CITIZENS' RIGHTS

Stresses

40. that the democratic and efficient functioning of the European Union is in the hands of its citizens;

41. that their right to vote and to stand as a candidate at elections to the European Parliament, their right to vote and to stand as a candidate at municipal elections, their right to good administration and of access to documents, the right to refer to the European Ombudsman, as well as the right to petition are the guarantee to further enhance the democratic functioning of the EU, which is of high value to the Council.

42. that every citizen of the Union has the right to move and reside freely within the territory of the Member States;

43. that the Council adopted conclusions on facilitating entry for citizens of the EU at external borders, focusing on the need to improve fast-track systems for external border crossings for the benefit of EU citizens while at the same time safeguarding the right balance between guaranteeing the right to free movement and the highest level of security.

Underlines

44. that relating to diplomatic and consular protection the Council approved updated consular guidelines on the protection of EU citizens in third countries;

45. that notwithstanding primary national responsibility in consular matters, the guidelines provide a framework for consular cooperation, especially in situations in which the safety of EU citizens is endangered in a third country.

JUSTICE

Taking note of

46. the fundamental principles governing justice, such as the right to an effective remedy and to a fair trial, the presumption of innocence and right of defence;

47. the principles of legality and proportionality of criminal offences and penalties, the right not to be tried or punished twice in criminal proceedings for the same criminal offence.

Reaffirming

48. that the Council adopted a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, calling for the adoption of five measures covering the most basic procedural rights.

CONCLUSION

Stresses

49. that action to respect and protect human rights and meeting the EU's values, objectives, and principles requires a combination of all relevant efforts and instruments at EU and national levels;

50. that the proper application of the Charter requires a multiplayer activity focused on EU law making and implementation while maintaining an intense dialogue with the citizens;
51. that the effective application of the Charter shall be underpinned by the dynamic activity of all EU institutions and bodies, offices and agencies, such as the European Union Agency for Fundamental Rights, as well as the actions of competent national institutions while applying EU law.

Appreciates

52. the progress made in the negotiations on the EU accession to the European Convention on Human Rights

Considers

53. that in the application of the Charter due attention should be paid to respecting the integrity of the Treaties, delivering action of the EU institutions across the policies without prejudice to Member States' competence;
54. that judicial bodies of the Member States play a primary role in the enforcement of the Charter;
55. providing better information for the general public;
56. promoting inter-institutional cooperation in the EU and cooperation with other actors in the field, between the Member States and EU agencies.

Invites the Commission

57. to pursue its activity as described in the 2010 Report with emphasis on areas which are likely to have the most decisive impact on covering the needs of the citizens;
58. to prevent the non-compliance with the provisions of the Charter, with due respect to the principle of subsidiarity and the division of competences between the EU and the Member States;
59. to come forward with a proposal on how to better inform citizens about the implementation of the Charter, focusing on how they can stand up for their rights;
60. to enhance the European e-Justice Portal by providing the citizens with information about where to turn to when their fundamental rights have been violated.

Invites the European Union Agency for Fundamental Rights

61. to follow the rights enshrined by the Charter within its mandate ;
62. to continue its task namely to provide expertise and data for the decision making bodies in the field.

Invites the European Parliament

63. to take part in the dialogue on the implementation of the Charter.

Invites the Member States

64. to inform the citizens on the application of the Charter, and especially about the way they can get information about their rights;
65. to continue to respect the provisions of the Charter while implementing EU law;
