

Contents

Introduction

- Q. 1. What are the main sources of legal protection for human rights in Europe?[AT3]
 - Q. 2. What role has the ECHR played in EU law?
 - Q. 3. What is the historical background of accession?
 - Q. 4. What is the legal basis for accession in EU law?
 - Q. 5. What is the legal basis for accession in ECHR law?
 - Q. 6. What is the relationship between the jurisprudence of the CJEU and ECtHR with respect to fundamental rights?
 - Q. 7. How does EU law arise in cases before the ECtHR?
 - Q. 8. How has the CJEU relied upon the ECHR and ECtHR jurisprudence?
 - Q. 9. How did the Lisbon Treaty and the proclamation of the EU Charter influence the relationship between the ECHR law and EU law?
 - Q. 10. What is the interplay between the ECHR and EU Charter in the context of EU law?
 - Q. 11. What are the principal tenets in the Draft revised Agreement on the Accession?
 - Q. 12. What is the main legal change effected by accession?
 - Q. 13. What changes will accession effect with regard to EU representation before the Council of Europe?
 - Q. 14. How does EU accession affect additional protocols to the ECHR?
 - Q. 15. What are the expected procedural impacts of EU accession to the ECHR?
 - Q.16. How will the advisory opinion mechanism under Protocol 16 operate post-accession?
 - Q. 17. What is the current status of accession process?
 - Q.18. What are the key points of the EULEX Kosovo judgment and what are its implication for EU accession to ECHR?
 - Q. 19. What are the potential legal and operational implications of EU accession to the ECHR?[AT18][LM19]
- Resources on accession[AT21][LM22]
- List of documents and draft revised accession instruments

Endnotes

Introduction

This Q&A considers legal and operational implications of EU accession to the ECHR including relevant aspects of the relationship of EU and ECHR legal protection for human rights in Europe. It also includes some framing questions about the relationship between ECHR and EU law that offer some broader legal context to accession. It is intended for a general legal audience and does not purport 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, ECtHR and the CJEU, drawing also upon relevant caselaw.

Q. 1. What are the main sources of legal protection for human rights in Europe? [AT3]

At the European level, human rights [1] are protected by two legal frameworks: one adopted under the aegis of the Council of Europe and the other under that of the European Union ("EU").

The main legal instruments for human rights protection in these systems are the [European Convention on Human Rights](#) ("ECHR") and [EU Charter of fundamental rights](#) ("the Charter").

The ECHR was adopted by the Council of Europe in 1950 and entered into force in 1953. Its implementation is overseen by the European Court of Human Rights ("ECtHR") in Strasbourg. The interpretative jurisprudence of the ECtHR has helped ensure that the Convention remains a "living instrument" capable of adapting to the values, needs and mores 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 Convention. All 46 member states of the Council of Europe, including the 27 EU member states, are parties to the ECHR.

The Charter of Fundamental Rights of the European Union ("the Charter") was proclaimed in 2000 and became legally binding on the 1 December 2009, entering into force with the Lisbon Treaty. 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. As such, it carries no requirements of transposition or incorporation into the legal systems of EU Member States [2]. It is interpreted by the Court of Justice of the European Union (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 [3]. Such obligation is relevant both for the EU Member States as well as for the EU institutions. [4] The EU is not currently a party to the ECHR; however, it has a legal obligation to accede to the Convention under Article 6(2) of the Treaty on the European Union (TEU).

Q. 2. 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 EU Charter has been influenced by the ECHR and provides that the Charter rights 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.

Q. 3. What is the historical background of accession?

Discussion of EU (formerly EEC or EC) 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](#) in 1977, followed by the preamble of [Single European Act](#) (1986) incorporating reference to democracy and human rights, and the European Parliament [Declaration on the Fundamental Rights and Freedoms](#) (1989). In [Opinion \(2/94\) of 28 March 1996 pursuant to Article 228\(6\) of the EC Treaty](#), the European Court of Justice considered that accession would entail a significant change to the Community's system for protecting human rights and would have constitutional implications. It therefore concluded that accession could only be achieved by amending the Treaties as, in its view, the Community did not at that time have the necessary competence to accede to the ECHR, as later required by Article 6(2) of TEU (Lisbon Treaty).

In April 2013, negotiators for the EU and for each of the Member States of the Council of Europe reached an agreement on EU accession to the ECHR. On 18 December 2014 in its [Opinion 2/13](#), the Court of Justice 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 Box 1). 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.

