



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from: Presidency

to: delegations

No. Cion prop.: 15319/10 FREMP 39 JAI 877 COHOM 229 JUSTCIV 180 JURINFO 45

Subject: Draft Council conclusions 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

INTRODUCTION

On 20 October 2010, the Council received a Communication from the Commission to the European Parliament and the Council on a ‘Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union’¹. This Communication presents in detail the approach and methodology taken by the Commission in order to guarantee that fundamental rights are respected throughout its internal procedures, especially in the context of legislative drafting.

¹ Doc. 15319/10 FREMP 39 JAI 877 COHOM 229 JUSTCIV 180 JURINFO 45.

Given that the bulk of Union law is adopted in the course of the ordinary legislative procedure, involving both the Council and the European Parliament, the Commission calls upon the institutions to ensure that a high level of fundamental rights protection, as enshrined in the Treaty and the Charter, is indeed guaranteed throughout the legislative process.

The Presidency deemed it appropriate for the Council to seize the opportunity and, in reacting to the Commission Communication in the form of Council conclusions to present how it will ensure that the Charter of Fundamental Rights is effectively implemented in the legislative procedure. In this vein, a fruitful and in-depth debate was conducted at the informal Justice and Home Affairs Council on 21 January 2011 in Gödöllő.

The Presidency presents to the delegations in the Annex a draft proposal for the text of Council conclusions 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, which it intends to submit to the JHA Council on 24-25 February 2011 for adoption.

DRAFT COUNCIL CONCLUSIONS**of....****THE COUNCIL OF THE EUROPEAN UNION,**

Having regard to the Treaty on European Union, which reaffirms that fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter '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 of Fundamental Rights (hereinafter 'the Charter') of the European Union has become legally binding and the Union will accede to the European Convention on Human Rights;

Whereas the Charter applies primarily to the institutions and bodies of the Union, and therefore particularly concerns the legislative and decision-making work of the Commission, Parliament and Council, the legal acts of which must be in full conformity with the Charter;

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

Whereas the Stockholm Programme also emphasizes that the Union is based on common values and respect for fundamental rights and that the European Council has made protection and promotion of fundamental rights in the Union one of its priorities within the area of freedom, security and justice;

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;

Taking into account 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,

1. **Welcomes** the Communication from the Commission to the European Parliament and the Council on a 'Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union', highly appreciates the internal measures and methodology already elaborated by the Commission regarding a preventive fundamental rights scrutiny in the law-making process and strongly supports the Commission's approach to ensure that Fundamental Rights are fully taken into account in every phase of the legislative procedure.
2. **Recalls** the Stockholm Programme which also invited all EU institutions to ensure that legislative initiatives are and remain consistent with fundamental rights and freedoms throughout the legislative process by way of strengthening the application of the methodology for a systematic and rigorous monitoring of compliance with the European Convention on Human Rights and the rights and freedoms set out in the Charter.
3. **Emphasizes** the importance of efficient inter-institutional collaboration, avoiding unnecessary duplication in the activities of European Union institutions, and reaffirms the inter-institutional agreement on a 'Common Approach to Impact Assessment' referred to in the Commission Communication, which states that the Council is responsible for assessing the impact of their its own amendments.
4. **Acknowledges** that being a co-legislator, its amendments to Commission proposals must also comply with the Charter and recognizes that the acts to be adopted by virtue of the Treaty on the basis of Member States' initiatives must also respect the Charter.
5. **Reaffirms** its commitment to guarantee that Fundamental Rights are respected throughout its own internal decision-making procedures, especially in the context of legislative drafting, bearing in mind the characteristics of the Council's structure, working methods and role within the institutional framework of the European Union.

6. **Recognizes** that the Council, like any other EU institution, has an increased responsibility for not only ensuring full compliance with the Charter within the legislative procedures, but also for doing this in an as visible and transparent way as possible, for the benefit of the citizens of the European Union.
7. **Highlights** that the Council, while recognizing the continued need to assess and ensure the compatibility of any amendment it proposes with regard to Fundamental Rights, should avoid the creation of a burdensome, long and inefficient new procedures for that purpose and should rather rely on the existing structures within the European Union
8. **Considers** it important to make full use of the expertise, knowledge and experience of experts working in the Member States and recalls that Member States' administrations are the first level where compliance with obligations deriving from the Charter, as well as the constitutional traditions and international obligations common to the Member States, is, and should be, scrutinized.
9. **Expects** that before a proposal is submitted to the Council by a Member State, its conformity with the Charter has been examined and checked by the relevant Member State, bearing in mind also the checklist and methods used by the European Commission for its proposals.
10. **Recalls** that in December 2009, immediately after the entry into force of the Lisbon Treaty, which made the Charter legally binding, the Council established a permanent working party tasked with all matters relating to Fundamental Rights, Citizens Rights and Free Movement of Persons (hereinafter 'the FREMP Working Party').
11. **Takes the view** that the preparatory instances of the Council should early recognize the questions and concerns relating to Fundamental Rights in the relevant dossiers on their agenda and act to meet the requirements set out in the Charter.

12. **Emphasizes** the interest for the Council's preparatory instances to dispose of general guidelines on how to identify and solve problems raised by their own proposals in relation to their compatibility with Fundamental Rights and therefore invites the FREMP Working Party to elaborate, in close cooperation with the Council Legal Service, such guidelines on the main aspects of Fundamental Rights' scrutiny which, after their adoption, should guide the legislative work of the preparatory instances of the Council.
13. **Encourages** the Council's preparatory instances to seek, where necessary, and on a case by case basis, the assistance of the FREMP Working Party with respect to specific Fundamental Rights issues arising during their work throughout the legislative procedure.
14. **Reiterates** its commitment to make full use of the expertise of the European Union Agency for Fundamental Rights (hereinafter 'the Fundamental Rights Agency') and to consult, where appropriate, with this Agency, in line with its mandate, on the development of policies and legislation with implications for fundamental rights.
15. **Invites** the FREMP Working Party to maintain and reinforce the cooperation with the Fundamental Rights Agency, for example by following-up its reports.
16. **Underlines** its commitment to have an annual exchange of views on the Commission's annual reports on the application of the Charter. In this respect, particular attention should be paid to the annual reports of the Fundamental Rights Agency.
