FRA EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

# EU ACCESSION TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS

# QUESTIONS AND ANSWERS ON LEGAL AND OPERATIONAL IMPLICATIONS

REPORT

## Contents

**Introduction** 3

**Questions and answers** 4

Q1. What are the main sources of legal protection for human rights in Europe? 4

Q2. What role has the ECHR played in EU law? 4

Q3. What is the historical background of accession? 5

Q4. What is the legal basis for accession in EU law? 7

Q5. What is the legal basis for accession in the ECHR and Fundamental Freedoms law? 8

Q6. What is the relationship between the jurisprudence of the Court of Justice of the European Union and the European Court of Human Rights with respect to fundamental rights? 8

Q7. How does EU law arise in cases before the European Court of Human Rights? 9

Q8. How has the Court of Justice relied upon the ECHR and European Court of Human Rights jurisprudence? 10

Q9. How did the Treaty of Lisbon and the proclamation of the Charter influence the relationship between ECHR law and EU law? 11

Q10. What is the interplay between the ECHR and the Charter in the context of EU law? 12

Q11. What are the principal tenets in the Draft revised Agreement on the Accession? 14

Q12. What is the main legal change effected by accession? 16

Q13. What changes will accession effect with regard to EU representation before the Council of Europe? 17

Q14. How does the EU's accession affect additional protocols to the ECHR? 17

Q15. What are the expected procedural impacts of the EU's accession to the ECHR? 18

1. Addressing the current procedural limitation 18

2. Third-party intervention 18

3. Prior involvement and co-respondent mechanism 19

Q16. How will the advisory opinion mechanism under Protocol No 16 operate post-accession? 20

Q17. What is the current status of the accession process? 21

Q18. What are the key points of the EULEX Kosovo judgment and what are its implication for the EU's accession to the ECHR? 21

Q19. What are the potential legal and operational implications of the EU's accession to the ECHR? 22

**Further resources** 24

Resources on accession 24

Council of Europe list of documents and draft revised accession instruments 24

**Endnotes** 25

**About this publication** 29

# Introduction

This document considers the legal and operational implications of the EU's accession to the Convention for the Protection of Human Rights and Fundamental Freedoms, commonly known as the European Convention of Human Rights (ECHR). It encompasses the relevant aspects of the relationship between EU and ECHR legal protection for human rights in Europe. It also includes some framing questions about the relationship between ECHR law and EU law that offer some broader legal context to accession. It is intended for a general legal audience and does not purport to offer expert analysis or a comprehensive appraisal of the issues. It is based on a compilation of the official data and pronouncements of the Council of Europe (CoE), the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU), drawing upon relevant case-law.

# Questions and answers

## Q1. What are the main sources of legal protection for human rights in Europe?

At the European level, human rights [1] are protected by two legal frameworks: one adopted under the aegis of the CoE and the other under that of the EU.

The main legal instruments for human rights protection in these systems are the ECHR and EU Charter of Fundamental Rights of the European Union [2] ('the Charter').

The ECHR was adopted by the CoE in 1950 and entered into force in 1953. Its implementation is overseen by the ECtHR in Strasbourg. The interpretative jurisprudence of the ECtHR has helped ensure that the ECHR remains a 'living instrument' capable of adapting to the values, needs and so-called 'mores' or morals of a changing society. The ECHR is an international treaty that creates a positive obligation for high contracting parties to respect and protect human rights and fundamental freedoms, while ensuring that their national laws and practices meet the minimum standards of the ECHR. All 46 Member States of the CoE, including the 27 EU Member States, are parties to the ECHR.

The Charter was proclaimed in 2000 and became legally binding on 1 December 2009, entering into force with the Treaty of Lisbon. The Charter has the same legal status as the EU treaties and, as such, it is considered a part of the EU's primary law and carries no requirements of transposition or incorporation into the legal systems of EU Member States [3] . It is interpreted by the CJEU in Luxembourg. The Charter is part of EU law and applies in all situations where the EU institutions and Member States are acting within the scope of EU law [4] . Such obligation is relevant both for the EU Member States and for the EU institutions [5] . The EU is not currently a party to the ECHR; however, it has a legal obligation to accede to the ECHR under Article 6(2) of the Treaty on European Union (TEU).

## Q2. What role has the ECHR played in EU law?

Accession notwithstanding, the ECHR has already played a significant role in ensuring the effective protection of fundamental rights within the EU. First, fundamental rights as guaranteed by the ECHR, constitute general principles of EU law (Article 6(3) of the TEU) and the CJEU has relied extensively upon the ECHR in its jurisprudence on fundamental rights. Second, the content and interpretation of the Charter have been influenced by the ECHR and provide that the rights guaranteed by the Charter, corresponding to those guaranteed by the ECHR, have the same meaning and scope. The EU may, in some instances, provide more extensive protection (Article

52(3) of the Charter) but it cannot restrict or reduce the level of protection of rights and freedoms recognised by the ECHR.

## Q3. What is the historical background of accession?

Discussion of the EU's (formerly European Economic Community (EEC) or European Communities) accession to the ECHR can be traced as far back as the Joint Declaration by the European Parliament, the Council and the Commission concerning the protection of fundamental rights and the ECHR [6] (1977), followed by the preamble of the Single European Act [7] (1986) incorporating reference to democracy and human rights, and then the European Parliament Declaration on the Fundamental Rights and Freedoms [8] (1989). In Opinion 2/94 of 28 March 1996 pursuant to Article 228(6) of the EC Treaty [9], the CJEU considered that accession would entail a significant change to the European Communities' system for protecting human rights and would have constitutional implications. It therefore concluded that accession could only be achieved by amending the treaties. In its view, the 'European Communities' did not at that time have the necessary competence to accede to the ECHR, as required by Article 6(2) of the TEU, following the entry into force of the Lisbon Treaty.

In April 2013, negotiators for the EU and for each Member State of the CoE reached an agreement on EU accession to the ECHR. On 18 December 2014 in its Opinion 2/13 [10], the CJEU declared the draft agreement of 2013 to be incompatible with the EU treaties. It identified 11 issues that needed to be addressed to remedy the incompatibility (see Legal corner – Opinion 2/13 of the CJEU). The CJEU ruled that the agreement did not adequately reflect the special nature of the European Union, the competences of the CJEU and the autonomy of EU law. Negotiations were paused following the issuance of the CJEU Opinion.

### Legal corner – Opinion 2/13 of the CJEU

Opinion 2/13 identified several issues preventing the EU's accession to the ECHR.

- **Article 53 of the ECHR** should ensure that nothing in the ECHR or the protocols thereto could require the EU to perform an act or adopt a measure for which it has no competence under EU law (paragraphs 186–189 of the Opinion).
- **Mutual trust in EU Law (Area of Freedom, Security and Justice)** – the draft did not adequately protect the principle of mutual trust between Member States in the field of justice and home affairs, especially as regards the Dublin system and asylum (paragraphs 191–195 of the Opinion).
- **Advisory opinions under Protocol No 16 to the ECHR** (paragraphs 196–200 of the Opinion) – the draft did not address the risk that Member States' courts would seek advisory opinions from the ECtHR on EU law matters,

bypassing the CJEU's preliminary ruling procedure.

