



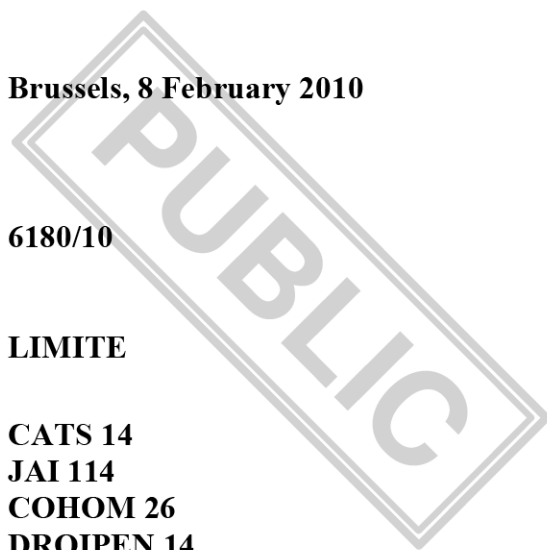
**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 8 February 2010**

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**NOTE**

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from: Presidency  
to: CATS/Coreper/Council

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Subject: Accession of the European Union to the European Convention on Human Rights

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**1. Introduction**

Among the challenges which lie before the Spanish Presidency of the Council, the question of the accession of the EU to the 1950 European Convention on Human Rights, hereinafter referred to as "ECHR" ranks among the highest priorities.

The entry into force of the Treaty of Lisbon not only provides the legal basis to initiate negotiations in view of the accession of the EU to the ECHR, but also establishes an obligation for the EU to finalize the negotiations with the accession to the Treaty (Art. 6 (2) TEU: "The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms").

Further to this, the Stockholm Programme indicates that a "rapid" accession to the ECHR should be made (see point 2.1 of the Programme) and invites "the Commission to submit a proposal on the accession of the EU to the European Convention on Human Rights *as a matter of urgency*". The importance of the accession has been stressed in relation to the fact that it "will reinforce the obligation of the Union, including its institutions, to ensure that in all its areas of activity, fundamental rights are actively promoted".

The Spanish Presidency entirely shares this vision, in full agreement with the future Belgian and Hungarian Presidencies, as stated also in the 18 months programme submitted by the Trio Presidencies on 27 November 2009<sup>1</sup>.

## **2. Preliminary discussions**

Following a joint initiative of the Swedish Presidency and the then incoming Spanish Presidency in December 2009, several meetings of JHA Counsellors and national experts on the question of the EU accession to the ECHR have been held, with the participation of the Commission and, lately, also a representative of the Court of Justice in response to an invitation by letter of 14 January from the President of Coreper. The aim of these discussions was to allow the Commission to consult with Member States' delegations on their preliminary views on a number of questions revolving around the accession to the ECHR, as well as permitting an informal exchange of views with Member States' delegations on these matters.

These informal and preliminary discussions have highlighted a number of legal and technical issues which will have to be addressed in the mandate to be adopted under Article 218 TFEU and in the negotiations for the accession to the Convention.

Among the issues addressed were:

- the question of the scope of the EU accession to the "ECHR system", i.e. whether the EU shall accede not only to the Convention proper, but also to the Additional Protocols to the ECHR; and, if yes, to which of these Protocols (all or only those that all Member States have acceded to);
- the question of the most appropriate manner to ensure that the accession complies with the conditions laid out in the Treaties and their Protocols (in particular Protocol No 8 relating to Article 6 (2) of the TEU), such as the non affectation of individual Member States' situation vis-à-vis the ECHR, the non affectation of the Union's competences, or the preservation of the monopoly of the Court of Justice of the EU in the interpretation of European Union Law;

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<sup>1</sup> See doc. 16771/09, p. 74.

- the advisability to devise a "co-defendant" mechanism, ensuring that in certain cases both the EU and the Member State concerned may, where appropriate, be parties in any proceedings before the European Court of Human Rights;
- the representation of the European Union in the Council of Europe bodies which exercise functions related to the ECHR, such as the Parliamentary Assembly for what concerns the appointment of Judges to the European Court of Human Rights, or the Council of Ministers in its functions of supervision on execution of judgements according to Article 46 (2) ECHR; and
- the relations between the Court of Justice of the EU and the European Court of Human Rights.

Several other issues were also discussed during this preparatory phase.

The importance that EU reach a common, shared approach to the matter was unanimously stressed in these preliminary discussions. At a recent seminar, organised by the Presidency together with the Fundamental Rights Agency, on the accession of the EU to the ECHR in Madrid on 2-3 February, a number of participants stressed the need for finding solutions to all these issues and to maintain the political objective of a rapid accession of the Union to the ECHR.

In this respect, the question arises as to how the European Parliament may be involved, both during the initial discussion, and, in future perspective, in the course of the negotiations with the Council of Europe which will begin after the approval by the Council of the negotiating mandate. According to Article 218 (10) TFEU, the European Parliament shall be "immediately and fully informed at all stages of the procedure". The Presidency suggests that, once the negotiations are opened, this task should be the responsibility of the negotiator/negotiating team that the Council will have to designate under Article 218 (3) TFEU. In the view of the Presidency, the Parliament needs to be very closely associated with the discussions in the light of the nature of the matter and in order to allow the Parliament to fully exercise its role provided for in the TFEU.

### **3. Timing**

According to the information given by the Commission during the preliminary discussions referred to above, the approval of the Recommendation containing the draft negotiating directives and mandate will be treated as a matter of urgency and should, therefore, be reached within a short time. Further information will be given by the Commission at the meeting of the Council on 25 and 26 February 2010.

The Presidency welcomes the willingness of the Commission to contribute to the rapidity of the proceedings. Indeed, the complexity of the questions arising, among which are those summarized above, suggests that negotiations with the Council of Europe should begin as soon as possible.

### **4. Questions for the Council**

In the light of the above, the Presidency would like to ask Ministers the following questions for discussion:

- a) Do Ministers agree that the negotiating directives/ mandate in view of the accession of the European Union to the European Convention on Human Rights should be adopted, in so far as possible, before the end of the Spanish Presidency of the Council of the European Union?
  
  - b) Do Ministers agree that the European Parliament should be associated to the negotiations with the Council of Europe as depicted above in view of the accession and that it should be for the negotiator/negotiating team to implement Article 218 (10) TFEU?
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