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NOTE

From:	Presidency
To:	Permanent Representatives Committee/Council
Subject:	Council Conclusions on the application of the EU Charter of Fundamental Rights; The role of the civic space in protecting and promoting fundamental rights in the EU - Approval

1. On 6 December 2022, the Commission presented its annual report on the application of the Charter of Fundamental Rights of the EU, entitled “a thriving civic space for upholding fundamental rights in the EU”¹. That report focused on the crucial role of civil society organisations (CSOs) and human rights defenders in ensuring the effective implementation of the Charter; on how CSOs and human rights defenders are protected, supported and empowered by the Member States and the EU, as well as on the need to improve their protection, support and empowerment. The Commission report was presented at the JHA Council of 9 December 2022 and at the FREMP WP on 12 December 2022.

¹ 15737/22

2. By way of a follow-up to the Council Conclusions of 5 March 2021 on strengthening the application of the Charter of Fundamental Rights in the European Union² and in the light of the aforementioned Commission annual report for 2022, the Presidency submitted to FREMP draft Council Conclusions on the application of the Charter focusing on the role of the civic space in protecting and promoting fundamental rights in the EU.
3. These draft Conclusions were examined by FREMP in a series of meetings, the latest of which took place on 20 February 2023. During these meetings, the Presidency submitted compromise suggestions in order to accommodate delegations' concerns.
4. The Presidency considers the outcome of the work carried out at FREMP as a balanced approach that meets the objectives set out in the draft Conclusions.
5. In the light of these considerations, the Permanent Representatives' Committee is invited to agree provisionally on the draft Council Conclusions, as set out in the Annex to this Note, on the role of the civic space in protecting and promoting fundamental rights in the EU, and to invite the Council to approve them at its session on 9-10 March 2023.

² 6795/21

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**Council Conclusions on the application of the EU Charter of Fundamental Rights;
The role of the civic space in protecting and promoting fundamental rights in the EU**

Preamble

The Council of the European Union,

- a. **Recalling** Article 2 of the Treaty on European Union (hereinafter ‘TEU’), whereby the Union is founded on the values, which are common to the Member States, 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;
- b. **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;
- c. **Recalling** that Member States have undertaken to guarantee the rights and freedoms enshrined in the Charter for all people within their jurisdiction and to ensure that fundamental rights are universal, indivisible, interdependent and interrelated;

- d. **Highlighting** that the Charter is one of the most modern and comprehensive legally binding fundamental rights instruments and that it obliges all Union institutions, bodies, offices and agencies 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;
- e. **Stressing** the importance of finalising the Union's accession to the European Convention on Human Rights, in accordance with Article 6, paragraph 2 of the TEU³, to enhance coherence and consistency in the protection of fundamental rights and further strengthen the fundamental rights protection in Europe;
- f. **Recalling** the Union's commitment to supporting human rights defenders worldwide, including through the European Union Guidelines on Human Rights Defenders and the European Union Human Rights Defenders Mechanism.
- g. **Deploring** the grave and widespread human rights violations caused by Russia's war of aggression against Ukraine, as well as human rights challenges posed by the COVID-19 pandemic, the climate crisis, as well as the consequences of the cost-of-living crisis. These crises highlight that the protection of fundamental rights and Union values cannot be taken for granted and that they can only be ensured in a democratic society based on the rule of law. It is a continuous endeavour and a shared responsibility which requires a collective effort from all actors concerned.

³ The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.

