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NOTE

From:	Presidency
To:	Council
No. prev. doc.:	12727/17
Subject:	Draft Council conclusions on the application of the EU Charter of Fundamental Rights in 2016

Delegations will find annexed the draft Council conclusions on the application of the EU Charter of Fundamental Rights in 2016, for adoption at the JHA Council on 12 October 2017.

In addition, the Presidency invites the Ministers to reflect on how to strengthen the protection of fundamental rights and raise awareness of the Charter.

**DRAFT COUNCIL CONCLUSIONS ON THE APPLICATION OF THE CHARTER
OF FUNDAMENTAL RIGHTS IN 2016**

I. INTRODUCTION

1. The Council recalls Article 2 of the Treaty on European Union, which states that 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. These common values lay down the foundation of the European Union and our societies. According to Article 51 of the EU Charter of Fundamental Rights (the Charter), the institutions and bodies of the Union, as well as the Member States when implementing EU law, shall respect the fundamental rights enshrined in the Charter.
2. In 2016, the protection of several rights in the Charter was further reinforced through the adoption of a set of legal instruments: on the presumption of innocence and the right to be present at the trial;¹ on legal aid;² procedural safeguards for children³ as well as the establishment of a comprehensive set of data protection rules at EU level.⁴

¹ Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings, OJ L 65, 11.3.2016, p. 1–11.

² Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings, OJ L 297, 4.11.2016, p. 1–8.

³ Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, OJ L 132, 21.5.2016, p. 1–20.

⁴ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1–88. Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA.

3. The Council reaffirms that, in all policy areas, fundamental rights need to be fully integrated into the preparation and assessment of EU legislation and policies. It recalls the Council guidelines on methodological steps to be taken to check fundamental rights compatibility in the Council's preparatory bodies⁵, which aim to strengthen the consideration of fundamental rights in the law and policy making processes.
4. The Council looks favourably at the 2016 Commission Report on the application of the Charter⁶ as well as the Fundamental Rights Report 2017⁷ of the EU Agency for Fundamental Rights (the Fundamental Rights Agency). These reports underline the progress made over the past year and remaining challenges regarding the effective application of the Charter in the EU and the Member States.
5. The Council notes the Commission's proposal to establish a European Pillar of Social Rights⁸ that sets a framework for the way forward for future action towards enhancing equal opportunities and access to the labour market, fair working conditions and social protection and inclusion and looks forward to discussions on the proposal at the EPSCO of 23 October 2017.

II. MAKING THE RIGHTS OF THE CHARTER A REALITY

6. The Council acknowledges that the protection of fundamental rights is a horizontal issue which affects all fields of EU activity and can only be realised with the support and active cooperation of all stakeholders at EU as well as at national level. The Council recalls the importance of awareness-raising on the application of the Charter at national as well as at EU level among policymakers, legal practitioners and the rights holders themselves. It underlines in this regard the need to enhance the use of digital tools such as e-Justice and the exchange of best practices.

⁵ 5377/15.

⁶ 9511/17.

⁷ 10744/17 + ADD 1 + ADD 2.

⁸ See doc. 8637/17.

7. The Council is committed to further strengthening the coherence between the internal and external dimension of EU fundamental and human rights policy⁹.
8. The Council underlines the role played by the Court of Justice of the European Union in interpreting, applying the Charter in the EU and thereby making the rights it contains a reality.
9. The Council acknowledges the essential role of the Fundamental Rights Agency, as laid down in its founding regulation,¹⁰ in providing evidence-based advice and expertise on fundamental rights issues over the last 10 years. The Council encourages the Fundamental Rights Agency to enhance this commitment, through its role as a fundamental rights data collector and by fostering synergies and promoting cooperation between networks of government focal points, national human rights institutions, civil society organisations and citizens. The Council invites the Fundamental Rights Agency to work together with Member States to facilitate the exchange of good practices, tools and methods on the application of the Charter and on the communication of fundamental rights, values and freedoms.
10. Within the framework of international, EU and national law, civil society organisations play an important role in promoting and implementing fundamental rights on the ground and serving as a watchdog, as well as in raising awareness of fundamental rights among rights holders and in supporting their efforts to exercise and defend their rights. To fulfil their tasks, civil society organisations must be enabled to carry out their work.

⁹ In line with the EU action Plan on Human Rights and Democracy (2015-2019).

