



Council of the
European Union

Brussels, 8 March 2021
(OR. en)

6795/21

JAI 233
FREMP 38

OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Delegations
Subject: Council conclusions on strengthening the application of the Charter of Fundamental Rights in the European Union

Delegations will find in the Annex the Council Conclusions on strengthening the application of the Charter of Fundamental Rights in the European Union, as approved by written procedure on 5 March 2021¹.

¹ CM 2064/21

COUNCIL CONCLUSIONS on strengthening the application of the Charter of Fundamental Rights in the European Union

Preamble

The Council of the European Union,

Recalling Article 2 of the Treaty on European Union, whereby the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities;

Stressing that the Charter of Fundamental Rights of the European Union (hereinafter ‘Charter’), solemnly proclaimed on 7 December 2000, represents a milestone of European integration and is a symbol of our shared European identity;

Highlighting that the legally binding character of the Charter obliges all Union institutions, bodies, offices and agencies, with due regard for the principle of subsidiarity, as well as the Member States when implementing Union law, to respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties, pursuant to paragraph 1 of Article 51 of the Charter;

Noting that the Charter is one of the most modern and comprehensive legally binding fundamental rights instruments and an integral part of the Union’s multi-layered fundamental rights protection system;

Recalling that the Union’s accession to the European Convention on Human Rights (hereinafter ‘ECHR’) will complement the existing architecture of fundamental rights protection in the Union and promote greater consistency in the protection of fundamental rights in Europe, and **welcoming** the fact that the Union and the Council of Europe have recently resumed negotiations towards achieving this goal;

Emphasising that the protection of fundamental rights and Union values cannot be taken for granted. It is a continuous endeavour and a shared responsibility which requires a collective effort from all actors concerned, namely Union institutions, bodies, offices and agencies, national, regional and local authorities, including law enforcement authorities, legislators, judges and prosecutors, other legal practitioners, universities and legal practitioners' training schools, national human rights institutions (hereinafter 'NHRIs'), equality bodies and civil society organisations;

Underlining that fundamental rights can only be ensured in a democratic society based on the rule of law, of which the independence of the judiciary is one of the essential building blocks;

Alarmed by the unprecedented challenges posed by the Covid-19 pandemic and its severe impact on the exercise of fundamental rights and freedoms in areas such as healthcare, long-term care, education, work, housing, access to food, culture, access to justice, access to support services, freedom of movement, freedom of assembly, freedom of information and freedom of religion or belief;

Concerned by the way in which the effects of the pandemic disproportionately affect persons in a vulnerable position and by its possible long-lasting effects and other unforeseeable consequences to human dignity, equality and basic fundamental rights;

Acknowledging the challenges regarding the protection of fundamental rights, democracy and the rule of law that have emerged in recent years in the Union and its Member States, such as those relating to the reception and integration of asylum-seekers and migrants, the digital transition and the increased use and possible misuse of artificial intelligence², the rise in disinformation and hate speech, both online and offline, the protection of personal data and privacy, the shrinking spaces for civil society, external threats to the integrity of elections and democratic process, climate change and cross-border protection of vulnerable adults;

Noting with concern the persistence of serious problems and obstacles to everyone's full enjoyment of fundamental rights, such as poverty, homelessness and precariousness, all forms of discrimination, gender inequality, domestic violence and violence against women, children, LGBTI persons, persons belonging to minorities, older persons and persons with disabilities, and human trafficking;

² See Presidency conclusions on the Charter of Fundamental Rights in the context of Artificial Intelligence and Digital Change (doc. 11481/20 of 21 October 2020).

Praising the continuous advancements in fundamental rights protection in the European Union, in particular, through legislation aimed at reinforcing the protection and promotion of specific rights, strategies and action plans devised to enhance fundamental rights protection, as well as the case-law of the Court of Justice of the European Union (hereinafter ‘CJEU’);

Noting with appreciation the important work carried out by the Commission in the framework of the «Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union» of 2010;³

Welcoming the annual Conclusions of the Council and the Commission’s annual reports on the application of the Charter, as well as the annual Fundamental Rights reports of the European Union Agency for Fundamental Rights (hereinafter ‘FRA’);

Recognising that further efforts are needed to ensure that the Charter is used to its full potential, to make it truly effective in people’s lives and thus to foster a strong culture of fundamental rights in the Union;⁴

Recalling the 2019 «Council Conclusions on the Charter of Fundamental Rights after 10 years: State of Play and Future Work» (hereinafter ‘2019 Council Conclusions’),⁵

The Council of the European Union **renews** its commitment to make the Charter a reality for all and **adopts** the following conclusions:

1. The Council **welcomes** the «Strategy to strengthen the application of the Charter of Fundamental Rights in the European Union»⁶ (hereinafter ‘Charter Strategy’) and its heightened focus on the responsibility of Member States.
2. The Council **highlights** the synergies and complementarity of the Charter Strategy with other policies and instruments aiming at promoting and protecting the fundamental values on which the Union is founded, such as the Annual Rule of Law Cycle, the new European Democracy Action Plan and the 2020 Citizenship Report.