- h. **Welcoming** the “Strategy to strengthen the application of the Charter of Fundamental Rights in the European Union” and its renewed commitment to ensure that Union institutions and Member States apply the Charter to its full potential.
- i. **Welcoming** the Commission “2022 Annual Report on the Application of the EU Charter of Fundamental Rights: A thriving civic space for upholding fundamental rights in the EU” (hereinafter the ‘2022 Charter Report’).
- j. **Welcoming** the work of the European Union Agency for Fundamental Rights (hereinafter the ‘Fundamental Rights Agency’), such as its recent reports as regarding the protection of fundamental rights in challenging times, notably the 2022 report ‘Europe’s Civil society - still under pressure’ and the bulletins on the war in Ukraine ‘Fundamental rights impact of the Russian war of aggression against Ukraine’.
- k. **Looking forward to** the conference “Protection of Fundamental Rights in times of Crisis” to be organised by the Swedish Presidency of the Council of the European Union on 20-21 April 2023. The conference will provide a forum to discuss how structures to protect fundamental rights in the European Union can be made more robust and resilient in times of crisis, including what can be learnt from crises, past and present, and how to best move forward.

The role of civic space in protecting and promoting fundamental rights in the EU

The Council of the European Union **renews** its commitment to the continuous application of the Charter of Fundamental Rights and **approves** the following conclusions.

The Council of the European Union,

1. **Recalls** that the Charter recognises the rights to freedom of peaceful assembly and of association (Article 12), and freedom of expression and information (Article 11).
2. **Emphasizes** that the right to freedom of association constitutes one of the essential foundations of a democratic and pluralist society as it enables citizens to act collectively in areas of common interest and, by doing so, contributes to the proper functioning of public life.⁴
3. **Acknowledges** that civil society actors at all levels need appropriate and sufficient human, material and financial resources to carry out their missions effectively and that the freedom to seek, receive and use such resources is an integral part of the right to freedom of association.⁵ Such access must be in accordance with the principle of legality and adhere to the common values of the Union.
4. **Stresses** that civil society organisations (hereinafter ‘CSOs’) and human rights defenders⁶ are essential in our constitutional democratic societies to contribute to the promotion and the protection of the values and rights enshrined in Article 2 of the TEU and in the Charter and help ensuring that the Charter is properly applied, thereby increasing the impact of fundamental rights on people’s lives. They are an indispensable element in the system of checks and balances in a healthy democracy; unjustified restrictions to their operating space can present a threat to the rule of law.

⁴ In accordance with relevant case law of the ECtHR.

⁵ See OSCE-ODIHR, Guidelines on freedom of association (2015), principle 7.

⁶ For the purpose of these conclusions, “human rights defenders” are understood as covering, beyond CSOs, NHRIs, equality bodies and ombuds institutions.

5. **Underlines** that Article 11 of the TEU requires Union institutions to give citizens and representative associations the opportunity to make known and publicly exchange views in all areas of Union action; and that the institutions shall maintain an open, transparent and regular dialogue with representative associations and CSOs and to carry out broad consultations on new initiatives.
6. **Acknowledges** the value of knowledge sharing and exchanges of good practices between Member States on efforts to protect, support and empower CSOs and human rights defenders, and the lessons to be learnt from the different sources of knowledge compiled by e.g. the European Commission and the Fundamental Rights Agency.
7. **Notes** with concern that the Fundamental Rights Agency's reports on civic space show evidence that CSOs are challenged and therefore hampered in fulfilling their important roles regarding fundamental rights, democracy and the rule of law across the Union.
8. **Stresses** the importance of improving consultation mechanisms to ensure that CSOs and human rights defenders are appropriately involved in processes to prepare, implement and monitor legislation and policies.

The Council of the European Union invites Member States to:

9. **Safeguard and promote** an enabling environment for CSOs and human rights defenders so that they are able to pursue their activities in line with Union values without unjustified interference by the State as required by EU- and international standards.

