



**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

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NOTE

from:	Presidency
to:	Working Party on Fundamental Rights, Citizens' Rights and Free Movement of Persons (FREMP)
Cion. report:	9042/14 FREMP 64 JAI 239 POLGEN 54 ASILE 10 COHOM 63 COPEN 126 CULT 65 DATAPROTECT 61 DROIPEN 58 ECOFIN 400 INF 126 JUSTCIV 101 MI 381 SOC 301 VISA 105
Subject:	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

I. INTRODUCTION

1. On 15 April 2014 the Commission submitted to the Council the 2013 report on the application of the EU Charter of Fundamental Rights as set out in 9042/14.

2. Following discussions on 21 November 2013¹ and 15 January 2014,² on 9 April 2014 FREMP discussed consistency between internal and external aspects of human rights' protection and promotion in the European Union on the basis of a Presidency non-paper, as set out in 8318/14.

3. Taking the report as well as the discussions in FREMP on 9 April 2014 as a basis, the Presidency has prepared draft Council conclusions on the 2013 Commission 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.

II. CONCLUSION

4. In the light of the above, FREMP is invited to discuss the conclusions as set out in the Annex to this note with a view to their adoption in the June 2014 JHA Council.

¹ 17049/13FREMP 201 JAI 1089 COSCE 16 COHOM 268.

² 5886/14 FREMP 16 JAI 50 COHOM 18.

Draft 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

Having regard to TEU Articles 2 and 6 concerning the values on which the Union is founded and as regards fundamental rights as the general principles of Union law;

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

Recalling Council conclusions of 25 February 2011 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,³ its conclusions of 23 May 2011 on the Council's actions and initiatives for the implementation of the Charter of Fundamental Rights of the European Union,⁴ the guidelines on methodological steps to be taken to check fundamental rights compatibility in the Council's preparatory bodies,⁵ Council conclusions on the 2011 report from the Commission on the application of the EU Charter of Fundamental Rights⁶ as well as the Council conclusions of 6 June 2013 on fundamental rights and rule of law and on the Commission 2012 report on the application of the Charter of Fundamental Rights of the European Union;⁷

³ 6387/11 FREMP 13 JAI 101 COHOM 44 JUSTCIV 19 JURINFO 5

⁴ 10139/1/11 FREMP 53 JAI 318 COHOM 131 JUSTCIV 128 JURINFO 30

⁵ 10140/11 FREMP 54 JAI 319 COHOM 132 JURINFO 31 JUSTCIV 129

⁶ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/131230.pdf.

⁷ 10168/13 FREMP 73 JAI 430 COHOM 99 JUSTCIV 139 EJUSTICE 53 SOC 386 CULT 65 DROIPEN 63

THE COUNCIL OF THE EUROPEAN UNION:

I. Towards effective and systematic application of the Charter

1. Welcomes the 2013 report of the Commission on the application of the Charter, which highlights important developments and challenges in the effective implementation of the Charter, including Union legislative actions and the continuous growth of Charter-related case-law of the Court of Justice of the European Union (hereafter CJEU).
2. Underlines that the Charter is the cornerstone for the effective and systematic protection of fundamental rights in the Union framework and is fully binding on the Union institutions and on the Member States when the latter are implementing Union law, while acknowledging that it complements national systems of protection of fundamental rights and does not replace them.
3. Takes note of the evolving case-law of the CJEU clarifying the situations in which the Charter applies to the Member States.
4. Stresses the need for consistent application of clear and precise principles of delimitation in accordance with the allocation of powers between the Union and the Member States in accordance with the case-law of CJEU.
5. Underlines that the Union system of judicial protection, including effective remedies at national level,⁸ provides essential safeguards for the effective implementation of the Charter and stresses the need for an effective and systematic application of the Charter on the basis of the mechanisms laid down in the Treaties.

⁸ See TEU Article 19(1);

6. Notes that national judges are key actors in ensuring effective judicial protection in relation to the rights provided for in the Charter and welcomes the increased number of applications for preliminary rulings with specific reference to the Charter submitted by national courts to the CJEU since 2010.

7. Recalls that Union institutions are under a duty of scrutinising their action with regard to the provisions of the Charter and reiterates its commitment to check fundamental rights' compatibility throughout the Council's internal decision-making procedures, especially in relation to legislative procedures in different policy areas.

