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European Union

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"I/A" ITEM NOTE

From: General Secretariat of the Council

To: Permanent Representatives Committee (Part 2)/Council

No. prev. doc.: 9409/15

Subject: Draft Council conclusions on the application of the Charter of Fundamental Rights in 2014
- Adoption

1. On 8 May 2015 the Commission presented its 2014 report on the application of the EU Charter of Fundamental Rights (Charter)¹ containing information about how the European Union and its Member States gave effect to the Charter in 2014.
2. On 21 May 2015 the Management Board of the EU Agency for Fundamental Rights (Agency) adopted the 2014 annual report of the Agency,² highlighting fundamental rights challenges and achievements from the perspective of the Agency in 2014.

¹ 8707/15 + ADD 1

² 8988/15

3. Based on these reports, the Presidency prepared a set of draft Council conclusions on the application of the Charter in 2014. The Working Party on Fundamental Rights, Citizens' Rights and Free Movement of Persons (FREMP) discussed these reports at its meeting on 27 May 2015 and the draft conclusions at its meetings on 27 May and 9 June 2015.
 4. As a result of these discussions there is agreement on the text of the conclusions as set out in the Annex to this note.
 5. In the light of the above, Coreper is requested to invite the Council to adopt the conclusions as set out in the Annex.
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**DRAFT COUNCIL CONCLUSIONS ON
THE APPLICATION OF THE CHARTER OF FUNDAMENTAL RIGHTS IN 2014**

I. INTRODUCTION

1. The Council welcomes the 2014 Commission report on the application of the EU Charter of Fundamental Rights (further referred to as the Charter)³ which identifies how the European Union and its Member States gave effect to the Charter in 2014.
2. The Council also welcomes the 2014 annual report of the EU Agency for Fundamental Rights (further referred to as the Agency),⁴ highlighting fundamental rights challenges and achievements from the perspective of the Agency in 2014. The Council reiterates that the data collected by the Agency on specific thematic topics and its opinions given in accordance with its mandate remain an important tool for the EU institutions and its Member States in matters of implementation of EU law.

II. RESPECTING AND PROMOTING FUNDAMENTAL RIGHTS OF THE CHARTER

a) Awareness of the Charter

3. Marking that five years have passed since the Charter became legally binding, the Council notes its steady gain of legal importance as evidenced by increasing case law both at national and EU level. The Council highlights the relevance of the Charter, its rigorous application and implementation at EU and national level and underlines the continued need to regularly and systematically analyse the application of the Charter as the basic legal instrument for fundamental rights in the EU. The Council renews its commitment to annual debates following each Commission report on the application of the Charter.

³ 8707/15 + ADD 1

⁴ 8988/15

4. The Council recognises that fundamental rights have to be considered constantly and comprehensively throughout decision-making and legislative procedures. The Council recalls that in 2014 it updated its guidelines⁵ on methodological steps to be taken to check fundamental rights compatibility at the Council preparatory bodies, organised training activities to promote the use of these guidelines and emphasises that this will be accompanied by further training and awareness-raising activities in order to enhance the protection of fundamental rights at all levels of Council work. In this context the Council welcomes the recently adopted Better Regulation Guidelines,⁶ Better Regulation for Better Results - An EU Agenda⁷ and the proposal for an Interinstitutional Agreement on Better Regulation.⁸
5. The Council underlines the essential role of the Agency in raising awareness of the Charter rights, its scope and about where to turn to concerning fundamental rights issues. Practical toolkits such as the Charterpedia application and the CLARITY project are to be welcomed and further developed.
6. The Council recalls the international conference organised by the Latvian Presidency on 28-29 April 2015 in Riga on the role of the Charter in the legislative process of the EU and its application in the European Union's case law with a special focus on the impact of the Charter on the area of freedom, security and justice. In that context the Council notes that it is necessary to continue promoting training and best practice sharing with regard to the application of the Charter at national and EU level.
7. The Council welcomes Commission plans to launch annual colloquiums on the state of play of fundamental rights in the Union, including the first edition of this initiative in October 2015 on tolerance and respect: preventing and combating anti-Semitic and anti-Muslim hatred.

