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SEMDOC

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NOTE

from : The Presidency

to : Delegations

Subject : Meeting of the Fundamental Rights Charter ad hoc Working Group

Introduction

This note summarises the state of discussions after the first meeting of the "Fundamental Rights Charter" ad-hoc Working Party on 13 July. In the light of that discussion, the Presidency has prepared a revised draft on the composition, method of work and practical arrangements for the Body, which will form the basis of discussion at the next meeting (see Annex).

A. Composition of the Body

(i) Chair

Two broad views emerged from the discussions:

- The view that the respective representative of the President of the European Council should chair the Body, on the grounds that the decision to elaborate the Charter was taken at the initiative of the European Council, thereby underlining the important role Member States governments should play in the work of the Body.

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- The view that a permanent Chairperson should be elected by the Body itself, given the need for continuity and the special character of the Body which will comprise representatives of Heads of State of Government and parliamentarians on an equal footing.

A compromise could be that while the Chair is assumed by the respective Presidency of the European Council, there should be two or three Vice-Chairpersons, one being the representative of the incoming Presidency of the European Council, one an MEP and possibly one a national parliamentarian.

(ii) Members of the Body

Whereas the composition of the Body as far as representatives of Heads of State or Government and of the President of the Commission are concerned is self-evident, there is no clear view as to the number of European and national parliamentarians who should be members of the Body. On the one hand, there is a widespread concern to limit the size of the Body to ensure that it remains effective and does not become too unwieldy. On the other hand, emphasis was placed on the need to find a ratio between European and national parliamentarians acceptable to the European Parliament and to the national parliaments, with two delegations advocating parity between the two component groups.

As regards Members of European Parliament, a majority of delegations could accept 8, which would allow each political group in the Parliament to be represented if the European Parliament so wishes, with some preferring 2 or 15, the latter figure being justified on the grounds that representatives of Heads of State or Government and the European Parliament would be represented with an equal number. Some considered 15 to be a minimum in the event of opting for 30 national parliamentarians.

With respect to the national parliamentarians, a majority of delegations could accept one member of parliament from each national parliament, although six delegations considered that two members from each national parliament would be necessary to enable them to take account of their bicameral system and/or of both the majority and the opposition in their national parliament.

(iii) Observers, bodies or persons to be invited to give their views, and secretariat

The revised draft attached reflects the broad convergence of views on these issues. One question which merits further careful consideration is the status accorded to the Council of Europe, with some delegations raising the question of whether a proposal should be made to the Tampere European Council to formally include the Council of Europe in the list of observers to the Body, given its particular experience in this field. It was also brought up in the discussions that it would be appropriate to consult the applicant countries during the work of the Body.

B. Procedure of the Body

(i) Drafting Committee

On the one hand, a number of delegations indicated that it would be difficult to accept a Drafting Committee in which not all representatives of Heads of State or Government were represented. On the other hand, the broad view was expressed that, for reasons of efficiency, any Drafting Committee would need to be small. Three broad views were brought up by delegations:

1. The formation of a small Drafting Committee comprising the Chairperson, the Vice-Chairpersons and the representative of the Commission.
- The formation of a Drafting Committee comprising the Chairperson, the Vice-Chairpersons, the representative of the Commission and the representatives of all Governments of Member States.
2. No Drafting Committee should be formed, with the task of bringing the work of the Body forward falling on the Chairman of the Body, assisted by the Secretariat.

It was accepted that any Member of the Body may submit drafting proposals.

C. Working Method of the Body

(i) Adoption of the Draft Charter

A clear distinction must be made between the three stages of the procedure set out in the European Council conclusions, namely the establishment of the Draft Charter by the Body, the subsequent endorsement of the Charter by the European Council (via the normal channels), and the final joint solemn proclamation of the Charter by the European Parliament, the Commission and the Council. It was stressed that the mandate of the ad-hoc Working Party covered only the first of these three stages.

With respect to this first stage, a majority of delegations seemed to favour an option which would give the Chair of the Body some discretion in determining when consensus had been encountered on the draft in the Body and then submitting it to the European Council. The main advantage of this option is that it would avoid the difficult question of setting voting rules for the body. However, other delegations pointed out that the Cologne Conclusions state clearly that it is the Body, not the Chair, which should elaborate the Draft Charter, and that the Working Party would need to address the question of a procedure for adopting the final draft.

Three broad views were argued by delegations:

3. Firstly, consensus in the Body without a formal vote, with the Chair entitled to use his discretion in determining when such consensus has been reached.
4. Secondly, common agreement of all Members of the Body.
5. Thirdly, adoption by the Body according to procedural rules, to be determined in advance or by the Body itself.

Whatever the alternative chosen, most delegations underlined the need for common agreement among the representatives of the Heads of State or Government, given that it would be required for endorsement of the Draft Charter by the European Council. In the view of the Presidency there was a wide support for the first alternative.

(ii) Transparency

One delegation raised the issue of transparency of deliberations of the Body.

D. Practical arrangements

The state of discussions on the issues under this heading is reflected in the revised Annex.

E. Consultation of the European Parliament and national parliaments

Several delegations raised the question when and how the European Parliament and national Parliaments should be consulted on the composition of and procedure for the Body. It was stressed that agreement of the European Parliament and national parliaments to the rules governing the Body would need to be reached as soon as possible, and in any case before the Tampere European Council.