- **Inter-party applications** under Article 33 of the ECHR (paragraphs 201–213 of the Opinion) – the draft allowed Member States to bring inter-state cases against each other before the ECtHR about EU law matters, which could bypass the CJEU's exclusive jurisdiction.
- **The co-respondent mechanism and division of competences** (paragraphs 220–225 of the Opinion) – the rules for involving both the EU and its Member States as co-respondents before the ECtHR were not sufficiently clear. Were the ECtHR to determine the allocation of responsibility between the parties, there is a risk that this could blur or confuse the division of competences within the EU. The draft also did not provide sufficient guarantees that the ECtHR would respect the division of power and competence between the EU and its Member States.
- **Reservations under Article 57 of the ECHR** (paragraphs 226–228 of the Opinion) – the draft agreement (Article 3(7)) does not preclude a Member State from being held responsible, together with the EU, for the violation of a provision of the ECHR in respect of which that Member State may have made a reservation in accordance with Article 57 of the ECHR. This contradicts Article 2 of Protocol No 8 to the TEU, which aims to prevent the accession agreement from affecting Member States' ECHR situation, particularly regarding reservations.
- **Joint responsibility** (paragraphs 229–234 of the Opinion) – the draft laid out that the ECtHR may decide, based on the reasons given by the respondent and the co-respondent, and having sought the views of the applicant, that only one of them is to be held responsible for that violation. This provision permitting the ECtHR to adopt such a decision would also risk adversely affecting the division of powers between the EU and its Member States as guaranteed by the founding treaties and EU law principles.
- **Initiating the prior involvement procedure** (paragraphs 236–240 of the Opinion) – the mechanism for the CJEU to be involved before the ECtHR rules on a case involving EU law was not sufficiently robust, with the risk that the ECtHR could interpret EU law without the CJEU's input.
- **Systematic information for the purposes of the prior involvement procedure** (paragraph 241 of the Opinion) – Article 3(6) of the draft agreement does not exclude ECHR jurisdiction and the possibility to interpret CJEU case-law, including cases where the CJEU has already given a ruling on the same question of law as that at issue in the proceeding before the ECtHR.
- **The prior involvement procedure and secondary law** (paragraphs 241–244 of the Opinion) – the envisaged draft agreement excludes the possibility of bringing a matter before the CJEU for it to rule on a question of interpretation of secondary law by means of the prior involvement procedure.

- **Acts in the Common foreign and security policy (CFSP)** (paragraphs 249–257 of the Opinion) – the draft did not sufficiently protect the limitations on the CJEU's jurisdiction over CFSP acts, potentially allowing the ECtHR to review matters excluded from the CJEU's jurisdiction.

*Source:* Opinion 2/13 of the CJEU of 18 December 2024.

In October 2019, the European Commission informed the CoE that it was ready to restart negotiations. Formal negotiations resumed in October 2020 [11] and in March 2023 negotiators reached a provisional agreement on a revised Draft Accession Agreement [12].

## Q4. What is the legal basis for accession in EU law?

According to Article 47 of the Treaty on the Functioning of the European Union (TFEU) [13], the EU enjoys legal personality and is subject to public international law. Accordingly, Article 216 of the TFEU provides the general legal basis for the conclusion of international agreements by the EU.

The EU can conclude agreements with one or more non-EU countries or international organisations, provided the conclusion of an agreement:

- is necessary to achieve one of the objectives referred to in the treaties within the context of the EU's policies;
- is provided for in a legally binding EU act; or
- is likely to affect common rules or alter their scope.

Additionally, Article 218 of the TFEU establishes a general procedure for the exercise of international agreements' negotiations and conclusion. This procedure includes the possibility to obtain the opinion of the CJEU as to whether an agreement envisaged is compatible with the treaties (Article 218(11) of the TFEU).

In respect of ECHR accession, Article 6(2) of the TEU provides for the following:

**'The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.'**

*Source: Article 6(2) of the TEU.*

This provision establishes a clear legal obligation for the EU to accede to the ECHR, rather than merely permitting or enabling such accession, although it does not stipulate a time limit for the fulfilment of this obligation. Nevertheless, the obligation remains in force, and the EU is still legally required to accede to the ECHR. It is worth noting that the principal limitation identified in Opinion 2/94 was addressed through the Treaty of Lisbon reform.

Additionally, the Protocol (No 8) relating to Article 6(2) of the Treaty on European Union on the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms [14] provides that 'the agreement relating to the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms …. shall ensure that accession of the Union shall not affect the competences of the Union or the powers of its institutions'.

## Q5. What is the legal basis for accession in the ECHR and Fundamental Freedoms law?

The legal basis for accession of the EU as a non-state party is provided for by Article 59(2) of the ECHR ('the European Union may accede to this Convention'), as amended by Protocol No 14 to the ECHR, which entered into force on 1 June 2010 [15] .

In 2010, the Committee of Ministers of the CoE accorded an ad hoc mandate to its Steering Committee for Human Rights (CDDH) to cooperate with the European Commission in developing the necessary legal instrument for the accession. The Legal Service of the European Commission represents the EU in accession negotiations.

The 2023 Reykjavík Summit of Heads of State and Government of the Council of Europe provided renewed political support for the EU's accession to the ECHR and welcomed progress in the accession process. The political statement 'United around our values' [16] adopted at the summit underlined that accession will enhance coherence in human rights protection in Europe. It also, welcomed the provisional agreement on the revised draft accession instruments and encouraged the timely adoption of the agreement. In May 2024, the Committee of Ministers took note of the provisional agreement and the EU's intention to resolve the outstanding issue internally.

## Q6. What is the relationship between the jurisprudence of the Court of Justice of the European Union and the European Court of Human Rights with respect to fundamental rights?

> **'The two European systems and their mechanisms have substantially evolved towards convergence and the two European Courts – the European Court of Human Rights (ECtHR) and the Court of Justice of the EU (CJEU) – are actively engaged in a judicial dialogue and draw inspiration from each other.'**
>
> *Source: EU-ECHR Interplay: CoE HELP course for EU judges, prosecutors and lawyers – human rights education for legal professionals.*

The CJEU already relied on fundamental rights as general principles of EU law before the entry into force of the Charter in 2009, and it continues to do so today.

The expansion of the CJEU's competence to ensure respect for fundamental rights began in the 1970s. In the landmark case of *Internationale Handelsgesellschaft* v *Einfuhr- und Vorratsstelle Getreide* [17], the CJEU confirmed its own competence in ensuring respect for fundamental rights as 'general principles of law' (paragraph 4).

The CJEU further solidified its stance in subsequent cases. In *Cinéthèque* v *Fédération nationale des cinémas français* [18], it asserted that national legal provisions falling within the scope of (then) EEC law must also comply with the fundamental rights protected by EEC law as general principles (paragraph 26). This decision underscored the CJEU's commitment to ensuring that EU law and national law are aligned in the protection of fundamental rights.

The general principles of EU law are rooted in the constitutional traditions common to the Member States and in international human rights treaties. In developing EU fundamental rights discourse, the CJEU has drawn inspiration from the constitutional traditions common to the Member States. In *Nold* v *Commission* [19], the CJEU emphasised the central importance of Member State constitutional traditions in its interpretation of EU law (paragraph 13).

## Q7. How does EU law arise in cases before the European Court of Human Rights?

EU Member States play a key role in ensuring that EU law is implemented correctly and in a timely manner (Article 4(3) of the TEU), pending the nature of the respective EU legal act (Article 288 of the TFEU). The obligation to implement EU law *ex officio* by Member States' authorities was confirmed by the CJEU in *Amministrazione delle Finanze dello Stato* v *Simmenthal* in 1978 [20]. Even in advance of accession, the ECtHR can already review the actions/omissions of Member

States' authorities when implementing EU law for compliance with the ECHR.

