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NOTE

From: Presidency

To: Permanent Representatives Committee/Council

Subject: Accession of the European Union to the European Convention for the
Protection of Human Rights and Fundamental Freedoms (ECHR)
- State of play

DOCUMENT PARTIALLY ACCESSIBLE TO THE PUBLIC (18.12.2023)

I. INTRODUCTION – BACKGROUND INFORMATION

1. The purpose of this Presidency note is to inform delegations about the state of play of the work for the completion of the accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).
2. Pursuant to Article 6(2) TEU, the Union shall accede to the ECHR. This will take the form of an agreement between the EU and the Contracting Parties to the Convention in accordance with Article 218(6) and (8) TFEU (unanimity at Council and the European Parliament's consent, and approval by the Member States in accordance with their respective constitutional requirements).

3. In the wake of negotiations that had started in July 2010, the Council of Europe (CoE)'s Steering Committee for Human Rights (CDDH) ad hoc negotiation group on the accession of the EU to the ECHR (now¹ 'ad hoc 46+1 group') had reached a provisional accord on the draft agreement in April 2013. Following a request by the Commission, the Court of Justice of the European Union (CJEU) issued its Opinion 2/13 in December 2014, whereby it held that the draft accession agreement was not fully compatible with the EU law.²
4. On 7 October 2019, the Council expressed its commitment to the swift resumption of the negotiations and adopted supplementary negotiating directives,³ in order to address the concerns raised by the CJEU in its Opinion 2/13. The negotiations of the ad hoc 46+1 group resumed in June 2020.
5. Since then, work has focused, mainly, on adapting the draft accession instruments agreed in 2013 to the provisions expressed by the CJEU in its Opinion 2/2013, updating them to the current circumstances, where required.
6. Provisional agreement has been reached on all the issues raised by the CJEU (which were organised in four baskets⁴), except for the ones regarding basket 4 (judicial review of EU acts in the Common Foreign and Security Policy (CFSP) area).
7. **DELETED**

¹ Following the exclusion of the Russian Federation from the CoE on 16 March 2022.

² Opinion 2/13 of 18 December 2014, Accession of the EU to the ECHR, EU:C:2014:2454.

³ 12585/19 RESTREINT UE/EU RESTRICTED.

⁴ The specific mechanisms of the EU procedure before the ECtHR ('basket 1'); the inter-party applications under Article 33 of the ECHR and requests for advisory opinions under Protocol No. 16 to the ECHR ('basket 2') and the principle of mutual trust between EU Member States ('basket 3'); judicial review of EU acts in the CFSP area ('basket 4').

8. **DELETED**

9. In the outcome of the Fourth Summit of Heads of State and Government of the Council of Europe, which took place in Reykjavík on 16–17 May 2023, the organisation welcomed the unanimous provisional agreement of the revised draft accession instruments as an important accomplishment in the process of the accession of the EU to the ECHR. It underlined that the accession would enhance coherence in human rights protection in Europe and encouraged the timely adoption of the agreement.

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