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JAI 702
FREMP 199

NOTE

From: Presidency
To: Council

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

I. INTRODUCTION

1. The Lisbon Treaty committed the European Union to accede to the European Convention on Human Rights and Fundamental Freedoms (ECHR).¹ The Lisbon Treaty added Protocol 8 to the Treaties, providing that the accession agreement should make provision for preserving the specific characteristics of the Union and Union law.
2. The Council Decision authorizing the Commission to negotiate the accession agreement of the European Union to the ECHR and setting out the negotiating directives was adopted on 4 June 2010.²
3. Thereby, the Commission was nominated the Union negotiator and the Working Party on Fundamental Rights, Citizens' Rights and Free Movement of Persons (FREMP) was appointed as the special committee within the meaning of Article 218 (4) TFEU.

¹ Article 6(2) of the Treaty on European Union (TEU) provides that « The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms ».

² 10817/10 RESTREINT UE FREMP 27 JAI 523 COHOM 153 COSCE 17

II. STATE OF PLAY

a) CDDH-EU 7+7

4. In the first phase of negotiations, the Council of Europe's Steering Committee on Human Rights (CDDH) entrusted the task of preparing a first draft to a group of experts (seven from EU and seven from non-EU countries, CDDH-EU 7+7). The first draft Accession Agreement was finalized in April 2011 and was submitted to the High Contracting Parties to the ECHR and to the EU in June 2011.
5. From the EU side, it appeared that some Member States were unable to agree to the draft as submitted and suggested proposals for modifications to that draft agreement. Negotiations were suspended in Strasbourg. Intensive discussions at EU level started and resulted in a compromise in the Council (JHA) on 27 April 2012.³

b) CDDH 47+1

6. On 13 June 2012 the Council of Europe's Committee of Ministers' Deputies instructed CDDH to pursue negotiations with the EU, in an *ad hoc* group 47+1 (47 Council of Europe member countries and the European Union), with a view to finalizing the legal instruments setting out the modalities of accession of the EU to the ECHR.
7. The CDDH 47+1 *ad hoc* group held five meetings in total.⁴ At the meeting on 3-5 April 2013, the negotiators agreed on the draft revised accession agreement.

³ 8915/12 RESTREINT UE FREMP 63 JAI 267 COSCE 11 COHOM 83

⁴ On 21 June, 17-19 September and 7-9 November 2012, as well as 21-23 January and 3-5 April 2013

c) CJEU

8. In July 2013, pursuant to Article 218(11) TFEU, the Commission sent a request to the Court of Justice of the European Union (CJEU) to obtain its opinion on the compatibility of the Draft Accession Agreement with the EU Treaties.
9. On 18 December 2014 the CJEU declared the Draft Accession Agreement incompatible with the EU Treaties on a number of grounds.
10. The opinion stated that the draft agreement was liable to:
 - a) adversely affect the specific characteristics and the autonomy of EU law (lack of coordination between Article 53 of the ECHR and Article 53 of the Charter of Fundamental Rights of the EU as interpreted by the CJEU, risk that the principle of “mutual trust” in JHA matters is undermined, lack of provision regarding the relationship between Protocol 16 to the ECHR and the preliminary ruling procedure provided for in Article 267 TFEU),
 - b) affect Article 344 TFEU according to which Member States undertake not to submit a dispute concerning the interpretation or application of the EU Treaties to any method of settlement other than those provided therein,
 - c) disregard the specific characteristics of EU law as regards the proposed co-respondent mechanism and the prior involvement of the CJEU,
 - d) entrust a judicial review of EU actions in (some) CFSP matters - for which the CJEU has no competence - to the European Court of Human Rights (ECtHR).

d) Recent developments

11. Following the CJEU opinion, the Latvian Presidency organized a first informal exchange of views in Coreper on 28 January 2015. Whilst reiterating commitment to EU accession, it was widely acknowledged that a period of reflection was needed on the next steps to be taken before returning to the negotiations.
12. A second informal exchange at Coreper level was held on 25 March 2015. At that meeting the Latvian Presidency took the initiative to define the procedural outline for further examination.
13. Following that discussion, two half-day FREMP meetings were held on 9 and 21 April 2015 and a first technical written contribution from the Commission services on the co-respondent mechanism and the prior involvement of the CJEU was discussed.⁵
14. On 23 June 2015, the Council adopted conclusions on the application of the Charter of Fundamental Rights in 2014, recalling its commitment to the accession of the EU to the ECHR.⁶

III. WAY FORWARD

15. The Presidency considers that accession of the EU to the ECHR remains of paramount importance.
16. It will strengthen fundamental values and enhance consistency in the protection of fundamental rights throughout Europe, fostering harmonious development of the case-law of the CJEU and the ECtHR.
17. EU accession would also mean that any person claiming to be a victim of a violation of the ECHR by an institution or body of the EU is able to bring a complaint against the EU under the same conditions as those applying to complaints brought against Member States. This would enhance the credibility and accountability of the EU both internally and externally in terms of fundamental rights protection.

⁵ DS 1216/15

⁶ 9319/15 FREMP 120 ECOFIN 415 JAI 387 INF 98 POLGEN 85 JUSTCIV 132 ASILE 10 MI 352 COHOM 46 SOC 378 COPEN 140 VISA 198 CULT 34 COMPET 292 DATAPROTECT 92 DIGIT 48 DROIPEN 52 CYBER 43.

18. It is a clear, specific mandatory requirement set up by the Lisbon Treaty, under the conditions provided for in Protocol 8.
 19. The accession process has to be pursued and the strong commitment of the EU to this process should be expressed towards our partners in the Council of Europe.
 20. There is a need for concrete follow-up action to the opinion of the CJEU, by identifying options to address the issues raised by the opinion. The Commission in its role as the EU negotiator is invited to come forward with a comprehensive analysis on the ways to address Opinion 2/13 by submitting to the Council technical written contributions on all aspects to be discussed.
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