



Brussels, 12 October 2018
(OR. en)

13093/18

JAI 997	DATAPROTECT 213
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NOTE

From: Presidency

To: Delegations

No. prev. doc.: 12884/18

Subject: Presidency Conclusions

- The application of the Charter of Fundamental Rights in 2017

The discussions in Council have not led to reaching a consensus on conclusions on the application of the Charter of Fundamental Rights in 2017. However, the Presidency concluded that the text annexed was supported or not objected to by 27 delegations.

THE APPLICATION OF THE CHARTER OF FUNDAMENTAL RIGHTS IN 2017

I. INTRODUCTION

1. The European Union is a ‘union of values’ as enshrined in Article 2 of the Treaty on European Union, founded on the respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. Respect for fundamental rights is key to ensuring that the EU is a place where people can prosper, enjoy their rights and freedoms and live without discrimination. The EU and Member States when implementing EU law should therefore respect the Charter in all their action in all EU policy areas.
2. In this context, we look favourably on the Commission 2017 report on the application of the EU Charter of Fundamental Rights¹ (hereinafter referred to as the Charter), as well as the Fundamental Rights Report 2018 of the EU Agency for Fundamental Rights² (hereinafter referred to as the Agency).
3. Pursuant to Article 51 of the Charter the provisions of the Charter are addressed to all EU institutions, bodies, offices and agencies of the Union as well as, with due regard for the principle of subsidiarity, to Member States when they are implementing Union law. All these actors are called upon to apply and promote the use of the Charter at different levels. The Member States are invited to promote awareness of the Charter rights, including relevant Court of Justice of the European Union (CJEU) case law, especially among European citizens, the public in general, and staff of national authorities, and to ensure that targeted training modules are offered to national legal professionals including judges.

¹ ST 9542/18

² ST 9557/18

4. In this context, we welcome Charter-related conferences organised by Council Presidencies and look forward to the upcoming conference entitled “The ‘national life’ of the EU Charter of Fundamental Rights. Avenues to enhance awareness, judicial training and implementation” on 23 and 24 October 2018. The conference will discuss various tools for a better implementation and enhancing awareness of the Charter rights. It will also be the occasion for the Agency to present its upcoming handbook providing guidance on the applicability of the Charter.
5. We look forward to the upcoming 10th anniversary in 2019 of the Charter becoming legally binding with the entry into force of the Lisbon Treaty. This will be an opportunity to reflect on the experiences so far and further avenues to ensure that it is used to its full potential.
6. The role played by the CJEU in interpreting and applying the Charter in the EU and, through its case law, giving further guidance to national judges and courts on the application of the Charter is underlined. It contributes to making the Charter a reality for people on the ground.
7. We recognise the essential role played by the Agency, as set out in its Founding Regulation, in collecting and disseminating relevant, objective, reliable and comparable data and providing evidence-based assistance and expertise on fundamental rights issues on the ground, thereby nurturing a fundamental rights culture across the EU. This was clearly underlined also in the second independent external evaluation of the Agency, which was welcomed by the Agency’s Management Board in December 2017 and was later presented to the Council. Any proposal for a revision of the Founding Regulation of the Agency the Commission may decide to submit will be considered, taking into account the external evaluation of the Agency in 2017 and the recommendations of the Agency’s Management Board based on this evaluation.

8. We welcome the good cooperation, within the competence of the Union, with international organisations, especially the Council of Europe and its expert bodies such as the Venice Commission.

II. RESPECT FOR DEMOCRACY AND THE RULE OF LAW AS A PREREQUISITE FOR THE FULL ENJOYMENT OF FUNDAMENTAL RIGHTS

9. Democracy is a central value common to the EU and all its Member States. We look forward to the 2018 Commission Colloquium on Fundamental Rights dedicated to the important theme 'Democracy in the EU'. The colloquium will provide a timely opportunity to discuss at the highest political and expert level how to renew democratic engagement within the EU and European society and identify potential ways to foster free, inclusive and open democracy in the EU.
10. In view of the upcoming European elections in May 2019, it is important to take action to support turnout and democratic participation and at the same time to underline the growing problem of massive digital disinformation. We welcome the actions undertaken by the Commission in this context including in its Communication 'Tackling online disinformation', which aims at promoting a consistent approach by Member States to this complex problem, and look forward to seeing the results of the implementation of the actions planned. In addition, we recognise the work that individual Member States and the European External Action Service are undertaking in this area, underlining that this work can also contribute to supporting international partners in tackling these issues around the world.

11. Within the framework of international, EU and national law, the crucial role of a vibrant civil society in promoting fundamental and human rights and thereby contributing to the functioning of democracies is stressed. The importance of removing and refraining from any unnecessary, unlawful or arbitrary restrictions on the civil society space, in particular with regard to freedom of association, peaceful assembly and expression is recalled.
12. It is recalled that the rule of law is one of the fundamental values of the Union and a prerequisite for the respect of fundamental rights.
13. It is recalled that the Council and the Member States meeting within the Council have committed themselves to establishing a dialogue among all Member States within the Council to promote and safeguard the rule of law in the framework of the Treaties and looks forward to the evaluation of the dialogue on the rule of law in the Council by the end of 2019.
14. We underline the importance of trust in public institutions and welcome that this year's annual rule of law dialogue in the Council will analyse this topic. The seminar organised by the Presidency on 11 July 2018 showed that trust is a necessary prerequisite for the proper functioning of the legislative, executive and judicial branches of the State and discussed various measures that would contribute to strengthening or regaining trust, including enhanced openness and transparency. We look forward to the ministerial debate at the General Affairs Council.