³ Communication from the European Commission, 19 October 2010, COM (2010)0573.

⁴ As shown by the FRA’s Fundamental Rights Report of 2019, the Commission’s annual reports and the Eurobarometer survey on citizen’s awareness of the Charter.

⁵ Adopted on 7 October 2019, doc. 13217/19.

⁶ Communication from the European Commission, 2 December 2020, COM(2020) 711 final.

Prevention and promotion

Training

3. Preventing fundamental rights violations demands adequate training of all the actors in the Charter enforcement chain, including NHRIs, equality bodies and civil society organisations. To the extent possible, capacity building should take into account the specificities of the work carried out by these actors, particularly the judiciary. In this regard, the Council **calls on** Member States to strengthen training activities regarding the Charter at national level, in particular by developing targeted tools and training tailored to the needs of the different actors, making the best use of available Union funding and FRA's assistance. The Council **underlines** the importance of universities and legal practitioners' training schools in the promotion of knowledge on the Charter, through academic research and training activities, also in cooperation with the Union institutions, national authorities and civil society organisations.

4. The Council **invites** the Commission to continue supporting Member States and all actors at national, regional and local level, as well as other Union institutions, bodies, offices and agencies, in the application of the Charter and in fostering a culture of compliance and promotion of fundamental rights across the Union.

The Council **welcomes** FRA's contribution to capacity building on the Charter and the development of dedicated tools. The Council **encourages** FRA to keep these tools updated, available in all Union languages, easily accessible and user-friendly.

Awareness-raising

5. The Council **emphasises** the importance of providing accessible information on the rights enshrined in the Charter to the public in order to foster people's awareness and ownership of the Charter. In that regard, it **welcomes** the existing materials created by the Commission and FRA and **encourages** Member States to further use and disseminate them. The Council **suggests** that Member States explore innovative and complementary ways to raise awareness, with particular consideration to certain groups that may require enhanced accessibility to the Charter, such as older persons, persons with disabilities and children, and consider the creation of dedicated pages on the Charter in the relevant institutional websites.

6. The Council **underlines** that citizens should know who and where to turn to if their rights are breached in any Member State. The Council **recalls** the helpful interactive fundamental rights tool available in the European e-Justice Portal⁷ and **invites** all Member States to contribute to it, keep it updated and promote it.

7. The Council **looks favourably** on the awareness-raising campaign envisaged by the Commission and further **invites** the Commission to cooperate with Member States, rights defenders, such as NHRIs and equality bodies, and civil society organisations to this effect.

Application of the Charter

FRA's expertise and data

8. The Council **reaffirms** its readiness to make the best use of FRA's expertise and data in its activities that may have a significant impact on fundamental rights, and **invites** other Union institutions and Member States to do so. The Council **looks forward** to continuing the discussions on the proposed amendments to FRA's Founding Regulation, including on the scope of activity of FRA and its working methods.

The role of the legislator

9. The *acquis* of the Union continues to evolve, including in areas that may have a significant impact on fundamental rights. The Council **emphasises** the obligation incumbent on the Commission and the Union's co-legislators to ensure that all legislative proposals and instruments comply with the Charter.

The Council **reasserts** the usefulness of the «Guidelines on methodological steps to be taken to check fundamental-rights compatibility»⁸ (hereinafter 'Guidelines') to assess and ensure the compatibility of legislative proposals with fundamental rights.

The Council **renews** the commitment undertaken in the 2019 Council Conclusions to explore new ways to make a more efficient use of the Guidelines. It further **reminds** the General Secretariat that the Guidelines should be shared with experts in the relevant preparatory bodies, namely by making them available in the Delegates Portal.

⁷ https://beta.e-justice.europa.eu/459/EN/fundamental_rights_interactive_tool.

⁸ Doc. 5377/15, 20 January 2015.