However, the ECtHR has a clear position that, pending the EU's accession to the ECHR, it will dismiss complaints against the EU as inadmissible *ratione personae*. This approach was confirmed in *Confédération française démocratique du travail* v *Council of the European Communities* [21] or in *Dufay* c. *les Communautés européennes* [22] . The situation was reaffirmed after Opinion 2/13 in cases, such as *Connolly* c. *15 États membres de l'Union européenne* [23] or *Andreasen* v *the United Kingdom and 26 other Member States of the European Union* [24] .

The only exception to this arises when the action of a Member State authority was required by EU law and there is no discretion by Member States regarding implementation. In such situations, the Bosphorus [25] presumption may apply (see Legal corner - Bosphorus presumption).

### Legal corner – Bosphorus presumption

The Bosphorus presumption refers to a doctrine in the case-law of the ECtHR. In this case, the ECtHR first stated, in line with previous case-law, that as long as the international organisation is considered to protect fundamental rights in a manner which can be considered at least 'equivalent to that of the Convention system', the Court will presume that a State has acted in compliance with the Convention. This applies where the State had no discretion in implementing the legal obligations flowing from its membership of the organisation.

*Source*: Bosphorus Hava Yollari Turizm ve Ticaret Anonim S iketi v Ireland, paragraphs 155 and 156.

The Bosphorus presumption applies particularly to situations when the preliminary reference to the CJEU (Article 267 of the TFEU) has been exhausted.

## Q8. How has the Court of Justice relied upon the ECHR and European Court of Human Rights jurisprudence?

The CJEU has frequently relied on the ECHR and the case-law of the ECtHR when interpreting human rights under EU law [26] , especially prior to the adoption of the Charter. Pre-Charter jurisprudence attests to an incipient rights discourse rooted also in norms and principles enshrined in the ECHR. Examples include the following.

- Rutili v Minister for the Interior [27] . The CJEU referred to the ECHR when examining restrictions on the free movement of workers.
- Hauer v Land Rheinland-Pfalz [28] . The CJEU relied on the ECHR when recognising the right

to property as a general principle of EU law.

- Hoechst v Commission [29] . The CJEU drew on the ECHR when considering the protection of business premises under the right to privacy.
- Elliniki Radiophonia Tiléorassi AE and Panellinia Omospondia Syllogon Prossopikou v Dimotiki Etairia Pliroforissis and Sotirios Kouvelas and Nicolaos Avdellas and others [30] . The CJEU explicitly recognised the relevance of the ECHR in its interpretation of EU law (paragraph 42).

These cases demonstrate the CJEU's reliance on the ECHR as a normative source when defining the scope of fundamental rights within the EU legal order, even before the EU's accession to the ECHR was formally proposed. They also highlight the CJEU's commitment to aligning EU law with international human rights law, and with the ECHR in particular as the relevant regional international human rights treaty. The CJEU still relies on ECHR provisions and case-law, including in cases where it interprets the Charter.

The CJEU had continued to rely upon the ECHR and the case-law of the ECtHR after the Maastricht Treaty introduced human rights in its preamble. The Treaty of Amsterdam provided Article F with 'the EU based on principles of human rights and fundamental freedoms protection' and the Treaty of Lisbon introduced Article 6 of the TEU and the Charter. In the times between the Maastricht Treaty (1993) and the Treaty of Lisbon (2007), the CJEU used the ECHR and ECtHR case-law in a number of cases [31] , as reflected in the CJEU 'case-law fact sheets'.

## Q9. How did the Treaty of Lisbon and the proclamation of the Charter influence the relationship between ECHR law and EU law?

The Treaty of Lisbon confirmed the CJEU's ability to protect human rights through general principles of EU law. Article 6(3) of the TEU provides that fundamental rights, as guaranteed by the ECHR and as they result from the constitutional traditions common to the Member States, constitute general principles of EU law.

Article 6(3) of the TEU refers to both the ECHR and the Charter, and the CJEU cites both sources in the judgments. The CJEU has referred to other sources of international human rights law such as the Convention on the Rights of the Child, suggesting that the sole mention of the ECHR in Article 6(3) has not constrained the CJEU. The special significance and privileged position of the ECHR in the context of EU law is also evident in its case-law [32] .

Under EU law, general principles on fundamental rights [33] serve two main purposes:

- to help to interpret the Charter through reliance on pre-Charter case-law relating to fundamental rights, which are now included in the Charter; and
- to provide a fallback or alternative source of legal protection for rights not explicitly enshrined in the Charter.

## Q10. What is the interplay between the ECHR and the Charter in the context of EU law?

To ensure coherence between the two systems, the ECHR has been accorded special status in EU law (Article 6(3) of the TEU) with respect to the application of the Charter. Specifically, Article 52(3) of the Charter provides that, for rights covered by both instruments, their meaning and scope must align with those established by the ECHR, thereby safeguarding coherence and minimising divergence between the two systems. Article 52(3) combines a clause of parallel interpretation and a minimum standard clause: (i) the meaning and scope of those rights that correspond to rights guaranteed by the ECHR shall be the same as those laid down by the ECHR; and (ii) the application of Article 52(3) of the Charter should prevent an interpretation of the Charter that would yield lower protection than that provided by a (partially) corresponding ECHR right [34] .

The Charter protects the full range of civil, political, economic and social rights that had previously been enshrined only in the ECHR, the European Social Charter, the EU treaties and the constitutions of EU Member States. In formal terms, all rights enshrined in the ECHR are also protected under the Charter. In addition, the Charter protects certain contemporary fundamental rights issues not covered in the ECHR, such as data protection (guaranteed by Article 8 of the Charter and safeguarded through the interpretation of Article 8 of the ECHR). The Charter applies in addition to other international human rights instruments and national constitutional guarantees of human rights protection. Moreover, Article 53 of the Charter states that it should not be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law, by international law and by international agreements to which the EU or all its Member States are party.

Article 52(3) stipulates that Charter rights corresponding to ECHR rights shall have the same 'meaning and scope', also permitting EU law to provide broader protection. Though non-binding, the explanations to the Charter [35] guide interpretation. For most Charter articles, **the meaning and scope** are the same as the corresponding articles of the ECHR (Table 1). There are, however, some articles of the Charter where the **meaning** is the same as the corresponding articles of the ECHR, but where the **scope** is wider under EU law (Table 1). The CJEU has expanded protections in cases involving EU secondary legislation (e.g. Regulation (EU) 2016/679 [36] or when balancing rights within the EU legal framework, all while safeguarding the primacy of EU law.

Figure 1 provides a general textual comparison of human rights protected under both the Charter and the ECHR. It does not purport to cover every possible scenario or situation, as both instruments continue to evolve through judicial interpretation by both courts, which can lead to variations in scope and application. Rather, it provides a snapshot of the textual correspondence between the ECHR and the Charter.

