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NOTE

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to: Council

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- Lunch Item (Justice Ministers)
The Charter of Fundamental Rights - three and a half years in force

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The Charter of Fundamental Rights is just over three years in force as primary law. In that short time, it has become the dynamic reference point for fundamental rights in the European Union.

The Court of Justice of the European Union as well as the national courts have applied the principles of the Charter in their case-law.

By presenting fundamental rights in one legally binding document, the Charter advances the goals of legal clarity and accessibility. It does not, however, specify how rights should be protected. Moreover, it co-exists with two other sources of fundamental rights, namely, the European Convention of Human Rights (ECHR), and the general principles of EU law, as guaranteed by the ECHR and as they result from the constitutional traditions common to the Member States.

An important challenge linked to the implementation of the Charter is the question of its scope of application.

The Charter binds EU institutions in all activities that fall within the scope of their respective spheres of competence.

It is, however, more difficult to determine precisely when EU Member States are bound by it. The provisions of the Charter are addressed to the Member States only when they are implementing EU law. Neither the Charter nor the Treaty create any new competence for the EU in the field of fundamental rights.

The lack of clarity on this issue affects not only individuals who are rights-holders under the Charter, but also all actors who bear responsibility for applying this instrument at various levels of governance.

EU citizens and others living or residing in the EU are not always aware of the precise scope of application of the Charter and their rights. This in turn, makes it difficult to respond to the expectations of the rights-holders, which can sometimes be unrealistic. There is uncertainty about whether and when the Charter rights can be invoked in particular situations. There is also uncertainty about what the appropriate redress mechanisms are for defending or vindicating fundamental rights.

A related challenge is making sure that institutions and authorities at the EU level and at Member State level are fully aware of the concrete implications of their obligations under the Charter in their day-to-day relations with rights-holders and in their inter-institutional relations.

What could be done at Council and Member State level to overcome or mitigate these challenges?

The complexity of a multi-layered fundamental rights protection system in the EU needs to be clarified and communicated, especially with a view to the upcoming EU accession to the European Convention on Human Rights.

It is also essential to provide targeted information on the Charter and to ensure dissemination of this information. For assessing the situation it is crucial to collect information on the fundamental rights situation at EU and national levels. The Commission annual report on the Application of the Charter is a welcome initiative and the role of the Fundamental Rights Agency in this regard should be underlined as well.

It would be crucial to create networks for improving and developing access to redress mechanisms aiming to close existing gaps which prevent individuals from obtaining redress. Since the EU's fundamental rights landscape is complex, individuals should be properly guided to the appropriate body when seeking assistance and redress so that individuals are not left without a response to their complaint and the coherence of the EU fundamental rights system is demonstrated and reaffirmed.

The key requirements are **cooperation and coordination** among the various actors involved, at the EU and at national levels, in civil society as well as in public administrations, and in other institutions and bodies of the EU and its Member States. National Human Rights Institutions (NHRIs) which comply with the Paris Principles have the potential to undertake a key role in this regard, and should work closely with the Fundamental Rights Agency.

Such a process of political dialogue and scrutiny between all the EU institutions and Member States would help to ensure that the Charter remains a key reference point for the purposes of integrating fundamental rights into all EU legal acts and also when Member States apply EU law.

Questions for discussion:

1. Has the Charter had an impact on legislative activities in your Member State?
 2. What can the Member States do to increase the visibility of the Charter in their day-to-day work?
 3. How can the Member States better communicate the complexities relating to the scope of the Charter?
 4. What role might National Human Rights Institutions play in making the Charter more effective at local level?
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