



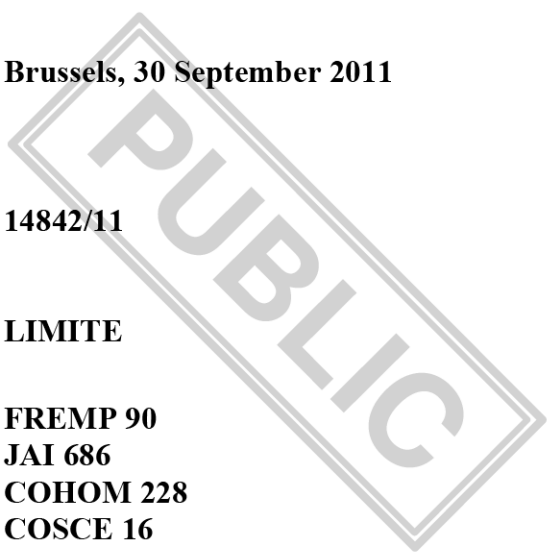
**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

**FREMP 90
JAI 686
COHOM 228
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NOTE

from:	Presidency
to:	Coreper
No. prev.doc.:	10817/10 RESTREINT UE FREMP 27 JAI 523 COHOM153 COSCE 17
Subject:	Accession the European Union to the European Convention for the protection of Human Rights and Fundamental Freedoms (ECHR) - State of play and way forward

I. INTRODUCTION

1. Article 6(2) of TEU provides the legal basis for the accession of the EU to the European Convention for the Protection of Human Rights and Fundamental Freedoms (further referred to as "ECHR").
2. The Council Decision authorising the Commission to negotiate the accession agreement of the European Union to the ECHR and setting out the negotiating directives was adopted by the Council on 4 June 2010.¹ Thereby, the Commission was nominated as the Union negotiator and the Working Party on Fundamental Rights, Citizens Rights and Free Movement of Persons (further referred to as "FREMP") was appointed as the special committee within the meaning of Article 218 (4) TFEU.

¹ 10817/10 RESTREINT UE FREMP 27 JAI 523 COHOM 153 COSCE 17

II. STATE OF NEGOTIATIONS

a) CDDH

3. On 26 May 2010 the Committee of Ministers of the Council of Europe adopted *ad hoc* terms of reference for the Steering Committee on Human Rights (further referred to as "CDDH") to elaborate, in co-operation with representatives of the EU, a legal instrument(s) setting out the modalities of accession of the EU to the ECHR. The CDDH further entrusted this task to an informal working group CDDH-UE². The group held 8 meetings and finalised its work considering that its mandate had been fulfilled.
4. The draft texts of the Accession Agreement, the draft amendments to the Rules of the Committee of Ministers of the Council of Europe and the explanatory memorandum were extensively negotiated and are now submitted for examination and approval to the extraordinary meeting of the CDDH that is scheduled to meet on 12-14 October 2011. The latest texts of the draft legal instruments on the accession of the EU to ECHR are set out in CDDH-UE(2011)16.

b) FREMP

5. FREMP in its role of the Special Committee of Article 218 (4) was regularly consulted by the negotiator and gave its input to the negotiations in order to ensure that the negotiations are conducted in conformity with Article 6(2) of TEU and Protocol No 8 and are governed by the principles set out in the negotiating directives (*i.e.* principle of neutrality regarding Union powers, principle of preservation of the Convention system, principle of neutrality regarding Member States' obligations, principle of autonomous interpretation of Union law and principle of equal footing).

² Composed of 14 members (7 coming from the EU MS and 7 coming from non-member States) acting in their capacity as experts and a representative of the European Commission.

6. In addition, FREMP met on 5 and 19 September and is scheduled to meet on 3 and 4 October 2011 to discuss the possible options regarding the internal rules which the EU will have to adopt as a consequence of the accession to regulate its participation in proceedings before the European Court on Human Rights (further referred to as "ECtHR").
7. The Commission Services suggest to deal only with those issues in the future proposal to be submitted by the Commission which strictly need to be governed by a legally binding instrument.
8. Such issues could include the prior involvement of the Court of Justice of the European Union in cases where it has not had the possibility to rule on the compatibility with fundamental rights of a provision of EU law which is relevant in proceedings before the ECtHR, the establishment of the list of candidates for the office of a judge at the ECtHR, obligation of the Union and the Member States to seek participation as co-respondents, financial issues and the basic requirement regarding non-contradictory submissions to the ECtHR.
9. Other issues could possibly be laid out in a flexible instrument, such as a code of conduct. The exact formulation and the choice of a legal instrument for all the issues that need to be set out remain still to be discussed further once the Commission comes forward with its proposal(s).

c) Further steps

10. Once CDDH has endorsed the text, possibly at its meeting on 12-14 October 2011, the Commission is planning to ask the Court of Justice of the European Union for an opinion under Article 218(11) as to whether the envisaged agreement is compatible with the Treaties.
11. Thereafter, from the Council of Europe side the agreement would be submitted to the Committee of Ministers that would also have to consult the Parliamentary Assembly. Once the Committee of Ministers approves, the agreement would be opened for signature. The agreement would be subject to approval and ratification in all 47 member States of the Council of Europe.

12. At the EU level, the Commission is expected to submit a proposal for the internal rules as referred to in paragraphs 6-8 of this note. In accordance with the Council declaration made on the occasion of adopting the negotiating mandate in June 2011 the internal rules should be adopted before the conclusion of the accession agreement.
13. In the period that the Court of Justice of the European Union is examining the text, no formal decisions can be taken in the Council. Technical work in FREMP can continue to examine the draft internal rules.
14. In accordance with Article 218 TFEU the proposal for a Council Decision concluding the agreement would be subject to unanimity and would enter into force only after approval by the Member States in accordance with their respective constitutional requirements. The European Parliament would be invited to give its consent in accordance with Article 218(6) a) (ii) TFEU.

III. COREPER

15. In the light of the above Coreper is invited to take note of the state of play and way forward of the accession of the European Union to the European Convention for the protection of Human Rights and Fundamental Freedoms.
