

Discussion document

**The role of the Council in ensuring the effective implementation of the Charter of
Fundamental Rights in the legislative procedure**

Informal meeting of the Justice and Home Affairs Ministers

Gödöllő, 20-21 January 2011

By making it legally binding, the Lisbon Treaty put the Charter of Fundamental Rights at the heart of European Union law. In its new status the Charter celebrated its first anniversary on the 1st December 2010.

The Charter not only provides a full catalogue of principles and rights the protection of which is secured under the auspices of Union law, but it sets out the respective obligations of the institutions of the European Union and the Member States as well.

According to Article 51(1) of the Charter all the three institutions, as well as the Member States must apply it equally when EU law is implemented. Every proposal, every measure taken or act adopted by the institutions has to be in line with the principles and rights enshrined in the Charter. The institutions of the European Union have an increased responsibility for not only ensuring full compliance with the Charter within the legislative procedures but also for doing this in a visible and transparent way to the benefit of the citizens of the European Union.

In this regard it shall also be recalled that in the Stockholm Program the European Council invited the Union institutions *'to ensure that legal 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 and the rights and freedoms set out in the Charter of Fundamental Rights.'*

The European Commission published its Communication on the Strategy for effective implementation of the Charter of Fundamental Rights in October 2010. 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. 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 for an inter-institutional dialogue in its Communication in order to ensure that a high level of fundamental rights protection as enshrined in the Charter is indeed guaranteed all through the legislative process. The Commission in particular seeks to find a way of handling amendments tabled in the context of the legislative procedure by the other two institutions so as to secure that the level of fundamental rights protection is not lowered by any means throughout the legislative work of the institutions.

The European Parliament adopted its Resolution on the situation of fundamental rights in the European Union (2009-2010) – institutional aspects after the Treaty of Lisbon in December 2010. The European Parliament has also called upon the Council to adapt to the changes required by the Treaty and to comply with the Charter of Fundamental Rights when using its legislative powers. It specially refers to the role of the Fundamental Rights working group of the Council (FREMP) in this regard.

The Hungarian Presidency takes the view that before engaging in an inter-institutional dialogue with the other EU institutions the Council needs to discuss the way ahead with regard to strengthening the fundamental rights scrutiny within its own working methods.

Current situation

While the Commission and the European Parliament have standing procedures and a structural framework to guarantee that all fundamental rights are respected in all draft proposals, the Council so far has not expressed itself explicitly in this matter. The Council also has some measures in place which would enable it to fulfil its duty as regards the fundamental rights scrutiny.

The Council Legal Service is involved in the drafting work carried out in the Council and can be requested to provide an opinion, and check compliance with primary law, whenever there is a question of compatibility with fundamental rights.

The Council may and should also rely on the expertise, knowledge and experience of experts working in the Member States. Before a proposal is submitted in a Council working group by a Member State, it should have been examined and checked against the Charter by each Member State at national level.

Member States are the first check point where compliance with obligations resulting from the Charter as well as the constitutional traditions and international obligations common to the Member States is usually scrutinized.

Options for a more effective implementation of the Charter

Given the increased responsibility of the institutions of the European Union, the Hungarian Presidency considers it necessary that the Council – similarly to the Commission and the European Parliament – reflect on whether its present working structure and methods provide a sufficient and adequate level of fundamental rights protection.

Methodology and good practice established by the Member States at national level can inspire the Council in reflecting and elaborating a more visible, structured or even new fundamental rights scrutiny procedure.

Without introducing a burdensome, time-consuming process, the role of the different Council formations can be adapted to the new fundamental rights architecture of the European Union. FREMP, CATS or Coreper can play a role in assessing what impact a legislative proposal of the Council may have on fundamental rights and whether the proposal is compatible with these rights.

The European Union Agency for Fundamental Rights, as mentioned in the Stockholm Programme, can also be consulted on the development of policies and legislation with implications for fundamental rights.

On the basis of the above-mentioned considerations Ministers are invited to share their experience as to how fundamental rights scrutiny is carried out under their national legislative procedures and how they can be relevant in an EU context.

Ministers are also invited to discuss the following questions:

1. Are the existing methods for fundamental rights scrutiny within the Council satisfactory or is there a need to strengthen the fundamental rights checks to be carried out in the work of the

Council, bearing in mind that this issue also should have been dealt with in the impact assessment of the Commission's legislative proposals?

2. Does the Council's scrutiny of fundamental rights in its legislative procedures need strengthening and if so, what arrangements would Member States welcome?

3. Would Member States agree to give an increased role to different players within the Council, i.e. working group(s), CATS, Coreper, to improve the visibility of fundamental rights scrutiny within the Council? Can, for example, the FREMP be called upon, on an ad hoc basis, by another working group to give an opinion on fundamental rights implications of a legislative proposal? Should the Fundamental Rights Agency be involved in this scrutiny at any stage?

4. Would Member States support an arrangement whereby all three EU institutions involved in the legislative process would lay down a common method of securing the increased protection of fundamental rights in the course of EU law-making in an inter-institutional agreement?