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European Union

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## **NOTE**

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From:	Presidency
To:	Delegations
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Subject:	Implementation of the Charter of Fundamental Rights of the EU - Presidency discussion paper

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## **1. INTRODUCTION**

1. The Charter of Fundamental Rights is just over four years in force as primary law. In that short time, it has been referred to in case-law at national and EU level and has become the reference point for fundamental rights in the European Union.
2. By presenting fundamental rights in one legally binding document, the Charter advances the goals of legal clarity and accessibility. In accordance with Article 6(1) and (3) TEU, the Union recognises the rights, freedoms and principles set out in the Charter, which has the same legal value as the Treaties, and fundamental rights, as guaranteed by the European Convention of Human Rights (ECHR), and as they result from the constitutional traditions common to the Member States, constitute general principles of EU law. Article 6(1) TEU and Article 51 of the Charter clarify that the provisions of the Charter do not extend the Union competences as defined in the Treaties and that the provisions of the Charter are addressed to the EU institutions and bodies, as well as to the Member States when they are implementing EU law.

3. Since 2010, the European Commission is on a yearly basis publishing a “report on the application of the EU Charter of Fundamental Rights” which gives an account of how the EU institutions have respected and promoted the rights as enshrined in the Charter and on how Member States have respected the Charter when implementing EU law.<sup>1</sup> The Commission’s report is accompanied by a Staff Working Document also illustrating very concrete problems faced by individuals. This detailed account is mainly based on letters the Commission has received from the general public and the case law of the Court of Justice of the European Union (ECJ). Each year, the Council adopts conclusions on this report.
  
4. More recently, in landmark judgments delivered in Grand Chamber, the ECJ adopted a strict approach, in particular, to the protection of personal data (see judgment of 8 April 2014, *Digital Rights and Seitlinger*, by which the ECJ declared the Data Retention Directive invalid<sup>2</sup> and judgment of 13 May 2014, *Google*, on the interpretation of the 1995 Data Protection Directive<sup>3</sup>). The information note on the *Digital Rights* judgment underlines that “*it confirms that the Court of Justice will not satisfy itself with anything less than a strict assessment of the proportionality and necessity of measures that constitute serious restrictions to fundamental rights, however legitimate the objectives pursued by the EU legislature*”.

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<sup>1</sup> The last report the Commission submitted to the Council on 15 April 2014, as set out in 9042/14.

<sup>2</sup> Judgment in Joined Cases C-293/12 and C-594/12. See information note by the Council Legal Service (CLS) on that judgment (doc. 9009/14).

<sup>3</sup> Judgment in Case C-131/12. See information note by the CLS on that judgment (doc. 10187/14).

5. It is recalled that the Council, in its conclusions of 25 February 2011, already set out the main elements of its role in ensuring the effective implementation of the Charter.<sup>4</sup> As requested in point 15 of these conclusions, *Guidelines on methodological steps to be taken to check fundamental rights compatibility at the Council's preparatory bodies* were drafted by FREMP and endorsed by Coreper on 19 May 2011.<sup>5</sup> The efficacy of these guidelines was highlighted by the Council in its conclusions of 23 May 2011 on the Council's actions and initiatives for the implementation of the Charter.<sup>6</sup>
6. In its conclusions on the Commission 2013 report on the application of the Charter, the Council recalled that all Union institutions are under a duty of scrutinising their action with regard to the provisions of the Charter and indicated it would welcome a renewed determination of Union institutions to ensure consistent application of the Charter in legislative activity.<sup>7</sup> In these conclusions, the Council welcomed further debate on the application of the Charter and:
- a) reiterated its commitments to continue holding an annual inter-institutional exchange of views on the application of the Charter, based on the annual report on the application of the Charter submitted by the Commission, taking also account of the resolutions adopted by the European Parliament and the annual report presented by the EU Agency for Fundamental Rights (point 23);
  - b) noted with interest the idea of an annual assessment by the Council on the basis of the Commission's annual report on the application of the Charter of Union action regarding the provisions of the Charter and of pointing out areas for future action, noting that this could gradually lead to a Union internal strategy on fundamental rights, possibly through an action plan on a mid-term basis, regarding the respect and promotion of the Charter (point 24).

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<sup>4</sup> See 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 (doc. 6387/11).

<sup>5</sup> See doc. 10140/11.

<sup>6</sup> See point 9 of the Council conclusions on the Council's actions and initiatives for the implementation of the Charter of Fundamental Rights of the European Union (doc. 10139/1/11 REV 1).

<sup>7</sup> Council conclusions on the Commission 2013 report on the application of the EU Charter of Fundamental Rights and the consistency between internal and external aspects of human rights' protection and promotion in the European Union, adopted by the Justice and Home Affairs Council meeting Luxembourg, 5 and 6 June 2014, [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/jha/143099.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/143099.pdf)

## II. POINTS OF DISCUSSION

7. In an effort to take discussions forward, the incoming Italian Presidency invites delegations to exchange views on possible ways to improve the implementation of the Charter of Fundamental Rights in legislative activity. For the purposes of this first discussion, the Presidency proposes to focus on:

### a) Further commitment at the EU level

8. In view of the already existing conclusions and guidelines referred to in paragraph 5 above, delegations are invited to indicate how, in practical terms, to improve the application of the Charter. In particular, which concrete measures could help to ensure consistent application of the Charter in legislative activity? How do they evaluate the use and efficacy of the Council guidelines so far?

### b) Valuable experience from the national level

9. In addition, the Presidency believes that valuable experiences from the national level could be usefully exchanged and serve as a source of inspiration in this context.

a) What are your experiences at national level in the area of fundamental rights that could provide examples of best practices for mainstreaming fundamental rights throughout EU legislative process and administration?

b) What are your experiences with involving a variety of different actors, including independent national human rights institutions and civil society in order to make sure that legislation is in line with fundamental rights obligations? How could such practices inform/inspire policy making at EU level?

c) What are other instruments in place at national level to ensure that fundamental rights considerations are taken into account across all relevant areas? How could such practices inform/inspire policy making at EU level?

d) What is needed to make the knowledge on fundamental rights more accessible for policy makers and practitioners? How could the exchange of relevant data and best practices be improved? What type of objective data and assessment would be most useful for such an exercise? How could Member States make better use of the FRA data and surveys?

### **III. CONCLUSIONS**

10. Delegations are invited to discuss these points at the FREMP meeting on 15 July 2014.

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