**Figure 1 – Human Rights protected by Charter and the ECHR**

| CHARTER | | | | | |
|---|---|---|---|---|---|
| **CHAPTERS** | **ARTICLES** | | | | |
| **Dignity** (Art. 1-5) | 1 - Human dignity | 2 - Life | 3 - Integrity of the person | 4 - Torture, inhuman, degrading treatment | 5 - Slavery and forced labour |
| **Freedoms** (Art. 6-9) | 6 - Liberty and security | 7 - Private and family life | 8 - Personal data | 9 - Marry and found family | 10 - Thought conscience and religion |
| | 11 - Expression and Information | 12 - Assembly and association | 13 - Arts & Sciences | 14 - Education | 15 - Choose occupation & engage in work |
| | 16 - Conduct a business | 17 - Property | 18 - Asylum | 19 - Removal, expulsion, or extradition | |
| **Equality** (Art. 20-26) | 20 - Equality before the law | 21 - Non-discrimination | 22 - Cultural, religious, & linguistic diversity | 23 - Equality: men & women | 24 - The child |
| | 25 - Elderly | 26 - Integration of persons with disabilities | | | |
| **Solidarity** (Art. 27-38) | 27 - Workers' right to info & consultation | 28 - Collective bargaining & action | 29 - Access to placement services | 30 - Unjustified dismissal | 31 - Fair and just working conditions |
| | 32 - Prohibi-tion of child labour | 33 - Family & professional life | 34 - Social security & assistance | 35 - Healthcare | 36 - Access to services of economic interest |
| | 37 – Environm-ental protection | 38 - Consumer protection | | | |
| **Citizen's rights** (Art. 39-46) | 39 - Vote & stand candidate to EP | 40 - Vote & candidate at municipal elections | 41 - Good administration | 42 - Access to documents | 43 - European ombudsman |
| | 44 - Petition (EP) | 45 – Movement & residence | 46 - Diplomatic & consular protection | | |
| **Justice** (Art. 47-50) | 47 - Effective remedy & fair trial | 48 - Presump. innocence; right of defence | 49 - Legality & prop. of offences & penalties | 50 - *Ne bis in idem* | |

Legend:
- ECHR has equivalent
- Charter protections are more extensive
- No ECHR equivalent exists
- Protection is EU context specific

This table shows the Charter and its chapters in the left-hand menu and the related articles in the top menu. It provides comparison by colour of fundamental rights guaranteed by ECHR and by Charter, outlining their presence in both legal instruments and the extent of their overlap by the scope and meaning.

*Source:* European Union Agency for Fundamental Rights, 2025.

The ECHR provides a minimum standard of legal protection guaranteed by EU law insofar as 'corresponding rights' are concerned. This means that all EU legislation and national laws implementing EU law should ensure a minimum level of protection for rights guaranteed by the ECHR. Should there be uncertainty about whether a particular law meets this standard, the Member State's court implementing the EU law may seek clarification through a preliminary ruling of the CJEU (Article 267 of the TFEU) to determine the validity or interpretation of the EU law in question.

## Q11. What are the principal tenets in the Draft revised Agreement on the Accession?

A revised agreement on the accession of the EU to the ECHR, Draft Agreement on the Accession of the EU to the ECHR (DAA), was concluded in March 2023, after more than three years of resumed (re-)negotiations.

The negotiations and draft agreement aimed to observe the following principles:

1. preserve the equal rights of all individuals, the rights of applicants in the ECHR procedures and the equality of all High Contracting Parties;
2. leave unaffected the existing rights and obligations of Member States – i.e. substantive rights should not be under discussion;
3. as far as possible, preserve and apply to the EU the current control mechanisms of the ECHR in the same way as to other high contracting parties to the ECHR, making only those adaptations necessary;
4. respect the distribution of competences between the EU Member States and the EU institutions.

Comparing the 2023 DAA to its predecessor draft agreement, four main 'baskets' of issues were negotiated with respect to the relationship between both legal systems and the respective jurisdictions of the ECtHR and the CJEU [37] . These are as follows:

1. **EU-specific procedural mechanisms before the ECtHR:**
   The DAA does not alter the core principles of participation in proceedings and being legally responsible for any violation of the ECHR before the ECtHR. This is applicable for all Member States, whether they have applied EU law. However, in the specific context of the EU as a party to the ECHR alongside its Member States, the DAA contains a co-respondent mechanism, which aims to respect the distribution of powers between the EU and its Member States [38] . Three points are worth recalling under the 2023 DAA: (i) the ECtHR

takes the formal decision to admit the EU (or one or more of its Member States) as a co-respondent, but where the criteria for co-respondent are met, the ECtHR shall admit the EU (or one or more of its Member States); (ii) joint responsibility for the violation of the ECHR for the EU and the Member States parties if it is such a case; and (iii) the ECtHR in its judgment always shall hold the respondent and co-respondent jointly responsible for a violation, (Article 3(8)) with the apportionment of responsibility to be decided by the EU and its Member State(s), under the supervision of the CJEU.

2. **Inter-state application and advisory opinions:**
   For inter-state applications, the DAA obliges the Member States not to avail of Article 33 of the ECHR where the dispute concerns the application or interpretation of EU law. Furthermore, the ECtHR shall provide the EU with sufficient time to assess, as a matter of priority, whether a case between two Member States concerns a matter of interpretation or application of EU law. Protocol No 16 to the ECHR was adopted in October 2013 and entered into force on 1 August 2018. The protocol allows the highest courts and tribunals of Member States of the Council of Europe to request non-binding advisory opinions from the ECtHR on questions of principle related to the interpretation or application of ECHR rights. This aims to strengthen the dialogue between the ECtHR and national authorities, improve the implementation of the ECHR and promote the principle of subsidiarity. However, only a limited number of Member States have ratified the protocol [39], and, therefore, the DAA provides that when the highest court or tribunal of a Member State encounters a question that falls within the field of EU law, it shall not be considered as a highest court or tribunal of a high contracting party for the purposes of Protocol No 16.

3. **Mutual trust and mutual recognition:**
   Article 6 of the DAA states that accession of the EU to the ECHR shall not affect the application of the principle of mutual trust within the European Union and that, in this context, the protection of human rights shall be observed. Mutual trust and mutual recognition are two basic principles in EU law that are particularly pertinent in the field of justice and home affairs. The explanatory report to the DAA stipulates that the ECtHR must verify that the principle of mutual trust is not applied automatically and mechanically to the detriment of human rights.

4. **CJEU competence over EU acts in the field of Common foreign and security policy:**
   Under the TEU, the CJEU has limited jurisdiction in Common foreign and security policy (CFSP) matters. Article 24(1) of the TEU states that the CJEU shall not have jurisdiction with respect to CFSP provisions, except for monitoring compliance with Article 40 of the TEU and the CJEU's competence to review the legality of decisions provided for Article 275 of the TFEU (restrictive measures). Due to the CJEU's limited jurisdiction in CFSP matters, the DAA does not have any precise provisions concerning CFSP. The question of the CJEU jurisdiction in area of CFSP in cases, where there has been an alleged breach of fundamental rights, was outlined in the CJEU judgement (see Q19).

The text of the DAA was agreed within the '46+1' group [40], and the foregoing aspects of the revised DAA are understood as most prominent in respect of next steps towards ratification, namely the co-respondent mechanism (see Q18), the effect of Opinion 1/17 [41] on the revised

Agreement on the Accession of the EU (especially foreseen that the DAA will be subject of the stricter scrutiny upon the new request for the CJEU's opinion) and the CJEU's competence in the area of CFSP (see Q19). The Final consolidated version of the draft accession instruments is currently considered as preliminarily approved and thus is subject to revision after the CJEU Opinion, which has been requested by the European Commission on 25 July 2025 (see Q19), and before the ratification.

## Q12. What is the main legal change effected by accession?

The EU's accession to the ECHR will establish an explicit and direct legal obligation for the EU to comply with the ECHR as a treaty and create a direct legal responsibility of the EU as a matter of international law. Accession will also broaden and strengthen the legal basis for the protection of human rights and fundamental rights within the EU by providing direct legal obligations for the Union under the ECHR and by safeguarding the direct legal accountability of the EU itself. Accession will also expand the legal basis for monitoring and assessment. At the institutional level, it will entail important procedural changes and may impact the role and responsibilities of EU institutions and agencies, including the European Union Agency for Fundamental Rights (FRA).