The conclusion was reached at this stage that each delegation should make its own contacts with its national parliament if it deems it appropriate. As far as the European Parliament is concerned, it was suggested that the Presidency take informal contacts with the EP as soon as it is in place (e.g. in early September).

Composition, method of work and practical arrangements for the Body to be established in accordance with the European Council decision on the drawing up of an EU Charter of Fundamental Rights

A. Composition of the Body

(i) Members

(a) Representatives of Member States

- 15 representatives of the Heads of State or Governments of Member States

(b) Commission

- 1 representative of the President of the European Commission.

(c) European Parliament

- 8 representatives of the European Parliament to be designated by itself

(d) National Parliaments (members to be designated by national Parliaments themselves)

Option 1

- *15 representatives of the national Parliaments (one from each Member State)*

Option 2

- *30 representatives of the national Parliaments (two from each Member State)*

(ii) Chair

Option 1

The Body shall be presided by the representative of the Presidency of the European Union. The representative of the incoming Presidency of the European Union and the representative of the European Parliament shall act as Vice-Chairpersons of the Body.

Option 2

The Body shall be presided by the representative of the Presidency of the European Union.. The representative of the incoming Presidency of the European Union, the representative of the European Parliament and a representative of the national Parliaments shall act as Vice-Chairpersons of the Body.

Option 3

The Body shall be presided by a permanent Chairperson who shall be selected by [].

If the Chair is selected from among the representatives of the Heads of State or Governments of Member States, the representative of the Presidency of the European Union, the representative of the incoming Presidency of the European Union and the representative of the European Parliament [as well as the representative of the national Parliaments] shall act as Vice-Chairpersons of the Body.

If the Chair is selected from among the representatives of the European Parliament, the representative of the Presidency of the European Union and the representative of the incoming Presidency of the European Union [as well as the representative of the national Parliaments] shall act as Vice-Chairpersons of the Body.

If the Chair is selected from among the representatives of the national Parliaments, the representative of the Presidency of the European Union, the representative of the incoming Presidency of the European Union and the representative of the European Parliament shall act as Vice-Chairpersons of the Body.

(iii) Observers

- Two representatives of the Court of Justice of the European Communities to be designated by the Court

(iv) Bodies of the European Union to be invited to give their views

- The Economic and Social Committee
- The Committee of the Regions
- The Ombudsman

(v) Applicant States

An appropriate exchange of views should be held between the Body and the applicant States.

(vi) Other bodies or experts to be invited to give their views

- The Council of Europe¹
- Other bodies to be designated by the Body/the Chair of the Body
- Social groups to be designated by the Body
- Experts to be designated by the Body/the Chair of the Body

(vii) Secretariat

The General Secretariat of the Council shall provide secretariat services for the Body.

¹ Several delegations have suggested that a proposal should be made to the Tampere European Council for the Council of Europe, given its particular experience in the field of fundamental rights, to be included as an observer to the Body.

B. Drafting of the Charter

Option 1 (Drafting Committee):

(i) Composition of the Drafting Committee

There shall be a Drafting Committee of the Body.

The Drafting Committee shall consist of the Chair of the Body, who shall chair the Drafting Committee, as well as the Vice-Chairpersons of the Body and the representative of the President of the Commission [as well as the representatives of the Heads of State or Governments of all Member States].

Any member of the Body may submit drafting proposals.

(ii) Tasks of the Drafting Committee

On the basis of the work plan agreed by the Body, the Body shall mandate the Drafting Committee to elaborate a first preliminary draft of the Charter or parts of it. This draft, or the partial drafts respectively, shall be presented to the Body for discussion. The Drafting Committee shall assist the Body in carrying out its task. The Drafting Committee shall convene, as necessary, between the sessions of the Body.

Option 2 (no Drafting Committee):

On the basis of the work plan agreed by the Body, the Body shall mandate the Chair of the Body, assisted by the Secretariat, to elaborate a first preliminary draft of the Charter or parts of it. This draft, or the partial drafts respectively, shall be presented to the Body for discussion.

Any member of the Body may submit drafting proposals.

C. Working methods of the Body

(i) Preparation

The Chair of the Body shall propose a work plan for the Body and perform other appropriate preparatory work.

(ii) Transparency of the proceedings

The modalities of transparency of the proceedings should be examined at an appropriate time. One option would be to leave it to the Body to establish rules on this issue.

(iii) Ad hoc working groups

When preparing the draft of the Charter the Body may establish ad hoc working groups to deal with different aspects of the Charter.

(iv) Adoption of the Draft Charter

Option 1

A final complete Draft Charter is established when the Chair deems that consensus has been reached within the Body.

Option 2

The Body shall adopt a Draft Charter by common agreement.

D. Practical arrangements

(i) Venue

The Body shall hold its meetings in Brussels:

Option 1

In the Council building

Option 2

Alternately in the Council and the European Parliament buildings

(ii) Language regime

A complete language regime shall be applicable for sessions of the Body.

(iii) Travel expenses for members of the Body

All of the participants shall bear their own travel expenses. The question of whether representatives of the Heads of State or Governments should be reimbursed by the Council requires further examination.

If required, the question of who should pay for travel expenses of some of the parties invited to attend sessions of the Body will require further examination.

(iv) Cost of interpreting

The question of who should pay for interpreting services is linked to the outcome of the examination under (iii) above and to the venue selected for the Body.
