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NOTE

From:	Presidency
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To:	Delegations

Subject:	Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) - State of play
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**STATE OF PLAY OF THE NEGOTIATIONS FOR THE ACCESSION OF THE
EUROPEAN UNION TO THE EUROPEAN CONVENTION FOR THE PROTECTION OF
HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS ('ECHR')**

I. INTRODUCTION

1. With the present note the Presidency aims to inform the delegations about the state of play of the negotiations for the accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms ('ECHR').

2. The Council authorised the opening of the negotiations on the accession agreement of the EU to the ECHR by its decision of the 4th of June 2010¹. In the same decision, the Commission was nominated Union negotiator and the Working Party on Fundamental Rights, Citizens Rights and Free Movement of Persons ('FREMP') was appointed as the special committee in accordance with Article 218 (4) TFEU.
3. On the 5th of April 2013, the Council of Europe's CDDH *ad hoc* negotiation group on the accession of the European Union to the European Convention on Human Rights ('47+1 Group') reached a provisional agreement on the text of the draft accession agreement. Following a request by the Commission, the Court of Justice of the European Union ('CJEU') issued its Opinion 2/13 of the 18th of December 2014², whereby it held that the draft accession agreement was not fully compatible with EU law.
4. On the 7th of October 2019, the Council expressed its commitment to the swift resumption of the negotiations on the accession agreement and adopted supplementary negotiating directives with a synthetic overview of the required amendments to the negotiation instruments to address the problems identified by the CJEU³.

II. STATE OF NEGOTIATIONS

a) Steering Committee for Human Rights of the Council of Europe (CDDH)

5. The negotiations of the 47+1 Group resumed in June 2020⁴. The group has since held four meetings: the 6th negotiation meeting took place in a hybrid setting on the 29th of September to the 1st of October 2020; the 7th, 8th and 9th meetings were held virtually from the 24th to the 26th of November 2020, the 2nd to the 4th of February and the 23rd to the 25th of March of this year, respectively. The next meeting is scheduled from the 29th of June to the 2nd of July.

¹ ST 10817/10 of 8 June 2010 RESTREINT UE/EU RESTRICTED; declassified on 10 June 2015.

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

³ ST 12585/19 of 1 October 2019 RESTREINT UE/EU RESTRICTED.

⁴ On 22 June, the 47+1 Group held a virtual informal meeting where the European Commission presented a position paper on possible amendments sought to the draft accession agreement with the purpose to inform the discussion to be held at the 6th negotiation meeting.

6. In order to facilitate the discussions in the 47+1 Group, the Chair of that group prepared a steering document⁵ identifying the problems identified in Opinion 2/13 of the CJEU and structuring them in groups ('baskets'): EU-specific mechanisms of the procedure before the ECtHR (Basket 1), Operation of inter-party-applications (Article 33 of the Convention) and of references for an advisory opinion (Protocol no. 16) in relation to EU Member States (Basket 2), the principle of mutual trust between the EU Member States (Basket 3), and EU acts in the area of the Common Foreign and Security Policy (Basket 4). The paper also identified the interlinkage between the Convention and the EU Charter of Fundamental Rights, in particular, Articles 53 of both instruments, as an issue for discussion. However, delegations from non-EU Member States have raised further issues to be addressed, notably concerning Articles 6, 7 and 8 of the draft accession agreement and its appendices.
7. At this point, there has been concrete progress on Basket 1, in particular, as concerns the clarification of the effects of reservations made under Article 57 ECHR, and on the issue of the interlinkage between Article 53 of the Convention and Article 53 of the Charter.

b) Working Party on Fundamental Rights, Citizens Rights and Free Movement of Persons

8. FREMP, in its role as the special committee in accordance with Article 218(4) TFEU, was consulted by the Commission before each negotiating meeting of the 47+1 Group to discuss proposals and give its input to the negotiations, as well as debriefed on the results after each meeting. During the Portuguese Presidency, the preparation and debrief of CDDH meetings took place on the meetings of the 25th of January, the 8th of March and the 22nd of April; a further meeting is scheduled for the 14th of June, ahead of the 10th 47+1 group meeting.

⁵ «Paper by the Chair to structure the discussions at the sixth meeting of the CDDH *ad hoc* negotiation group (47+1) on the accession of the European Union to the European Convention on Human Rights», doc. 47+1(2020)2 of 31 August 2020.

9. Pursuant to the position reiterated by the Council⁶, the internal rules must be approved before the conclusion of the accession agreement by the EU. In this connection, the Council stated, in its decision of the 7th of October 2019, that FREMP should continue the discussions on the internal rules in parallel to the negotiations in the external vein and agreed on a list of basic elements and principles of the future internal rules⁷.
10. In view of continuing the discussions on the internal rules, relaunched in late 2019, the Portuguese Presidency prepared a mapping document with the identification of the various elements that need to be considered and reflected therein. This document was discussed in the meeting of the 17th of March, following which delegations were invited to send written comments, and in the meeting of the 20th of May. From these initial discussions emerged that the issues of representation of the Union and an effective coordination between the Union and the Member States throughout the proceedings are central aspects of the internal rules.
11. By decision of the 25th of September 2019, Coreper mandated the Working Party of Foreign Relations Counsellors (RELEX) to assist FREMP on the rules relating to the Common Foreign and Security Policy of the Union⁸. Under the Portuguese Presidency, the RELEX Working Party held a meeting on the 15th of April to discuss two documents prepared by the European External Action Service, in consultation with the Legal Service of the Council and the Legal Service of the Commission.

⁶ As noted last in the Presidency's note to the Council for the decision of 7 October 2019, par. 7.

⁷ Annex II to the Presidency note to the Council.

⁸ ST 12349/19 REV 1 of 25 of September 2019.

III. Way forward

12. Once the 47+1 Group reaches a new draft agreement on the accession of the Union to the ECHR, the Council will then have to adopt the decisions authorising the signing and conclusion of the accession agreement, acting unanimously and after obtaining the consent of the European Parliament, pursuant to Article 218(6)(a)(ii) and 218(8) TFEU. As provided for by Article 218(8) TFEU, the decision concluding the accession agreement shall enter into force only after it has been approved by the Member States in accordance with their respective constitutional requirements. The Council will also have to adopt the internal rules.

13. In the light of the above, the Council is invited to take note of the state of play on the accession of the European Union to the ECHR.