10. **Set up or facilitate** the establishment of national human rights institutions in compliance with the United Nations Paris Principles and adopt a legislative framework enabling them to carry out their role independently and provide them with the adequate mandate and appropriate resources to carry out their tasks effectively.
11. **Nominate**, where not already done, a Charter focal point or to entrust an existing focal point with the promotion and coordination of capacity building, exchange of information and awareness raising on the Charter.
12. **Increase** the efforts to protect, support and empower CSOs and human rights defenders, providing them with a range of opportunities to co-operate.
13. **Protect** the civic space by ensuring that no unnecessary or arbitrary restrictions are adopted, such as registration requirements and tax regimes that specifically target the civic space in an unfavourable manner.
14. **Protect** CSOs and human rights defenders from, inter alia, threats, attacks, persecution of critical voices and smear campaigns targeting organisations, staff and volunteers by active means, such as by taking targeted actions to address these issues, by establishing monitoring mechanisms to prevent such threats, by ensuring the prompt identification, reporting, investigation and follow-up on such incidents, and by putting in place dedicated support services for civil society actors.
15. **Protect** the possibility for CSO's and human rights defenders to be safe and act independently also in the digital space, inter alia by finding pathways for technology to be an enabler for engagement and democratic action and not be used to restrict the space of civil society actors and their activities.

16. **Support** CSOs by tackling challenges relating to the availability, accessibility and sustainability of funding, inter alia, by ensuring a fair distribution through transparent and non-discriminatory criteria, by publishing and broadly disseminating calls for proposals so that they are widely accessible as well as by simplifying access to flexible funding for CSOs of all sizes, including through digitalisation and new innovative ways of distribution. At the same time it should be recognised that funding of CSOs should not solely be dependent on public funds, in order to safeguard their independence.
17. **Empower** civil society actors by ensuring the meaningful participation of a wide range of CSOs when drafting and implementing legislation and other initiatives across relevant policy areas, that may fall under their specific remit, including when designing funding opportunities.
18. **Empower** CSOs by ensuring that they have the opportunity to assess and express their opinion on how proposed legal and policy measures may affect them, their members, their constituencies, or fundamental rights more generally.

The Council of the European Union,

19. **Welcomes** the Commission's work relating to the role of the civic space in protecting and promoting fundamental rights in the European Union, and in particular takes note of:
- The 2022 Charter Report.
 - The commitments in the Strategy to strengthen the application of the Charter of Fundamental Rights in the EU (Charter strategy) to support an enabling environment for civil society actors and take action against measures that breach Union law including the Charter when these affect civil society organisations.

- The annual Rule of Law Reports.
- The legislative proposal on standards for equality bodies.⁷

The Council of the European Union invites the Commission to:

20. **Protect** CSOs and human rights defenders by continued efforts to foster and protect democracy, the rule of law, and fundamental rights across all relevant policy areas, including by ensuring coherence between the Union's approach to protecting human rights defenders externally and internally.
21. **Support** CSOs and human rights defenders by continuing to provide, within the Multiannual Financial Framework, adequate and accessible funding through relevant funding programmes, such as the Citizens, Equality, Rights and Values Programme. All such funding must be used in accordance with the common values of the Union enshrined in Article 2 of the TEU and in the Charter.
22. **Support** CSOs and human rights defenders of all sizes, levels and capacity to have the possibility to benefit from EU funds, inter alia by simplifying open calls, stepping up support to potential applicants and by continuing innovative approaches such as financial support to third parties (CSOs) by intermediaries as well as core funding for organisations.

⁷ Proposal for a Council directive on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in the field of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC (15899/22) and Proposal for a directive of the European Parliament and of the Council on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU (15902/22).

23. **Empower** CSOs and human rights defenders by maintaining an open, regular, transparent and inclusive dialogue, and by continuing efforts to create adequate mechanisms and guidelines to enable CSOs and **human** rights defenders to contribute at relevant steps of decision-making processes, including in initiatives impacting them or fundamental rights.
24. **Empower** CSOs and human rights defenders by mainstreaming the possibilities for them to be involved in a meaningful way across policy and legislative areas.
25. **Empower** CSOs and human rights defenders by proceeding with the commitments in the 2022 Charter Report to launch a targeted dialogue with stakeholders through a series of thematic seminars on safeguarding civic space, focusing on how the European Union can further develop its role to protect, support and empower CSOs and human rights defenders to address the challenges and opportunities identified in the 2022 Charter Report.