- Accession will make the ECHR legally binding as an international treaty on the EU as an entity, creating direct international obligations for the EU institutions, bodies and agencies. Through this, the EU will formally incorporate international legal obligations as a party to the ECHR as part of the EU legal order [42] . Accession will allow the ECtHR to review actions of EU institutions for compliance with the ECHR and individuals will be able to bring complaints against the EU before the ECtHR for violations of the ECHR.
- Accession will enhance the system of judicial review for human rights accountability by allowing the ECtHR to review acts of the EU institutions for ECHR compliance, filling protection gaps and strengthening remedies for individuals. Nevertheless, while the system of remedies will be broadened, it will be subject to certain of the existing limitations: individuals will gain access to the ECtHR in proceedings against the EU, but individuals will have to exhaust remedies before the EU courts in the same way as they are currently required to do before domestic courts.
- The current system of remedies at the ECtHR level will continue after EU accession; the ECtHR will continue to decide on the existence of violations and, where necessary, award just satisfaction in respect of the EU as it currently does for other parties. At the national and the EU level, remedies for violations of EU law – including those involving fundamental rights – are primarily determined by national courts, and the system for remedies varies across Member States (as established in *Simmenthal*, Case 106/77 [43] . After accession, the ECtHR will have the competence to determine whether the EU has violated the ECHR, but the implementation of remedies at the national and the EU level may still show variations, which could result in gaps in effective redress depending on how judgments are executed.

## Q13. What changes will accession effect with regard to EU representation before the Council of Europe?

Accession will require additional representation of the EU in CoE bodies as outlined in draft Articles 9 and 10 of the DAA, in particular:

- a delegation of European Parliament participating in the Parliamentary Assembly of the Council of Europe (PACE) meetings with voting rights, for election of judges;
- an EU representative at the Committee of Ministers, with the right to vote in cases where the Committee will take a decision under particular articles of the ECHR:
  - Article 26(2) concerning the reduction of the number of judges of the Chambers to five, upon the request of the plenary court,
  - Article 39(4) concerning the supervision of the execution of the terms of the friendly settlement, as set out in the respective decision,
  - Article 46(2) concerning the supervision of the final judgment of the court,
  - Article 46(5) concerning situations where the court finds a violation of the obligation of a Member State to abide by the final judgment, as underlined in Article 46(1), to decide whether to refer the case to the Committee of Ministers for consideration of the measures to be taken,
  - Article 47 concerning the request of the Committee of Ministers to the ECtHR for an advisory opinion on legal questions concerning the interpretation of the EDHR and the protocols thereto,
  - Article 54(1) concerning the powers of the Committee of Ministers;
- obligatory consultation with EU regarding to amendments to the ECHR or to protocol(s) or rules relating to the selection of candidates for election of judges by PACE.

## Q14. How does the EU's accession affect additional protocols to the ECHR?

Accession to the ECHR does not mean that, upon accession, the EU will automatically be bound by all additional protocols to the ECHR. There are currently six additional protocols to the ECHR that protect substantive human rights, such as the right to peaceful enjoyment of one's possessions and the right to vote (both enshrined in Protocol No 1), the abolition of the death penalty (Protocol Nos 6 and 13) and a general prohibition on discrimination (Protocol No 12). All the protocols provide that their substantive provisions shall be regarded as additional articles to the ECHR, with all provisions of the latter continuing to apply; this confirms the accessory nature of the protocols to the ECHR [44] .

Ideally, all the protocols should be ratified by the EU as an ensemble. However, given the scope of

EU competence, the EU will have to take separate decisions as to whether to become a party to some or all of the protocols; such decisions will be taken after the EU has become a party to the ECHR itself [45] and the EU will only accede to those protocols that have already been ratified by all its Member States. It is noteworthy that the Final consolidated version of the draft accession instruments introduces also the possibility of EU accession to Protocol No 16 as an integral part of the accession agreement.

## Q15. What are the expected procedural impacts of the EU's accession to the ECHR?

### 1. Addressing the current procedural limitation

The EU, as a non-party to the ECHR, currently cannot be a respondent before the ECtHR. When Member States implement EU law and are challenged before the ECtHR, the EU has no formal standing other than as a third-party intervener (amicus curiae), which limits its ability to defend its legal order directly. Although accession will not grant the EU automatic (*ex officio*) legal standing, in the case of applications against EU Member States the EU may become a co-respondent to the proceedings in respect of an alleged violation notified by the ECtHR if it appears that such allegation calls into question the compatibility of a provision of EU law with the ECHR (see below).

### 2. Third-party intervention

Article 36(2) of the ECHR allows Member States and, in some instances, other entities (such as CSOs, the Commissioner for Human Rights, and other legal persons including the EU), to present their views in cases before the ECtHR, but this does not equate to such entities enjoying full party status.

Practice Directions [46] by the President of the ECtHR clarify the third-party intervention as a procedural device, the chief purpose of which is to enable the ECtHR to become acquainted with the views of Member States and other persons who are not parties to a case before it on the issues raised by that case. The definition of other states, which refers to 'any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant', in Article 36(2) of the ECHR, has been extended to the EU in several cases.

The EU has indeed been permitted to intervene as a third party in cases involving EU law, such as *Matthews v. the United Kingdom* [47] (linked to EU primary law) and *Bosphorus v. Ireland* [48] (linked to EU secondary law). However, this intervention is limited compared to the rights of a respondent party.

## 3. Prior involvement and co-respondent mechanism

In the *Bivolaru* v *Romania* [49] case, the ECtHR found that the execution of the European Arrest Warrant and related presumption of equivalent protection under EU law and ECHR law had been not applied. The ECtHR concluded that the protection of human rights by EU law was manifestly deficient, resulting in a violation of Article 3 of the ECHR. Accession would allow the EU to participate fully as a respondent before the ECtHR, ensuring its right to be heard and to defend the EU legal order. The DAA provides for new procedures, notably **the co-respondent mechanism and the 'prior involvement' procedure**.

The **co-respondent mechanism** should only be applied to cases that have been notified to a high contracting party of the ECHR according to the Article 54(2)(b) of the rules of the ECtHR. The co-respondent mechanism differs from third-party interventions under Article 36(2) of the ECHR. A co-respondent becomes a full party to the case and will therefore be bound by the judgment. The introduction of the co-respondent mechanism should thus not be seen as precluding the EU from participating in the proceedings as a third-party intervener, where the conditions for becoming a co-respondent are not met.

There are two situations that trigger the co-respondent mechanism:

- In cases in which the application is directed against one or more Member States of the EU but not against the EU itself, the EU may initiate the co-respondent mechanism with a request to join the proceedings as co-respondent (pending fulfilment of the criteria set out in Article 3(2) of the DAA). Where the application is directed against the EU but not against one or more of its Member States, the Member States may initiate the co-respondent mechanism with a request to join the proceedings as co-respondents (pending fulfilment of the criteria set out in Article 3(3) of the DAA). This should happen in a timely manner once the EU has received the relevant information.
- The co-respondent mechanism also makes it possible, where appropriate, to bring collective action against all Member States alongside the Union, if the ECtHR concludes that a provision of EU primary law itself violates the ECHR. Were such a case to be directed simultaneously against both the EU and at least one or more of its Member States, the DAA states that 'in respect of at least one alleged violation, the status of any respondent may be changed to that of a co-respondent', depending on whether the conditions inparagraph 2 or paragraph 3' were met (Article 3(4)). The procedure would apply *mutatis mutandis* as per the one directed against one or more Member States of the European Union.

The **'prior involvement of the CJEU' mechanism** [50] remedies situations where a national court fails to request a preliminary reference from the CJEU under Article 267 of the TFEU [51]. It applies only to cases in which a Member State is the defendant/respondent and the EU intervenes as co-respondent. This procedure entails the temporary suspension of the examination of the case by the ECtHR so that the CJEU can first rule on the compatibility of the EU law in question with the Charter.