Every Council preparatory instance should assess new legislative proposals in light of these Guidelines; in that regard, the Council **encourages** the promotion of an explicit exchange of views on the topic of Charter compliance at the outset of the negotiations and whenever deemed necessary. The Council **welcomes** the training on the Charter, including on the Guidelines, offered by the General Secretariat and FRA to the incoming Presidencies. It also **welcomes** the Charter e-learning tool announced by the Commission.

10. Highlighting that the FREMP working party is responsible for the preparatory work in the legislative procedures of the Council in the field of fundamental rights, citizens' rights and free movement of persons, the Council **encourages** the presentation of information points on ongoing legislative files with a potentially significant impact on fundamental rights in the FREMP working party. The Guidelines are a useful tool in that regard.

11. Parliaments and other stakeholders in the domestic legislative procedure play a key role in ensuring that Member State's legislation is in full conformity with the Charter, where applicable. The Council **encourages** Member States to reflect the obligation to ensure consistency with the Charter in their national rules on legal scrutiny and impact assessments of legislation that fall within the scope of Union law. In that regard, it **draws attention** to the existing best practices and tools at national and Union level, which may be adapted to each national context.

The role of administrations

12. The Council **underlines** the role of national, regional and local administrations, including civil servants, in mainstreaming the Charter and ensuring compliance with fundamental rights in policy-making, and in nurturing a fundamental rights culture across all levels of the executive.

13. Acknowledging the Charter Strategy's focus on the responsibility of Member States, the Council **recalls** nonetheless that all Union institutions, bodies, offices and agencies are bound by the Charter and that they should be exemplary in this context. It thus **underscores** that the work undertaken by Union agencies is often fundamental rights-sensitive, and **stresses** the importance of adequate training of staff and monitoring of their activities.

14. The Council **draws attention** to the importance of the right of access to Union documents, data protection and good administration as a means to improve the exercise, awareness and appropriation of the rights enshrined in the Charter by all citizens.

15. The Council **acknowledges** the crucial role that law enforcement authorities play in ensuring a society safe for all, but also that fundamental rights may be particularly affected by their action. The Council **attaches** vital importance to adequate training and monitoring, to ensure that all action by law enforcement authorities is compliant with national and international standards, as well as the standards of the Charter, when applicable. In this regard, the Council **urges** Member States to provide regular training to law enforcement staff, prison staff and staff working in detention centres. It also **emphasises** the importance of monitoring bodies and NHRIs having access to these venues, even in the context of COVID-19 restrictions, and the power to issue recommendations.

16. The Council **highlights** that cities and local governments are important actors in the promotion of fundamental rights at national and European level. It thus **invites** Member States to promote the sharing of experiences and best practices between local authorities, including networks of towns, and **encourages** the use of funding opportunities under the new Citizens, Equality, Rights and Values programme, in particular its Citizens engagement and participation strand. The Council further **looks with interest** at the initiative of FRA to work on a framework of commitments for human rights cities in the Union which should provide adequate visibility to the Charter.

Funding

17. The Council **recalls** that any Union funded project must comply with Union law, including the Charter, where applicable. Thus, it **welcomes** the introduction of an enabling condition to ensure the respect of the Charter in the next Union budget for 2021-2027. The Council **looks forward** to the development of a dedicated training module and related assistance by the Commission. The Council **encourages** Member States to ensure a smooth exchange of information and cooperation in this respect and to involve NHRIs as appropriate. It also **invites** Member States to consider making use of the expertise of FRA in this regard.

Exchange of good practices and coordination

18. The Council **acknowledges** the usefulness of mutual learning and exchanging good practices between Member States on the implementation of the Charter at national level and of having thematic discussions on the Charter.

19. The Council **recalls** that, following the Council's invitation to the Commission on the 2019 Council Conclusions, a dedicated page on the European e-Justice Portal was created. The Council **urges** all Member States to record their relevant good practices therein, including at local level. This page should be regularly updated.

20. In order to facilitate coordination and the flow of relevant information, the Council **invites** Member States to consider nominating a Charter focal point or to entrust an existing contact point with the promotion and coordination of capacity building, exchange of information and awareness raising on the Charter. National focal points could constitute a link between different levels of government in the country and other bodies, including those with a human rights remit and civil society organisations, as well as the Union institutions and agencies.

