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FREMP 83
JAI 387
COHOM 50
DROIPEN 85

NOTE

From: Presidency
To: Delegations
Subject: Draft Council conclusions on the application of the Charter in 2015

I. INTRODUCTION

1. On 19 May the Commission adopted its 2015 report on the application of the EU Charter of Fundamental Rights (Charter)¹ that for the fifth time sets out information about the application of the Charter in the Member States and the European Union.
2. On 20 May 2016 the Management Board of the EU Agency for Fundamental Rights (Agency) adopted the Fundamental Rights Report 2016² elaborating on the situation of fundamental rights from the perspective of the Agency.
3. The Presidency has prepared a set of draft Council conclusions, which was examined at the FREMP meeting on 25 and 26 May 2016 that take account of these reports.

¹ 8807/16

² 8809/16

II. CONTEXT

4. Recent times have been marked by multiple challenges. Those challenges test in different ways the basic values of the European Union, including fundamental rights as laid down in the Charter. The Presidency has aimed at ensuring that these principles consistently remain a central part of discussions and decision-making about finding appropriate policy and legislative responses to these challenges. Fundamental rights need to be upheld and defended as our best guarantee for sustaining stable, open and free European societies.
5. Given their horizontal nature and significance, fundamental rights require continuous attention across different policy fields. In addition to all ongoing efforts to this effect, the Presidency proposes to focus on the Charter as a legal instrument, the policy area of combatting racism, xenophobia and other forms of intolerance and the coordination issue of ensuring coherence between internal and external fundamental rights policy. The Presidency considers that it would at this juncture be beneficial for the Council to consolidate and encourage policy development.
6. The actions of EU institutions, bodies and agencies as well as Member States, when implementing Union law, have to be fully in line with the Charter. Article 51 of the Charter states that the institutions and bodies of the Union and the Member States shall respect its rights, observe its principles and promote its application in accordance with their respective powers, and that the Charter does not establish any new power or task for the Union or modify the powers and tasks defined by the Treaties.
7. As Eurobarometer reports³ show, the awareness and knowledge of Charter rights amongst citizens, although gradually increasing, could be further improved. Awareness-raising along with the necessity to continue promoting training and best practice sharing with regard to the application of the Charter at national and EU level have been recurring topics in the previous Council conclusions on the application of the Charter.⁴

³ http://ec.europa.eu/justice/fundamental-rights/files/2014_charter_eurobarometer_en.pdf and http://ec.europa.eu/public_opinion/flash/fl_416_en.pdf

⁴ See paragraphs 4-6 and 8 of the 2015 conclusions, 9319/15, and paragraph 4 of the 2013 conclusions, 10168/13.

8. The Charter complements national as well as international systems of fundamental rights protection, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter ECHR), and needs to be applied as a part of the wider set of applicable fundamental rights sources in the national context. Nevertheless, there are specific challenges when applying the Charter in the national context.
9. Whenever national legislation is developed, there is a need to identify whether it falls within the scope of application of Union law.⁵ It is also important to pay particular attention to those provisions of the Charter the meaning and scope of which are not determined by corresponding provisions of the ECHR.⁶ To enhance mutual learning and common understanding regarding when the Charter applies to Member States and how its provisions are to be applied, sharing of best practices and information about the Charter in the national legislative and policy procedures is essential.
10. The seminars organised by recent Presidencies and the Commission enhance the exchange of ideas with regard to challenges to the application of the Charter, and the sharing of promising practices in this respect.
11. The Netherlands Presidency organised an expert seminar on the national policy application of the EU Charter of Fundamental Rights on 19 February 2016 in Amsterdam. This seminar brought together EU institutions, Member States and other stakeholders to discuss the application of the Charter in the national policy context.
12. Such initiatives should, in the view of the Presidency, continue to be followed up in Council preparatory bodies. In particular, the FREMP working party could exchange, on a yearly basis, information about tools, procedural safeguards and awareness raising methods when it comes to the application of the Charter at both EU and national level.

⁵ Article 51(1) of the Charter.
See also Protocol 30 on the application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom.
See also Protocol 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice.

⁶ Explanations relating to the Charter of Fundamental Rights, 2007/C303/02.

13. The advancement of inclusive tolerance, integration and shared values together with raising awareness of the fundamental rights of all, are important guarantees against the rise of racism, xenophobia and all forms of intolerance in our diverse societies. Previously the Council called upon EU agencies, in particular the Agency, to facilitate the exchange of best practices and assist Member States in their efforts to develop effective methods to encourage reporting and ensure the proper recording of hate crimes, and outlined actions and further developments relating to the fight against hate speech, hate crime and xenophobia. Given the importance attached to this topic, the Presidency facilitated the fourth meeting of the Working Party on improving reporting and recording of hate crime in the EU on 28-29 April 2016.