II. Actions to strengthen and promote the effective implementation of the Charter

8. Welcomes the adoption of a number of legislative measures in 2013 that further strengthen the rights provided for in the Charter, with due regard for the principles of subsidiarity and proportionality, including the Directive on the right of access to a lawyer,⁹ as well as the proposals currently being negotiated that aim at further strengthening fundamental rights, notably those relating to non-discrimination, data protection and procedural and victims' rights in criminal proceedings, and looks forward to further progress.

9. Welcomes the adoption of non-legislative initiatives promoting fundamental rights, including for example on Roma integration¹⁰ and the Council conclusions on combating hate crime.¹¹

⁹ Directive 2013/48/EU, OJ L 294.

¹⁰ Council recommendation of 9 December 2013 on effective Roma integration measures in the Member States.

¹¹ Council conclusions of 6 December 2013 on combating hate crime in the European Union.

III. Consistency between internal and external aspects of human rights' protection and promotion in the Union

10. Recalls that in accordance with the Treaties the Union has a duty to ensure consistency between the different areas of its external action and between these and its other policies.¹²
11. Recognises the importance of consistency between internal and external aspects of human rights' protection and promotion in the Union framework in terms of enhancing Union's credibility in its external relations and its objective of leading by example in the area of human rights.
12. Underlines in this respect that the provisions of the Charter are binding on the Member States when they are implementing Union law, and that a number of provisions of the Treaties as well as of provisions of secondary law refer directly or indirectly to fundamental rights and are equally binding on the Member States.
13. Recalls that all Member States are parties to a series of international human rights instruments and their monitoring and judicial mechanisms, notably the European Court of Human Rights, and that the rights provided for in Charter are to be construed as having the same meaning and the scope of the corresponding rights guaranteed by the European Convention on Human Rights (hereafter ECHR).

¹² TEU Art. 21(3).

14. Underlines that Union accession to the ECHR will further contribute to consistency in human rights' protection in Europe as a whole.
15. Notes the valuable role of the Council of Europe mechanisms of protection in the field of democracy, rule of law and human rights and the importance of pursuing good cooperation with the Council of Europe, while avoiding duplication of work.
16. Considers that under the multi-layered system of protection of fundamental rights both the Union and the Member States ensure internally, in general terms, high standards of protection of human rights that can be further applied to the Union's external sphere of activities¹³ and be presented in a consistent and visible manner to relations with third partners.
17. Considers that further progress may be attained in relation to the ratification of international human rights instruments and the implementation of recommendations issued by international human rights monitoring bodies.
18. Recalls that standards of protection of human rights in the Union framework need to be implemented in accordance with the allocation of competences between the Union and its Members States and with due regard for the principles of subsidiarity and proportionality.
19. Considers that it is important to strengthen cooperation between various Council working groups, notably between FREMP and COHOM, in particular through regular exchange of information and joint thematic meetings on specific issues with a focused approach.

¹³ See 14806/11 FREMP 88 COHOM 227.

IV. Streamlining Union action for the protection and the promotion of rights provided for in the Charter

20. Emphasizes its own responsibility for the effective and systematic application of the Charter as a key element for upholding the values on which the Union is founded and for promoting a consistent human rights' policy in the Union framework.

21. Welcomes further debate on the application of the Charter and recalls its engagement to hold 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 the resolutions adopted by the European Parliament and the annual report presented by the EU Agency for Fundamental Rights Agency (hereafter FRA). Further steps should be taken building on current practices, in particular in order to ensure coordination and avoid duplication in the Council's work and to better involve civil society.

22. Recalls its conclusions of 23 May 2011 and considers that it would be important to present, on an annual basis, actions taken by the Council regarding all provisions of the Charter and to point out areas for future initiatives.

23. Notes with interest the idea of a Union fundamental rights policy cycle, building on the Commission's annual report on the application of the Charter that could involve an annual assessment of the past year and setting priorities for future initiatives. This policy cycle could gradually lead to a Union internal strategy on fundamental rights, including setting of priorities and an action plan on a mid-term basis in relation to the implementation of the provisions of the Charter.