



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 23 November 2012

16573/12

**FREMP 143
JAI 823
COHOM 256
COSCE 28**

NOTE

by : Presidency
to : Coreper/Council
No. prev. doc. : 16385/11 FREMP 100 JAI 795 COHOM 257 COSCE 20

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 Council Decision authorising the Commission to negotiate the accession agreement of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms (further referred to as "ECHR") and setting out the negotiating directives was adopted on 4 June 2010.¹ Thereby, the Commission was nominated the Union negotiator and the Working Party on Fundamental Rights, Citizens' Rights and Free Movement of Persons (further referred to as "FREMP") was appointed as the special committee within the meaning of Article 218 (4) TFEU.

¹ 10817/10 RESTREINT UE FREMP 27 JAI 523 COHOM 153 COSCE 17

2. Upon the adoption of the above-mentioned decision the Council made a declaration that in parallel with the accession negotiations, it would discuss binding internal rules laying down modalities for the various aspects relating to the EU accession to the ECHR. These rules shall, in accordance with the declaration, be adopted before the conclusion of the Accession Agreement.

II. STATE OF PLAY

a) CDDH 47+1

3. A first draft accession agreement was submitted to the High Contracting Parties to the ECHR and the EU in June 2011. Subsequently, some EU Member States suggested that the negotiator in Strasbourg submit certain proposals for modifications to that draft agreement. Negotiations were thus temporarily suspended pending the outcome of the discussions in FREMP on such proposals for modification.
4. Following the discussions in the JHA Council¹ on 27 April 2012, the negotiations in Strasbourg resumed. On 13 June 2012 the Committee of Ministers' Deputies instructed the Steering Committee on Human Rights (further referred to as "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 finalising the legal instruments setting out the modalities of accession of the EU to the ECHR.
5. The CDDH 47+1 *ad hoc* group has held 3 meetings so far, on 21 June, 17-19 September and 7-9 November 2012. Further meetings are scheduled for 21-23 January 2013 and 3-5 April 2013.

¹ 8915/12 RESTREINT UE FREMP 63 JAI 267 COSCE 11 COHOM 83

b) FREMP

6. During the Cyprus Presidency FREMP met on 23 July, 11 September, 8 October, 22-23 October, 15 November 2012 and is scheduled to meet on 29-30 November and 10 December 2012.
7. FREMP, in its role as the Special Committee of Article 218(4), was regularly consulted by the negotiator and gave its input to the negotiations in order to ensure that they are conducted in conformity with Article 6(2) of TEU, Protocol No 8, the mandate and the negotiating directives.
8. In addition and building on the work started by the previous presidencies, the Cyprus Presidency examined certain elements of the internal rules which the EU will have to adopt as a consequence of the accession to regulate its participation in proceedings before the European Court of Human Rights (further referred to as "ECtHR").
9. In particular, the elements that FREMP has examined during the Cyprus Presidency include the establishment of the list of candidates for the office of a judge at the ECtHR, representation of the Union in proceedings before the ECtHR, determination of Union positions, obligation of the Union and the Member States to seek participation as co-respondents, modalities relating to relinquishment of jurisdiction, referral to the Grand Chamber, friendly settlements and unilateral declarations; third party interventions and execution of judgements.
10. The exact formulation and the choice of a legal instrument for all the issues that need to be set out remain still to be discussed once the Commission comes forward with a formal proposal.

III. COREPER/COUNCIL

11. In light of the above, Coreper/Council is invited to take note of the state of play of the accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms.