III. BUILDING A CULTURE OF FUNDAMENTAL RIGHTS IN THE EU

15. We welcome the Commission's engagement in promoting the protection of fundamental rights in the EU, including the organisation of the Annual Colloquium on Fundamental Rights.
16. The importance of fostering better coherence and consistency between internal fundamental rights and external human rights policies is highlighted.
17. We remain committed to the accession by the EU to the European Convention on Human Rights (ECHR), 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. We invite the Commission to swiftly complete its analysis of the legal issues raised by the CJEU in Opinion 2/13, for further consideration by the Council.
18. On the occasion of the 70th anniversary of the Universal Declaration of Human Rights in 2018, the EU's role in setting a global benchmark for the universal protection and promotion of human rights as well as building a culture of fundamental rights is reaffirmed.

Women's and girls' full enjoyment of human rights

19. We welcome the Commission 2017 Colloquium on Fundamental Rights devoted to the promotion of women's rights and gender equality which addressed the economic, political and social empowerment of women, women's rights in public and private spheres of life and the fight against all forms of violence against all women and girls.

20. In this context, we welcome the work of the European Institute for Gender Equality (EIGE), particularly its Gender Equality Index 2017 measuring equality between women and men in the European Union in 2005-2015, as a comprehensive measure to support better-informed policymaking and increase awareness of gender equality issues at EU and national level.
21. The necessity of promoting and protecting women's and girls' full enjoyment of human rights and of strengthening the protection of all women and girls against all forms of violence in all settings, is highlighted.
22. The Council's decisions on the signing³ of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) by the EU expressed intent to proceed with the conclusion of the Convention. The Commission is invited to present its analysis of the obligations that the EU will itself incur under the Convention in respect of its institutions, bodies and agencies as well as its personnel. Those Member States that have not yet done so are invited to ratify the Istanbul Convention as soon as possible.

³ Council Decision (EU) 2017/865 and Council Decision (EU) 2017/866, of 11 May 2017, OJ L L 131/11, 20.5.2017

Combating racism and xenophobia

23. Results from the second edition of the European Union Minorities and Discrimination Survey (EU-MIDIS)⁴, as well as the reports by other relevant organisations, point at worrying trends as regards a number of forms of hatred and intolerance, including widespread discrimination, harassment and discriminatory profiling.
24. We welcome and supports the work of the EU High Level Group on combating racism, xenophobia and other forms of intolerance, which has fostered discussions, cooperation, good practice exchanges and the compilation of guidance on a number of key areas. It provides a platform to support EU and national efforts to ensure the effective implementation of relevant rules and the setting up of effective policies to prevent and combat hate crime and incitement to hatred and violence, including illegal hate speech online.
25. Member States are invited to build on this work to achieve concrete progress on the ground regarding racism and xenophobia, taking advantage of opportunities of support and operational assistance by EU and international bodies to better identify gaps and improve responses to address them.
26. Member States are also invited to make further efforts to improve the recording of hate crime and systematically collect and publish reliable data on hate crime on a regular basis to enable national authorities to develop effective, evidence-based legal and policy responses to these phenomena. Member States are also encouraged to ensure that various forms of hate crime are prohibited under their national law and to take measures to prevent and combat cases of hate crime and incitement to hatred and violence, in particular by effectively investigating, prosecuting and trying such cases, in order to avoid criminal acts being perpetrated with impunity.

⁴ <http://fra.europa.eu/en/project/2015/eu-midis-ii-european-union-minorities-and-discrimination-survey>

27. While emphasising the vital importance of freedom of expression, we further welcome the voluntary dialogue conducted under the Code of Conduct on countering illegal hate speech online and the positive results of the 2017 monitoring exercise, which shows that IT platforms removed around 70% of the content notified to them compared to only 28% in the previous exercise. We welcome that the code of conduct is becoming an industry standard, attracting attention also from smaller platforms.

Promoting Non-Discrimination

28. We welcome and support the work of the EU High Level Group on Non-Discrimination, Diversity and Equality and of its Subgroup on improving the collection and use of equality data where appropriate. Member States are invited to participate in this Subgroup and continue to strengthen the quality and the use of equality data in their policy-making. In this regard, we look forward to the new guidelines on improving the collection and use of equality data.
29. We also welcome the ongoing discussions on standards for equality bodies and positively note the Commission Recommendation⁵ advising Member States on measures they may apply to help increase the effectiveness and independence of equality bodies.
30. There is a need to take action at national and EU level to combat intolerance, discrimination and incitement to hatred and violence, including against religious groups, in all Member States.