14. On 8 March 2016 the Working Party on Human Rights (COHOM), in the presence of FREMP, organised a meeting on coherence and consistency of internal and external fundamental rights policy in the EU. In that context academic speakers and the Agency were invited to give presentations and a discussion took place on the basis of a discussion paper prepared by the Presidency (doc. 6256/16). In the Presidency's view it is worthwhile recalling and consolidating the conclusions drawn by COHOM on that occasion.

**DRAFT COUNCIL CONCLUSIONS
ON THE APPLICATION
OF THE CHARTER OF FUNDAMENTAL RIGHTS IN 2015**

I. INTRODUCTION

1. The Council takes note of the 2015 Commission report on the application of the EU Charter of Fundamental Rights (further referred to as the Charter) as well as the Fundamental Rights Report 2016 of the EU Agency for Fundamental Rights (further referred to as the Agency).

II. ENSURING CHARTER COMPLIANCE AT ALL LEVELS

Charter compliance and awareness at both EU and national levels

2. The Council recalls the importance of awareness-raising, training and best practice sharing with regard to the application of the Charter at national and EU level, recognising that it complements national systems of protection of fundamental rights and does not replace them. The Council highlights in that context the outcome of the expert seminar on national policy application of the Charter, organised by the Netherlands Presidency on 19 February 2016 in Amsterdam that enabled participants to exchange ideas about challenges to the application of the Charter and to share promising practices in this respect.
3. In order to ensure follow-up, the Council calls on the Working Party on Fundamental Rights, Citizens' Rights and Free Movement of Persons (further referred to as FREMP) to continue exchanging information about tools, best practices and awareness raising methods on the application of the Charter at both EU and national level on a yearly basis.

Charter application and awareness at EU level

4. The Council welcomes the interinstitutional agreement on better law-making⁷ which in the context of impact assessments highlights the importance of fully respecting fundamental rights and requires the Commission to explain in the explanatory memoranda which accompany its proposals how the measures proposed are compatible with fundamental rights.
5. The Council reaffirms its commitment to carefully consider any possible interference of legislative instruments with fundamental rights and freedoms and to encourage a consistent application of the Charter in all legislative activity and recalls its guidelines on methodological steps to be taken to check fundamental rights compatibility in the Council's preparatory bodies.⁸

Charter understanding, application and awareness at the national level

6. The Council highlights the importance of applying the Charter as a part of the wider set of applicable fundamental rights sources in the national context. Recognising that the Charter only applies to Member States when they are acting within the scope of EU law,⁹ the Council underlines the need to establish the applicability of the Charter in individual circumstances and underlines the need for particular attention by national authorities to those Charter provisions the meaning and scope of which are not determined by corresponding provisions of the ECHR with a view to the effective application of the Charter.¹⁰

⁷ 15506/15, see paragraphs 12 and 25.

⁸ 5377/15.

⁹ Article 51(1) of the Charter.

See also Protocol 30 on the application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom.

See also Protocol 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice.

¹⁰ In accordance with the explanations relating to the Charter of Fundamental Rights, 2007/C 303/02.

7. The Council, keeping in mind the respective responsibilities of the EU institutions and the Member States in the application of the Charter, welcomes best practice sharing between the Member States and EU institutions with a view to enhancing mutual learning and common understanding of the scope of Member States' obligations in this regard. The Council also recognises the relevance of the development of trainings and tools, such as a checklist for national guidance on the application of the Charter or targeted training for determining the applicability of the Charter in national legislative and policy procedures within a broader framework of human rights protection.
8. The Council encourages Member States further to exchange and map best practices and common tools for Charter awareness-raising and proofing practices, for example by accommodating training of civil servants to enhance the expertise at national level, including through the assistance of the Commission and the Agency. In that regard the Council acknowledges the importance of funding schemes dedicated to Charter training managed by the Commission, and its work of making existing tools and other practices more visible and accessible through a central online access point. The Council also encourages the Agency to maintain and further develop practical toolkits such as the Charterpedia, to develop relevant trainings for legal practitioners and modules and workshops for trainers, and to continue its practice of including a specific chapter about the application of the Charter in its Fundamental Rights Report 2016.
9. The Council requests the Agency to draft a handbook mapping promising practices on the domestic application of the Charter for practitioners and non-specialists in line with Article 4(1) (c) of the Regulation 168/2007 which takes account of other applicable fundamental rights sources.

III. OTHER ISSUES

Non-discrimination, racism and xenophobia

10. The Council is deeply concerned about the rise of racist and xenophobic speech and acts throughout the European Union.

