



**COUNCIL OF
THE EUROPEAN UNION**

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from:	General Secretariat
to:	COREPER / Council
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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

The Working Party on Fundamental Rights, Citizens' Rights and Free Movement of Persons examined the above mentioned draft Council conclusions during two of its meetings and lastly on 10 February 2011, on the basis of document 6110/11 FREMP 9 JAI 77 COHOM 34 JUSTCIV 16 JURINFO 4. The text of the draft Council conclusions as it arose from this meeting is set out in the Annex.

COREPER is invited to recommend to the Council to adopt the Council conclusions as set out to the Annex to this Note.

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****THE COUNCIL OF THE EUROPEAN UNION,**

Having regard to the Article 6 of Treaty on European Union;

Whereas the Charter of Fundamental Rights of the European Union (hereinafter ‘the Charter’) has the same legal value as the Treaties;

Whereas the 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 Stockholm Programme, which 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;

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;

1. **Recalls the** Stockholm Programme, which invites the EU institutions and the Member States to ensure that legislative initiatives are and remain consistent with fundamental rights 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, freedoms and principles set out in the Charter.
2. **Welcomes** the Commission's commitment, reaffirmed in the Communication on a 'Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union' to guarantee within its remit that fundamental rights are fully taken into account when drafting legal acts and throughout the legislative procedure.
3. **Appreciates** the European Parliament's ambitions, expressed in its resolution on the 'Situation of fundamental rights in the European Union (2009) – effective implementation after the entry into force of the Treaty of Lisbon', to strengthen its autonomous impact assessment in relation to legislative proposals and amendments under examination in the legislative process.

4. **Stresses** the role of the Council in ensuring the effective implementation of the Charter and, being a co-legislator, reaffirms that both its amendments to legislative proposals as well as the acts it adopts by virtue of the Treaty on the initiative of a quarter of Member States must be in conformity with the Charter.
5. **Recognizes** that respect for fundamental rights should also be taken into account when drafting legal acts which are not subject to a legislative procedure.
6. **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 Council's structure, working methods and role within the institutional framework of the European Union.
7. **Recognizes** that the Council has a responsibility not only for ensuring full compliance with the Charter when drafting legal acts but also for doing this in an as visible and transparent way as possible, for the benefit of citizens and other relevant stakeholders. In addition the Council recalls the measures already adopted for the sake of transparency and openness, including the regulation on public access to documents of the European Parliament, Council and Commission and the rule of public deliberations and votes on draft legislative acts.
8. **Underlines** that in the framework of its existing structures and procedures, the Council already disposes of a number of workable and reliable tools to assess and ensure the compatibility with fundamental rights of any amendment it proposes as well as of the Member States' initiatives, and to guarantee that these proposals are in accordance with the Charter and thereby ensuring that the Council delivers acts with a 'Fundamental Rights Label'.

9. **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 all Member States, should be guaranteed.
10. **Expects** that before proposals for amendments are submitted by Member States to the Council, as well as before legislative initiatives are tabled by a quarter of the Member States, their conformity with the Charter and their impact on fundamental rights have been examined by the Member States involved.
11. **Highlights** in this regard that the Council Legal Service, assisting at all preparatory instances of the Council, is at the Council's disposal and carries out useful and reliable work by providing for legal opinions and assessing the compliance of legislative and non-legislative proposals, as well as proposals for amendments, with primary law including also fundamental rights requirements.
12. **Reiterates** that the inter-institutional agreement 'Common Approach to Impact Assessment' entails the responsibility for each institution to assess the impact of its proposals and amendments. When making that assessment the Council should give the necessary attention to the impact of its substantive amendments on fundamental rights.
13. **Stresses** that the preparatory instances of the Council and the Council itself should, at an early stage of the legislative procedure, raise the questions and concerns relating to fundamental rights in the relevant dossiers on their agenda, and ensure compatibility with the Charter.

14. **Recalls** that in December 2009, immediately after the entry into force of the Lisbon Treaty, which made the Charter legally binding, the Council gave the former ad hoc Working Party on Fundamental Rights and Citizenship a permanent status and tasked it with all matters relating to fundamental rights, citizens' rights and free movement of persons (hereinafter 'the FREMP Working Party').
15. **Emphasizes** the need for the fundamental rights dimension to extend to all preparatory instances of the Council and the entire Council structure; for that very reason it considers that the Council's preparatory instances should benefit from disposing of short but pragmatic and methodological guidelines on how to identify and solve problems raised by their own proposals for amendments in relation to their compatibility with fundamental rights.
16. **Therefore invites** the FREMP Working Party to elaborate, by 30 June 2011, in close cooperation with the Council Legal Service, such methodological guidelines dealing with the main aspects of fundamental rights scrutiny which, once agreed by Coreper, should serve as a guidance for the work of the preparatory instances of the Council where relevant.
17. **Encourages** the Council's preparatory instances – while recognizing the responsibility of these instances for scrutinizing the compliance with the Charter – to seek, where necessary, the assistance of the Council Legal Service, and without prejudice to the responsibility of the Coreper, on a limited case by case basis, the advice of the FREMP Working Party with respect to specific fundamental rights issues arising during their work.

18. **Recalls** the invitation made in the Stockholm Program to all EU institutions to make full use of the expertise of the European Union Agency for Fundamental Rights (hereinafter: ‘Agency’) and to consult, where appropriate, with the Fundamental Rights Agency, in line with its mandate, on the development of policies and legislation with implications for fundamental rights.

19. **Reaffirms** its intention to take into account the reports and opinions of the Agency on specific thematic topics given in accordance with its mandate.

20. **Encourages** the FREMP Working Party to maintain and reinforce the cooperation with the Agency, inter alia by ensuring follow-up to the reports of the Agency relevant to its work.

21. **Underlines** the commitment to have an annual exchange of views on the Commission’s annual report on the application of the Charter.