The prior involvement mechanism ensures compliance with the principles of EU law (e.g. subsidiarity) and the exclusive competence of the CJEU to interpret EU law (Article 267(1) of the TFEU), along with ensuring effective judicial proceedings (without unnecessary delays). In cases where remedies have not been exhausted, including the request for a preliminary ruling to the CJEU under Article 267 of the TFEU, the ECtHR would have to dismiss the case (Article 35(1) of the ECHR). The prior involvement mechanism ensures that the CJEU can rule on the interpretation of EU law (relevant for the application in proceedings before the ECtHR) without prejudging the admissibility of the application before the ECtHR and while ensuring that all available remedies under EU law have been exhausted. The application of prior involvement of the CJEU is effective in the mutual respect of the competences and jurisdiction of both courts.

The CJEU had repeatedly requested [52] the introduction of a prior involvement procedure to ensure that it can always be involved in a case before the ECtHR decides on the violation of a human right or rights [53] . Under the new draft revised agreement on the accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms [54] , that request has been sustained.

## Q16. How will the advisory opinion mechanism under Protocol No 16 operate post-accession?

Article 5 of the DAA provides that: 'Where a court or tribunal of a Member State of the European Union that has ratified Protocol No. 16 to the Convention, in the context of a case pending before it, encounters a question relating to the interpretation or application of the rights and freedoms defined in the Convention or the protocols thereto, that court or tribunal shall not be considered as a highest court or tribunal of a high contracting party for the purposes of Article 1, paragraph 1, of Protocol No. 16 to the Convention if the question falls within the field of application of European Union law'.

Thus, if a court or tribunal in a Member State (that has ratified Protocol No 16) faces a question about interpreting or applying rights under the ECHR or its protocols, and that question falls within the scope of EU law, **that court is not considered a 'highest court' for the purposes of Protocol No 16**. This means that such national courts cannot (at that point) request advisory opinions from the ECtHR under Protocol No 16 in cases involving EU law [55] .

The aim of the Article 5 is to ensure that the advisory opinion mechanism does not affect the autonomy of EU law and that questions involving EU law are first addressed through the EU's own preliminary ruling procedure provided in Article 267 of the TFEU.

The DAA provides that, even after accession, the CJEU remains the final authority and arbiter on the interpretation of EU law, including where it covers fundamental rights or human rights.

## Q17. What is the current status of the accession process?

The last meeting of the '46+1' group took place in March 2023, and the updated text of its outcome is available on the CoE website [56] .

The accession agreement, provisionally agreed on the negotiators' level ('46+1' group), requires adoption by the Committee Ministers of the CoE. It will then be open for signature/ratification for CoE countries. The accession agreement may be subject to changes and amendments after the CJEU Opinion is delivered.

According to Article 218 of the TFEU, the European Union ratification (conclusion) process requires a decision of the Council of the European Union to be adopted by unanimity with the consent of the European Parliament. Following this, the accession agreement must be ratified by each EU Member State in accordance with its own constitutional requirements.

The accession agreement will enter into force after the European Union and all parties to the ECHR have ratified it.

In addition, any EU Member State, the European Parliament, the Council of the European Union or the Commission may request the CJEU to provide an advisory opinion on the revised accession agreement, as occurred in 2013 (see point 1.1.). Applying this option, the Commission submitted the request for an opinion of the CJEU, pursuant to Article 218(11) of the TFEU in relation to the draft agreement providing for the accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms based on its decision of 25 July 2025 [57] .

## Q18. What are the key points of the EULEX Kosovo judgment and what are its implication for the EU's accession to the ECHR?

The CJEU judgment of 10 September 2024 in the EULEX Kosovo case [58] concluded that the CJEU has jurisdiction over 'acts and omissions [that] are not directly related to political or strategic choices'. This conclusion follows the case-law that the CJEU developed after its Opinion 2/13. The CJEU also confirmed that the system of judicial protection in the CFSP, as set out in the treaties, is compatible with both the ECHR and the Charter. In particular, the CJEU affirmed that, when determining which CFSP cases fall within its jurisdiction, it must ensure that the system of access to justice in the CFSP meets the standards established by the ECHR. With the foregoing confirmed, the ruling appeared to suggest that no further revisions of the accession agreement would be necessary on this point.

The following aspects of the judgment are relevant to the EU's accession to ECHR:

The CJEU confirmed its jurisdiction to hear actions for damages related to CFSP matters, an area

which had not previously been addressed by the CJEU. This addresses one of the key obstacles to the EU's accession that had been identified in Opinion 2/13.

- The Grand Chamber ruled that the CJEU has jurisdiction to assess the legality of acts or omissions under the CFSP that are not directly related to political or strategic choices.
- The CJEU asserted its jurisdiction over actions for damages unless they pertain to 'political or strategic' choices made under the CFSP. The Advocate General had proposed a more proactive stance, suggesting that fundamental rights violations should not fall under this political question doctrine, advocating for broader jurisdiction.
- The judgment confirms the CJEU's jurisdiction over CFSP acts and omissions relating to operational issues, such as personnel choices, establishment of review measures and remedies.

Additionally, The CJEU **rejected arguments that fundamental rights breaches alone could justify its jurisdiction in CFSP matters.**

The CJEU introduced a two-step approach to determine its jurisdiction in CFSP cases:

- Verify if the situation falls within the express exceptions in Article 24 of the TEU and Article 275 of the TFEU;
- Examine if the situation is not directly related to political or strategic choices in CFSP. The CJEU defined '**political or strategic choices**' as acts directly related to the conduct, definition or implementation of CFSP, particularly regarding the EU's strategic interests and actions.

## Q19. What are the potential legal and operational implications of the EU's accession to the ECHR?

In substantive terms, EU fundamental rights overlap substantially with rights deriving from national constitutional traditions and international human rights treaties, including the ECHR. In many situations, therefore, a case may be governed simultaneously by different norms and legal regimes because of Member States' overlapping obligations under domestic, EU, ECHR and UN human rights treaties. These obligations exist concurrently but may ultimately be interpreted by different courts or committees in different ways, since there are no clear rules regarding their coexistence or the precedence of one court's jurisdiction or interpretative powers over another. This, in turn, may lead to divergent interpretations and discrepancies in levels of protection. It may also lead to incoherence and tensions both between two European courts and between each of these and national (constitutional) courts [59]. While the EU's accession to the ECHR is expected to advance coherence, absolute convergence is unlikely to eventuate, considering the substantial role of national (constitutional) courts in the multi-layered legal system that defines the EU human rights landscape.

Accession is expected to have two main consequences for the system of fundamental rights protection: (i) supporting coherence in terms of formal or structural legal accountability, since it

will place the EU on the same footing as its Member States in being subject to the external supervision exercised by the ECtHR, and (ii)closing the legal protection gap left by the EU system of remedies (in particular where protection against EU legislative acts is concerned). Accession will assign legal responsibility to the EU for human rights protection as established by the ECHR and for consequences flowing from human rights violations thereunder.