11. The Council recalls that the advancement of inclusive tolerance, integration and shared values together with raising awareness of the fundamental rights of all, are important guarantees against the rise of racism, xenophobia and all forms of intolerance in our diverse societies.
12. The Council recalls the Council conclusions on combating hate crime in the European Union which called upon EU agencies, in particular the Agency, to facilitate the exchange of best practices and assist Member States in their efforts to develop effective methods to encourage reporting and ensure the proper recording of hate crimes.¹¹
13. The Council recalls the discussions in October and December 2015 as well as May 2016,¹² which outline actions and reports on further developments relating to the fight against hate speech, hate crime and xenophobia.
14. The Council welcomes the Commission's first colloquium on fundamental rights which focused on combating Antisemitism and anti-Muslim hatred and underlines the importance of jointly implementing the colloquium conclusions.
15. The Council welcomes the work done by the Agency's Working Party on improving reporting and recording of hate crime in the EU, in particular in collecting Member States' promising practices in addressing underreporting and in improving recording of hate crimes, and research performed by the Agency such as the latest publication 'Ensuring justice for hate crime victims: professional perspectives.'
16. The Council welcomes the compendium of best practices for reporting and recording on hate crime launched at the fourth meeting of the Working Party on Improving Reporting and Recording of Hate Crime in the EU on 28-29 April 2016 which was organized by the Netherlands Presidency and calls upon Member States to use the knowledge and experience of these best practices when improving their efforts in addressing the issue of underreporting and improving recording of hate crimes.

¹¹ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/139949.pdf
¹² 14937/15 and 8839/16.

17. The Council invites Member States to continue their efforts to counter hate crimes, including by ensuring effective transposition and implementation of Framework Decision 2008/913/JHA and other relevant hate crime laws at national level, and to develop effective methods to encourage reporting and ensure proper recording of hate crimes.
18. The Council welcomes the Commission's initiative to create a new High Level Group on combating racism, xenophobia and other forms of intolerance with a view to bringing further political impetus for the Union and the Member States to counter hatred and intolerance and pooling Commission's expertise with that of the Agency and relevant international organizations and bodies.
19. The Council especially welcomes that the new High Level Group includes horizontal issues common to the fight against hate speech and hate crime; seeking to develop concrete practices and tools and to build capacity to improve responses to racism, xenophobia and other forms of intolerance in Member States. This will contribute to address the challenges in relation to better unmasking bias motives; ensuring effective investigation and prosecution, ensuring appropriate sentencing, protecting victims and strengthening their trust in the authorities, refraining from racial, ethnic and other biased form of profiling by Member State's police forces.
20. The Council welcomes the commitment by the Agency to build on the work done by the Working Party on Improving Reporting and Recording of Hate Crime in the EU as set out in the Council conclusions on combating hate crime in the European Union by coordinating, in the context of the new High Level Group, a results-oriented sub-group working towards the development of a common methodology for data collection and recording of hate crimes, as progress in this area will give an important contribution to Member States and Union policy action on combating hate crime.
21. The Council welcomes the efforts of the Commission to prevent and combat online hate speech. In this latter context it welcomes the dialogue with IT companies, in particular the code of conduct with IT companies to address online hate speech.

Coherence between internal and external policy making

22. The Council underlines the importance of coherence between internal and external aspects of fundamental rights protection and promotion.
23. The Council emphasises the need for clarity and a common understanding of what incoherence means in the context of the EU's internal and external action and the extent to which this impacts on the EU's internal and external fundamental rights policy.
24. The Council supports the inclusion of a reference to internal external-coherence in the Commission annual report on the application of the Charter and in the progress report on the EU Action Plan on Human Rights and Democracy (2015 – 2019) and invites FREMP and COHOM to continue discussing the interlinkages between the respective policy cycles. The Council welcomes efforts to strengthen the involvement of FREMP in the development of Lines To Take (LTT) documents describing the internal EU human rights situation to ensure their practicability as tools to use in political and human rights dialogues and other fora.
25. The Council is committed to continuing the regular exchanges, as held lastly on 8 March 2016, on the coherence and consistency of the EU's internal and external human rights policies between FREMP and COHOM, within their respective areas of competence and on specific thematic issues, such as the implementation of the UN Convention on the Rights of Persons with Disabilities.

Fundamental Rights Agency

26. The Council recalls the role of the Agency in researching and data collection on an EU-wide level and its contribution to ensuring evidence-based legislative work and policy by EU institutions and the Member States. The Council recalls the possibility for the Council to ask the Agency opinions on specific thematic topics within its remit or on positions taken by the Council in the course of legislative procedures.