Enforcement and monitoring

The role of the Court of Justice of the European Union (‘CJEU’) and national courts

21. The Council **reiterates** the importance of the case-law of the CJEU in the interpretation and application of the Charter. In order to promote its case-law and raise awareness on the relevant procedures, the Council **considers** this should be an integral part of training on the Charter and disseminated within Member States. The Council **invites** the CJEU to further engage with networks of national courts, namely through informal exchanges or study visits.

22. The Council **underlines** the vital role that courts play in upholding fundamental rights. Judges are the true guarantors of the Charter, as they are called upon to ensure effective judicial protection of the rights enshrined therein. The Council **notes with appreciation** the increased use of the Charter by national courts, as well as of requests for preliminary rulings to the CJEU, the primary form of judicial dialogue in the Union framework. In this connection, it **invites** FRA to provide regular updates of the database Charterpedia, including the national and European case law contained therein.

23. The Council **calls on** Member States to explore further avenues to improve the proficiency of the judiciary and other justice practitioners on the Charter, drawing on dedicated training material, including e-learning tools. The Council **suggests** that Member States encourage networks of judges, lay and honorary judges and other justice practitioners to put a renewed emphasis on the application of the Charter at national level, namely by cooperating on training and sharing of practices and building on support and tools offered by the Commission, the European Judicial Training Network (hereinafter ‘EJTN’) and FRA.

24. The Council **welcomes** the Commission’s new strategy «Ensuring justice in the EU — a European judicial training strategy for 2021-2024»,⁹ in particular, with regard to Charter training, and **looks favourably** on the action that the Commission envisages undertaking in the Charter Strategy.

⁹ Communication from the European Commission, 2 December 2020, COM(2020) 713 final.

Annual reporting and debate

25. The Council **welcomes** the Commission's commitment to present an annual Report on the application of the Charter with a thematic approach focusing on particular policy areas governed by Union law, based on the principles of objectivity, fairness and equal treatment of Member States, and **looks forward** to the presentation of the first focused report on fundamental rights in the digital age, to be published in 2021. The Council **invites** the Commission to also include in its reports best practices for better application of the Charter at local, regional and national levels, and to ensure that the report is reader friendly and disseminated to the general public.

26. The Council **commits** to having an annual exchange of views on the application of the Charter, at Union and national level, based on the Commission's annual Report, on FRA's annual Fundamental Rights Report and on the information provided by Member States on the European e-justice Portal. The annual debate should fuel targeted and forward-looking Council Conclusions.

National human rights institutions and equality bodies

27. The Council **recognises** that independent NHRIs and equality bodies play a crucial role in the protection and promotion of fundamental rights and in awareness-raising, and contribute to ensuring compliance of national policies with the Charter. NHRIs are key for the implementation of the Charter, given their broad and horizontal fundamental rights mandate and their proximity to citizens.

29. The Council **encourages** Member States that have not yet established independent NHRIs in accordance with the Principles relating to the Status of National Institutions («Paris Principles») to do so, recalling also indicator 16.a.1 of the SDGs. Member States where NHRIs have been established should ensure that they are provided with sufficient resources and staff to fulfil their mandate. Furthermore, the Council **underlines** that securing an enabling environment and adequate funding is essential to unlocking the potential of NHRIs and equality bodies as Charter agents.

30. The Council **notes** that there is room to enhance the impact of the work of NHRIs and **encourages** Member States, the Commission, and other Union institutions, bodies, offices and agencies to further strengthen mutual cooperation with these mechanisms, namely by ensuring their regular and substantiated involvement in exchange of views with the government and in reporting exercises.

Civil society

31. The Council **acknowledges** that civil society organisations are often the first instance to which citizens turn for support and information with regard to their rights; frequently, they are also at the forefront of prevention against and reaction to violations or abuses. The Council further **recognises** the essential role of civil society organisations in sharing relevant Charter knowledge and raising awareness.

32. The Council **recalls** the importance of removing and refraining from any unnecessary, unlawful or arbitrary restrictions on the civil society space, and **acknowledges** that transparent, sufficient and easily accessible funding is crucial for the efficient and independent operation of civil society organisations. In this connection, the Council **looks forward** to the implementation of the Union's Justice, Rights and Values Fund.

33. The Council **invites** Member States to consider ways of improving the interaction and cooperation with civil society organisations, with a view to support capacity building on the Charter to better promote and protect the rights enshrined therein. In that regard, it **considers** good practices that governments regularly meet with civil society organisations, that they involve them in the preparation of national action plans on fundamental rights and in the reporting on the application of fundamental rights instruments, and that they establish structures bringing together representatives from civil society, rights defenders and public authorities.