The EU's accession to the ECHR can advance the following:

- **Accountability**: As a result of acceding to the ECHR, the EU will itself be directly bound by the legal obligations enshrined in the ECHR and will also bear direct legal responsibility for breaches of the ECHR that are attributable to it. In addition to the internal protection of fundamental rights under EU, including through the supervision of the CJEU, the EU will be directly bound to respect the ECHR and will be placed under the external scrutiny and direct judicial review of the ECtHR.
- **Coherence and consistency:** Accession will enhance coherence between the EU and ECHR systems of rights protection and should also promote consistency between the Strasbourg courts' and the Luxembourg courts' interpretative jurisprudence on particular rights or issues, also affording citizens protection against the action of the EU, similar to the protection they enjoy with respect to actions of Member States of the CoE.
- **External policy implications:** Accession will likely enhance the credibility of the EU among broader constituencies including non-EU countries. The EU routinely calls upon non-EU countries to respect the ECHR in its bilateral and multilateral relations and exhorts them to respect fundamental rights in its dialogues as well as in development cooperation activities and trade agreements.
- **Closure of the protection gap:** The EU's accession to the ECHR may contribute to closing the legal protection gap left by the current EU system of remedies, particularly regarding EU legal acts (including both legislative and non-legislative acts). Individuals will gain the right to challenge EU measures before the ECtHR, ensuring that EU actions are subject to independent and external judicial review. This strengthens accountability and guarantees effective protection of fundamental rights where existing EU remedies may fall short.

# Further resources

## Resources on accession

- CoE, 'Accession by the European Union to the European Convention on Human Rights – Answers to frequently asked questions', 1 June 2010.
- CoE, '17th meeting of the CDDH ad hoc negotiation group on the accession of the European Union to the European Convention of Human Rights – Proposed editorial revisions to the draft revised accession instruments (document prepared by the Secretariat under the authority of the Chairperson and Vice-chairperson)', 46+1(2023)30, 18 January 2023.
- CoE Parliamentary Assembly, 'Legal aspects of the accession of the European Union to the European Convention on Human Rights', 2601/2025, April 2025.
- Corlăţean, T., 'Legal aspects of the accession of the European Union to the European Convention on Human Rights – Report', Doc. 16126, 7 March 2025.
- Burić, M. P. and Jourová, V., 'The EU's accession to the European Convention on Human Rights: Joint statement on behalf of the Council of Europe and the European Commission', 29 September 2020.
- Lecerf, M., 'Completion of EU accession to the European Convention on Human Rights', 24 October 2025.
- European Parliament: Andreadakis, S. and Morano-Foadi, S., 'The EU accession to the ECHR after Opinion 2/13: Reflections, solutions and the way forward', 20 April 2016, pp. 11-12.
- European Union Delegation to the Council of Europe, 'Major progress on the path to EU accession to the ECHR – Negotiations concluded at technical level in Strasbourg', European Union External Action website, 31 March 2023.
- Treaty on European Union, (OJ C 326, 26.10.2012, pp. 13–390).
- FRA, 'Article 52 – Scope and interpretation', FRA website, n.d..

## Council of Europe list of documents and draft revised accession instruments

- CoE, List of documents related to the accession process of EU to ECHR, 2023.
- CoE, Final consolidated version of the draft accession instruments, 2023.

# Endnotes

[1] The terms 'human rights' and 'fundamental rights' are both used in this note – the former in the context of the ECHR and the latter in the context of the EU. Where the reference is not specific to a particular legal context, the term 'human rights' is used.

[2] Charter of Fundamental Rights of the European Union (OJ C 326, 26.10.2012, pp. 391–407).

[3] However, the Protocol (No 30) on the application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom (OJ C 115, 9.5.2008, p. 313–314) states that the Charter does not extend the ability of the EU courts or any other EU institution to find that Polish laws are inconsistent with the fundamental rights, freedoms and principles it affirms. In practice, this means the Charter cannot be used to challenge the validity of Polish laws on the basis that they violate fundamental rights, unless those rights are already recognised in their national laws.

[4] CJEU: Research and Documentation Directorate, 'Fact Sheet – Field of application of the Charter of fundamental rights of the European Union', March 2021.

[5] Judgment of the Court of Justice of 20 September 2016, Ledra Advertising Ltd v European Commission and European Central BankLedra Advertising and Others v Commission and ECBLedra Advertising and Others v Commission and ECB, Joined Cases C-8/15 P to C-10/15 P, ECLI:EU:C:2016:701.

[6] Joint Declaration by the European Parliament, the Council and the Commission concerning the protection of fundamental rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms (OJ C 103, 27.4.1977, p. 1).

[7] Single European Act (OJ L 169, 29.6.1987, pp. 1–19).

[8] Resolution adopting the Declaration of fundamental rights and freedoms (OJ C 120, 15.5.1989, p. 51).

[9] Opinion 2/94 of the Court of Justice of 28 March 1996 , ECLI:EU:C:1996:140.

[10] Opinion 2/13 of the Court of Justice of 18 December 2014 , ECLI:EU:C:2014:2454.

[11] CoE, 'EU accession to the ECHR ('46+1' group)', CoE website.

[12] CoE, 'Interim report to the Committee of Ministers, for information, on the negotiations on the accession of the European Union to the European Convention on Human Rights, including the revised draft accession instruments in appendix', CDDH(2023)R_EXTRA, 4 April 2023.

[13] Treaty on the Functioning of the European Union (OJ C 202, 7.6.2106, pp. 1–388).

[14] Protocol (No 8) relating to Article 6(2) of the Treaty on European Union on the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms (OJ C 326, 2610.2012, p. 273).

[15] CoE, 'Protocol No 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention', Council of Europe Treaty Series, No 194, 13 May 2004.

[16] CoE, 'United around our values – Reykjavík declaration', June 2023.

[17] Judgment of the Court of Justice of 17 December 1970, Internationale Handelsgesellschaft v Einfuhr- und Vorratsstelle Getreide, Case 11/70, ECLI:EU:C:1970:114.

[18] Opinion of Advocate General Sir Gordon Slynn of 20 March 1985 in Cinéthèque v Fédération nationale des cinémas français, Joined cases 60 and 61/84, ECLI:EU:C:1985:329.

[19] Judgment of the Court of Justice of 14 May 1974, Nold v Commission, Case 4/73, ECLI:EU:C:1974:51.

[20] Judgment of the Court of Justice of 9 March 1978, Amministrazione delle Finanze dello Stato v Simmenthal, Case 106/77, ECLI:EU:C:1978:49.

[21] ECtHR, 10 July 1978, Confedération française démocratique du travail v. the European Communities, alternatively: their Member States a) jointly and b) severally, ECLI:CE:ECHR:1978:0710DEC000803077.

[22] ECtHR, 19 January 1989, Dufay contre les Communautés européennes, subsidiairement, la collectivité de leurs Etats membres et leurs Etats membres pris individuellement, ECLI:CE:ECHR:1989:0119DEC001353988.

[23] ECtHR, 9 December 2008, Connolly c. 15 États membres de l'Union européenne, ECLI:CE:ECHR:2008:1209DEC007327401.

[24] ECtHR, 2 March 2011, Andreasen v. the United Kingdom and 26 other Member States of the European Union, ECLI:CE:ECHR:2015:0331DEC002882711.

[25] Information Note on the ECtHR's case-law 76 of 30 June 2005, Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland [GC], No 45036/98.

[26] FRA, 'What are fundamental rights?', FRA website, n.d.

[27] Judgment of the Court of Justice of 28 October 1975, Rutili v Minister for the Interior, Case 36/78, ECLI:EU:C:1975:137.

[28] Judgment of the Court of Justice of 13 December 1979, Hauer v Land Rheinland-Pfalz, Case 44/79, ECLI:EU:C:1979:290.

[29] Judgment of the Court of Justice of 21 September 1989, Hoechst v Commission, C-46/87, ECLI:EU:C:1989:337.