¹⁰ Council Regulation (EC) No 168/2007 establishing a European Union Agency for Fundamental Rights, OJ L 53, 22.2.2007, p. 1-14.

a) Internal security

11. The Council reiterates that security and respect for fundamental rights are consistent and complementary policy objectives.
12. In this context, the Council emphasises the importance of the right to privacy and the right to the protection of personal data in the follow up to the work of the High-Level Expert Group on Information Systems and Interoperability in line with the Council Conclusions of 9 June 2017 on the way forward to improve information exchange and ensure the interoperability of EU information systems¹¹.

b) Asylum and migration

13. The Council recognises the need to respect the fundamental rights of migrants, persons seeking asylum, refugees and persons eligible for subsidiary protection even in the face of pressing challenges in the areas of migration and asylum. The Council agrees that EU and national actions should particularly take into account the serious risks of abuse and exploitation, for example by smugglers and human traffickers, with women and children facing greater risks of violence and discrimination.¹²

¹¹ 10151/2017.

¹² See, for example, the recent conclusions of the Council and the Member States on the protection of children in migration (doc. 10085/17), as well as the Commission Communication on the protection of children in migration of 12 April 2017 (COM 2017 (211)).

c) Rights of the child

14. The Council highlights the importance of the protection of children and respect for the principle of the best interests of the child as a primary consideration in all actions affecting children.
15. The Council underlines that cooperation and dialogue with stakeholders are key to ensure the respect of children's rights, and notably through the exchange of good practices, which should be further developed. It recalls the Annual Forum on the rights of the child, the informal Member States expert group on the rights of the child as well as the Commission's initiative to establish a European guardianship network.

d) Combating racism and xenophobia

16. The Council welcomes the measures coordinated by the Commission High Level Group on combating racism, xenophobia and other forms of intolerance. These include monitoring the code of conduct on countering illegal hate speech online,¹³ strengthening support for victims, developing methodologies for recording and collecting data on hate crime, countering illegal hate speech online, promoting media literacy and critical thinking, and increasing intercultural understanding through education. Against this background, the Conference organised by the Maltese Presidency on 'Counter-narratives: how to support civil society in delivering effective positive narratives against hate speech online' on 6-7 April 2017 confirmed the need for more cooperation and commitment from all stakeholders: the media, internet platforms and public authorities.
17. The Council looks forward to the results of the EU-MIDIS II survey carried out by the Fundamental Rights Agency to assess progress made over the past five years in protecting the fundamental rights of people with an immigrant or ethnic minority background.

¹³ Available at:
http://ec.europa.eu/justice/fundamental-rights/files/hate_speech_code_of_conduct_en.pdf

e) Violence against women

18. The Council welcomes that the 2017 Commission Colloquium on Fundamental Rights is devoted to the promotion of women's rights and gender equality as an opportunity to address the economic and political empowerment of women, women's rights in public and private spheres of life and the fight against violence against women in all its forms, the latter also being the topic of focused actions throughout the year.¹⁴
19. The Council has repeatedly expressed its commitment to preventing and eliminating all forms of violence against women and domestic violence. In this connection, the Council recalls its recently adopted decisions¹⁵ on the signing of the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) and its thereby expressed intent to proceed with the conclusion of the Convention. The Council invites those Member States that have not yet done so to ratify the Convention.

f) Media pluralism

20. The Council appreciates that media pluralism and democracy were the focus of the 2016 Colloquium on Fundamental Rights as well as its subsequently planned follow-up actions. It appreciates the continued focus on this issue by the Estonian Presidency at its informal expert seminar on 'Media Pluralism and the Rule of Law in the Digital Age' on 12 July 2017 in preparation of the Council's annual rule of law dialogue.

¹⁴ See https://ec.europa.eu/info/events/sustainable-development-goals/2017-annual-colloquium-fundamental-rights-2017-nov-20_it

¹⁵ Council Decision (EU) 2017/865 and Council Decision (EU) 2017/866.

g) EU accession to the ECHR

The Council remains committed to the EU's accession to the European Convention on Human Rights, which will reinforce the common values of the Union, improve the effectiveness of EU law and enhance the coherence of fundamental rights protection in Europe. The Council invites the Commission to swiftly complete its analysis of the legal issues raised by the European Court of Justice, for further consideration by the Council.