⁵ Commission's Recommendation 2018/951 of 22 June 2018, OJ L 167/ 28 of 4 July 2018

Roma integration

31. We welcome the discussion on the Commission's midterm review of the EU Framework for national Roma integration strategies up to 2020. It shows the first signs of progress, especially in ensuring that children complete their full-time, compulsory education and in promoting early childhood education. However there are still barriers (in education and housing) which continue to hamper efforts to translate these initiatives into increased employment opportunities. Member States are urged to pursue efforts to combat racism and incitement to hatred and violence against Roma and to improve the social and economic integration of Roma also in light of the country-specific recommendations in the European Semester.

Rights of persons with disabilities

32. Our commitment to promote, protect and ensure the full and equal enjoyment of all fundamental rights by all persons with disabilities is reaffirmed. Member States are urged to pursue efforts to implement the UN Convention on the Rights of Persons with Disabilities and to promote equality and non-discrimination in line with the Convention and the European Disability Strategy 2010-2020.

Rights of the child

33. We affirm our commitment to continue to promote the right of every child to reach their full potential in line with the UN Convention on the Rights of the Child and as enshrined in Article 24 of the Charter.
34. We welcome that the EU Foreign Ministers have adopted the revised EU Guidelines on the Promotion and Protection of the Rights of the Child – Leave no Child Behind (2017). These Guidelines set out the EU's overarching strategy to strengthen efforts to ensure every child, in particular, the most marginalised and vulnerable, is reached by EU policies and actions.

Protection of children in migration

35. Migrant children, especially unaccompanied minors, are in a state of particular vulnerability and continuously exposed to risks of violence, physical abuse, exploitation, sexual abuse and trafficking. In this regard, its conclusions on children in migration of 8 June 2017 following the Commission Communication of 12 April 2017 on this issue are recalled.⁶
36. We welcome the creation of the European Network on Guardianship, which will facilitate cooperation between relevant national authorities and exchange of good practices.

⁶ Conclusions of the Council of the European Union and the representatives of the governments of the Member States on the protection of children in migration of 8 June 2017, and Communication from the Commission to the European Parliament and the Council of 12 April 2017 on the protection of children in migration, COM(2017) 211 final

LGBTI Equality

37. It is noted that that LGBTI persons are still frequently victims of discrimination, physical violence and incitement to hatred and violence throughout the EU. Therefore, the Council's 2016 Conclusions on LGBTI equality are recalled⁷ and the Annual Report 2017 on the list of actions by the Commission to advance LGBTI equality, which was presented on 1 March 2018, on Zero Discrimination Day it is acknowledged with interest.⁸
38. The efforts of the Agency in 2018 to prepare the second EU-wide LGBTI survey⁹ to improve the body of data and thereby assist EU institutions and Member States when implementing EU law in protecting the fundamental rights of LGBTI persons are positively noted. We look forward to the publication of future surveys of the Agency on this topic so that trends can be identified.

A rights-based approach to ageing

39. The issues raised by the ageing population across Europe is recognised and the importance of ensuring that the fundamental rights of people continue to be respected throughout their lives and that the particular needs of older people are recognised and respected, is reaffirmed. We welcome the work that Member States are undertaking in this area.
40. We welcome the efforts of the Agency in its 2018 Fundamental Rights Report to analyse the phenomenon of ageing with a rights-based approach and takes note of the opinion of the Agency that EU institutions and Member States should consider using the European Structural and Investment Funds to promote such an approach to ageing.

⁷ Adopted on 16 June 2016 (<http://www.consilium.europa.eu/en/press/press-releases/2016/06/16/epsco-conclusions-lgbti-equality/>)

⁸ <https://ec.europa.eu/info/sites/info/files/2017annualreportonlgbtilistofactions.pdf>

⁹ <http://fra.europa.eu/en/project/2018/eu-lgbti-survey-ii>

Proclamation of the Social Rights Pillar

41. The proclamation of the European Pillar of Social Rights by the EU leaders on 17 November 2017 signals the strong political commitment by EU institutions and Member States to work towards a more social and inclusive Europe.
42. Delivering on the European Pillar of Social Rights is a shared political commitment and responsibility of the EU and its Member States.

Data protection and the digital world

43. We welcome the entry into application of the General Data Protection Regulation (GDPR) and of the Directive on protection of personal data in the field of law enforcement in May 2018. These legislative frameworks strengthen citizens' fundamental rights in the digital age with regard to the processing of personal data and the free movement of such data, as enshrined in Article 8 of the Charter, while facilitating business in the Digital Single Market.
44. The digital world, including increased use of algorithms, blockchain, artificial intelligence and other new technologies, will continue to have an important impact on the lives of citizens and on their rights. It is important to take into account that digital solutions and new technologies entail both important opportunities to better ensure fundamental rights, such as access to justice and freedom of expression and information, as well as potential risks, including in relation to data protection, privacy, equality and human dignity.

45. In this context, we recognize the need to strengthen trust in new technologies such as artificial intelligence, and look forward to guidelines to be developed in this area, with due regard to the Charter.
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