[30] Judgment of the Court of Justice of 18 June 1991, Elliniki Radiophonia Tiléorassi AE and Panellinia Omospondia Syllogon Prossopikou v Dimotiki Etairia Pliroforissis and Sotirios Kouvelas and Nicolaos Avdellas and others, Case C-260/89, ECLI:EU:C:1991:254.

[31] Judgment of the Court of Justice of 27 November 2001, Z v Parliament, Case 270/99, ECLI:EU:C:2001:639. Judgment of the Court of Justice of 3 September 2008, Kadi and Al Barakaat International Foundation v Council and Commission, Joined cases C-402/05 and C-415/05 P, ECLI:EU:C:2008:461. Judgment of the Court of Justice of 14 October 2004, Omega, Case C-36/02, ECLI:EU:C:2004:614. Judgment of the Court of Justice of 12 June 2003, Schmidberger, Case C-122/00, ECLI:EU:C:2003:333. Judgment of the Court of Justice of 16 June 2005, Pupino, Case C-105/03, ECLI:EU:C:2005:386. Judgment of the Court of Justice of 11 December 2007, International Transport Workers' Federation and Finnish Seamen's Union, Case C-438/05, ECLI:EU:C:2007:772.

[32] Judgment of the Court of Justice of 21 September 1989, Hoechst v Commission, C-46/87, ECLI:EU:C:1989:337.

[33] European Commission, 'Part I – Protecting fundamental rights within the European Union', European e-Justice Portal website, last update: 9 July 2024.

[34] Pascale, G. and Tonolo, S., The Vienna Convention on the Law of Treaties – The role of the treaty on treaties in contemporary international law, Edizioni Scientifiche Italiane, 2022, pp. 504–505.

[35] Explanations relating to the Charter of Fundamental Rights (OJ C 303, 14.12.2007, pp. 17–35).

[36] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, pp. 1–88).

[37] Meinich, T., 'From Opinion 2/13 to the 2023 Draft Accession Agreement: The Chair's perspective', European Papers, Vol. 9, No 2, 2024, pp. 685–694.

[38]According to Articles 3(2) and 3(3) of the draft accession agreement, if an EU Member State has acted or omitted to act and the alleged violation could have been avoided only by disregarding EU law, the EU may (or shall) become a co-respondent to the case and, unlike a third-party intervener, thereby become a party to the case and be bound the judgment of the ECtHR. Conversely, if the EU has acted and was obliged to do so under the TEU or the TFEU, the EU Member States may (or shall) become co-respondents to the case, since their participation is needed in order to amend the treaties.

[39] 13 EU Member States have ratified Protocol No 16 (by 8 August 2025): Belgium, Estonia, Finland, France, Greece, Lithuania, Luxembourg, Netherlands, Romania, Slovakia, Slovenia, Spain and Sweden.

[40] The '46+1' group is an ad hoc working group within the CoE's Steering Committee on Human Rights, assigned to (re-)negotiate the terms of the EU's accession to the ECHR.

[41] Opinion 1/17 of the Court of Justice (EU–Canada CET Agreement) of 30 April 2019, ECLI:EU:C:2019:341.

[42] Opinion 2/13 of the Court of Justice (Opinion pursuant to Article 218(11) TFEU) of 18 December 2024, ECLI:EU:C:2014:2454. Treaty on European Union, (OJ C 326, 26.10.2012, pp. 13–390), Article 216.

[43] Judgment of the Court of Justice of 9 March 1978, Amministrazione delle Finanze dello Stato v Simmenthal, Case 106/77, ECLI:EU:C:1978:49.

[44] CoE, '17th meeting of the CDDH ad hoc negotiation group on the accession of the European Union to the European Convention on Human Rights – Meeting report', 46+1(2023)R17, 2 February 2023, p. 16.

[45] CoE, 'Accession by the European Union to the European Convention on Human Rights – Answers to frequently asked questions', 1 June 2010.

[46] Practice Direction is an official document issued by the President of the ECtHR to clarify and supplement the ECtHR's procedural rules.

[47] ECtHR, 18 February 1999, Case of Matthews v. the United Kingdom, ECLI:CE:ECHR:1999:0218JUD002483394.

[48] Information Note on the ECtHR's case-law 76 of 30 June 2005, Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland [GC], No 45036/98. Divergence in the application of the ECHR in EU law, and vice versa, is visible in following cases. In the Bospohorus case AG Jacobs argued that, even though the ECHR may not be formally binding upon the EU, 'for practical purposes the Convention can be regarded as part of the Community law and can be invoked as such both in this Court and in national courts where Community law is in issue'. In McB, the CJEU held that, where the Charter rights are the same as those in the ECHR, they must be given the same meaning and the same scope as 'interpreted by the case-law of the ECtHR'. In Review Arango Jarmillo and Others v EIB, the CJEU went as far as to state that a reference to the case-law of the ECtHR 'must be made' when interpreting and applying a Charter right that corresponds to an ECHR right, in accordance with Article 52(3) of the Charter.

[49] ECtHR, 2 October 2018, Affaire Bivolaru c. Roumanie, ECLI:CE:ECHR:2018:1002JUD006658012.

[50] CoE, '18th meeting of the CDDH ad hoc negotiation group on the accession of the European Union to the European Convention on Human Rights – Final consolidated version of the draft accession instruments', 46+1(2023)R17, 2 February 2023, Article 3.

[51] Judgment of the Court of Justice of 6 October 1982, Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health, Case 283/81,ECLI:EU:C:1982:335.

[52] CJEU, Communication commune des présidents Costa et Skouris, 24 January 2011.

[53] European Parliament: Andreadakis, S. and Morano-Foadi, S., 'The EU accession to the ECHR after Opinion 2/13: Reflections, solutions and the way forward', 20 April 2016, pp. 11–12.

[54] CoE, '17th meeting of the CDDH ad hoc negotiation group on the accession of the European Union to the European Convention of Human Rights – Proposed editorial revisions to the draft revised accession instruments (document prepared by the Secretariat under the authority of the Chairperson and Vice-chairperson)', 46+1(2023)30, 18 January 2023.

[55] Gerards, J. and Loven, C., 'Protocol 16 EVRM – Achtergronden, betekenis, effecten en ervaringen', Utrecht University, Utrecht, July 2023.

[56] CoE, 'EU accession to the ECHR ('46+1' group)', CoE website, n.d..

[57] Commission Decision on a request for an opinion of the Court of Justice pursuant to article 218(11)TFEU in relation to the draft agreement providing for the accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms, C(2025)3950, 25 July 2025.

[58] Judgment of the Court of Justice of 10 September 2024, Joined cases C-29/22 and C-44/22 P, ECLI:EU:C:2024:725.

[59] Imanovic, S., The Architecture of Fundamental Rights in the European Union, Hart Publishing, Oxford, 2022, p. 91.

# About this publication

© European Union Agency for Fundamental Rights, 2025

Reproduction is authorised provided the source is acknowledged.

For any use or reproduction of photos or other material that is not under the European Union Agency for Fundamental Rights copyright, permission must be sought directly from the copyright holders.

Neither the European Union Agency for Fundamental Rights nor any person acting on behalf of the Agency is responsible for the use that might be made of the following information.

Luxembourg: Publications Office of the European Union, 2025

**HTML**

- TK-01-25-039-EN-Q
- ISBN: 978-92-9489-695-7
- DOI: 10.2811/4625892

**PDF**

- TK-01-25-039-EN-N
- ISBN: 978-92-9489-696-4
- DOI: 10.2811/9867274

FRA – EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

Schwarzenbergplatz 11 – 1040 Vienna – Austria

T +43 158030-0 – F +43 158030-699

- Website
- LinkedIn
- Instagram
- Facebook
- YouTube
- X