



**COUNCIL OF
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NOTE

from:	Presidency
to:	COREPER/Council
Subject:	Accession of the European Union to the European Convention on Human Rights

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 European Union to the ECHR, but also makes the accession, an obligation of result. Art. 6 (2) TEU stipulates: "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 European Union 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 22 December 2009¹.

2. Preliminary discussions

Following a joint initiative by 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 of a representative of the Court of Justice in response to an invitation by letter of 14 January 2010 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 arising from the accession to the ECHR, as well as permitting an informal exchange of views with Member States' delegations on these issues.

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

Among the issues raised, were:

- the question of the scope of the European Union Accession to the "ECHR system", i.e. whether the European Union shall accede not only to the Convention as such, but also to its Additional Protocols; and, if yes, to which of these Protocols;
- 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;

¹ See doc. 17696/09, p. 74

- the advisability to devise a "co-respondent" mechanism, ensuring that in certain cases both the European Union 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 Committee of Ministers in its functions of supervision of the execution of judgements according to Article 46 (2) ECHR; and
- the relations between the Court of Justice of the European Union and the European Court of Human Rights.

Several other issues were also discussed during this preparatory phase.

The importance that the European Union reaches a common and shared approach to the matter was unanimously stressed in these preliminary discussions. At a recent seminar, organised on 2/3 February 2010 in Madrid, by the Presidency together with the Fundamental Rights Agency on the Accession of the European Union to the ECHR, 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, several questions regarding the negotiation and conclusion of international agreements on behalf of the EU will have to be addressed, such as the implementation of Article 218 (10) TFEU¹ both during the initial discussions, 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 directives, or the nomination by the Council of the negotiator or head of the European Unión negotiating team in its decision authorising the opening of the negotiations for the Accession.

¹ Article 218 (10) TFEU stipulates that the European Parliament shall be "immediately and fully informed at all stages of the procedure".

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 will be treated as a matter of urgency and should, therefore, be finalised 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.

In this context, Member States and the Commission are called on to undertake all possible efforts in order that the negotiating directives in view of the Accession of the European Union to the European Convention of Human Rights will be adopted before the end of the Spanish Presidency of the Council of the European Union.

Bearing all this in mind, Ministers are invited to express their political views regarding this process in the prospect of the presentation by the Commission of the relevant recommendations for the negotiating directives to be adopted by the Council.