⁵ 5377/15

⁶ 9079/15 ADD 2

⁷ 9079/15

⁸ 9121/15

8. Having regards to the obligation to respect fundamental rights under the Charter the Council welcomes the Commission announcement to take steps to increase awareness of the Charter among the Member States when managing European Structural and Investment Funds (ESI funds).

b) Security

9. The Council notes the European Agenda on Security put forward by the Commission⁹ and welcomes that the first of the five key principles is the need to ensure full compliance with fundamental rights.
10. Security and respect for fundamental rights are consistent and complementary policy objectives. Taking into account growing threats from terrorism, serious and organized cross-border crime, including cybercrime, security plays an important role in ensuring that every individual can enjoy fundamental rights. Member States and the EU need to work together to ensure that all security measures comply with the principles of necessity, proportionality and legality, with appropriate safeguards to ensure accountability and judicial redress. Proportionate and legitimate responses also foster peaceful, inclusive and diverse societies and integrate respect for fundamental rights into planning and implementing counter-terrorism and other law enforcement actions from the outset.

c) Racism and xenophobia

11. The Council expresses concerns at the growing incidence of racist and xenophobic acts throughout the EU and deplores them.

⁹ See Commission Communication (2015) 185 final, The European Agenda on security, at: http://ec.europa.eu/dgs/home-affairs/e-library/documents/basic-documents/docs/eu_agenda_on_security_en.pdf

12. The Council recalls that promoting inclusive tolerance, integration and shared values combined with raising awareness of fundamental rights of all, are important guarantees against the rise of racism and xenophobia in our diverse societies.
13. The Council invites Member States to fully implement the Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law.

d) Asylum and migration

14. The Council takes note of the European Agenda on Migration¹⁰ and welcomes the emphasis on the importance of complying with fundamental rights in the EU asylum and migration policy at all stages, starting with the arrival of migrants and asylum seekers in the EU, through to migrant and refugee integration, and the return of those with no right to remain.
15. In that context, the Council invites the Member States to strictly enforce the immigration and asylum *acquis*, including the respect for the procedures and standards that allow Europe to ensure a humane and dignified treatment and a proportionate use of coercive measures, in line with fundamental rights and the principle of non-refoulement, and to reinforce the protection of the fundamental rights of asylum-seekers, paying particular attention to the needs of vulnerable groups, such as children. In this context appropriate cooperation measures for the benefit of Member States facing significant migratory pressure could improve the respect of the fundamental rights of migrants and asylum seekers.

e) Digital single market

16. The Council shares the concerns of the Commission about the effective protection of fundamental rights in the digital environment.

¹⁰ COM(2015) 240 final, 8961/15.

17. The protection of personal data, as guaranteed by Article 8 of the Charter is of key importance and should be enhanced with the adoption of the data protection reform package that is being negotiated.
18. The Council also notes with interest the adoption of the Digital Single Market Strategy for Europe by the Commission on 6 May 2015.¹¹

f) Consistency between internal and external policies

19. The Council recalls its conclusions of 5 and 6 June 2014, in particular on the consistency between internal and external aspects of human rights' protection and promotion in the European Union and welcomes cooperation in particular through information exchange between FREMP and COHOM working parties of the Council.¹²

g) Victims Directive

20. The Council recalls that the deadline for transposition of the Victims Directive (2012/29/EU) is 15 November 2015 and encourages all Member States to have the legislative and policy measures in place to ensure the full implementation of that Directive.

¹¹ COM (2015) 192 final, 8672/15

¹² The most recent joint meeting took place on 8 June 2015 on integrated child protection systems and on combating racism and xenophobia.

h) Rights of the Child

21. The Council welcomes research projects on the subject of children's rights undertaken by the Agency¹³ and recalls its conclusions of 4-5 December 2014 on the promotion and protection of the rights of the child.¹⁴ As follow-up to these conclusions, on 8 June 2015 the FREMP and COHOM working parties of the Council held a debate on child protection systems as follow-up to the 9th European Forum on the Rights of the Child which took place in Brussels on 3-4 June 2015.

III. EU ACCESSION TO ECHR

22. The Council agrees with the Commission that accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) remains of paramount importance and will strengthen fundamental values, improve the effectiveness of EU law and enhance the coherence of fundamental rights protection in Europe.
23. The Council reaffirms its strong commitment to the accession to the ECHR as required by the Treaties and invites the Commission as the EU negotiator to bring forward its analysis on the ways to address Opinion 2/13 of the Court of Justice of the European Union.

¹³ For example child-friendly justice:
http://fra.europa.eu/sites/default/files/fra-2015-child-friendly-justice-professionals_en.pdf
guardianship for child victims of trafficking
<http://fra.europa.eu/en/publication/2014/guardianship-children-deprived-parental-care-handbook-reinforce-guardianship>

¹⁴ 17016/14