In October 2019, the European Commission informed the Council of Europe that it was ready to restart negotiations. [Formal negotiations resumed in October 2020](#) [5], and in March 2023 negotiators reached a provisional agreement on a [revised draft accession agreement](#) [6].

Q. 4. What is the legal basis for accession in EU law?

According to [Article 47 of the TFEU](#), the EU enjoys legal personality and is a subject of 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, within the context of the EU's policies, one of the objectives referred to in the treaties; or
- 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

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 Treaty on European Union](#) (TEU) provides 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 Treaty on European Union](#)

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 ECHR. It is worth noting that the principal limitation identified in Opinion 2/94 was addressed through the Lisbon treaty 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, 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”

Q. 5. What is the legal basis for accession in ECHR law?

The legal basis for accession of the EU as a non-state party is provided for by Article 59, paragraph 2 of the ECHR (“the European Union may accede to this Convention”), as amended by Protocol No. 14 to the Convention, which entered into force on 1 June 2010. [7]

In 2010, the Committee of Ministers of the Council of Europe accorded an ad-hoc mandate to its Steering Committee for Human Rights (CDDH) to co-operate 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 Reykjavik 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](#)” adopted at the summit underlined that accession will enhance coherence in human rights protection in Europe, 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.

Q. 6. What is the relationship between the jurisprudence of the CJEU and ECtHR with respect to fundamental rights?

“The two European systems and their mechanisms have substantially evolved towards convergence and the two European Courts – the ECtHR and CJEU – continue to engage in an active judicial dialogue and draw inspiration from each other.”

Source: [EU-ECHR Interplay: Council of Europe HELP course for EU judges, prosecutors and lawyers - Human Rights Education for Legal Professionals \(coe.int\)](#)

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

The expansion of CJEU's competence to ensure respect for fundamental rights began in the 1970s. In the landmark case of [Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel](#) (1970) [8], the CJEU confirmed its own competence in ensuring respect for fundamental rights as 'general principles of law' (para 4).

The CJEU further solidified its stance in subsequent cases. In [Cinéthèque](#) (1985) [9], the Court 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 (para 26). This decision underscored the CJEU's commitment to ensuring that EU law and national law are aligned in the protection of fundamental rights.

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](#) (1974) [10] the Court emphasized the central importance of the Member State constitutional traditions in its interpretation of EU law (para 13).

Q. 7. How does EU law arise in cases before the ECtHR?

Member States (MS) play a key role in ensuring 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 [Simmenthal](#) (1978) [11]. Even in advance of accession the ECtHR can already review the actions/omissions of MS authorities when implementing EU law for compliance with the Convention.

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 [CFDT v the European Communities](#) [12] or the [Dufay contre les Communautés européennes](#), subsidiairement, la collectivité de leurs Etats membres et leurs Etats membres pris individuellement [13]. The situation was reaffirmed after Opinion 2/13 in cases such as [Connolly v 15 Member States of the European Union](#) [14] or [Andreassen v the UK and 26 other Member States of the European Union](#) [15].

The *only* exception to this arises when an EU MS authority's action was *required* by EU law and there is no MS discretion regarding implementation. In such situations, the [Bosphorus](#) (2005) [16] presumption may apply:

Box 2 - Legal corner – Bosphorus “presumption”

The Bosphorus presumption refers to a doctrine in the case-law of the ECtHR, when the ECtHR first stated, in line with previous case-law, that:

“The ECtHR state 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 for which the Convention provides’ the Court will presume that a State has acted in compliance with the Convention, 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 ikti v Ireland* 2005-VI; 42 EHRR 1, case 45036/98, judgement of 30 June 2005, paras 155 and 156

[AT4][LM5] The Bosphorus presumption applies particularly to situations when the preliminary reference to the CJEU (Article 267 TFEU) has been exhausted.

Q. 8. How has the CJEU relied upon the ECHR and ECtHR jurisprudence?

The CJEU has frequently relied on the Convention and the caselaw of the ECtHR when interpreting human rights under EU law [17], 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:

Rutili v Minister for the Interior (1975) [18]: the CJEU referred to the ECHR when examining restrictions on the free movement of workers.

Hauer v Land Rheinland-Pfalz (1979) [19]: the CJEU relied on the ECHR when recognising the right to property as a general principle of EU law.

Hoehst v Commission (1989) [20]: the CJEU drew on the ECHR when considering the protection of business premises under the right to privacy.

ERT (1991) [21]: the Court explicitly recognised the relevance of the ECHR in its interpretation of EU law (para 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 EU 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 Court still relies on ECHR provisions and caselaw, including in cases where it interprets the Charter.

The CJEU had continued to rely upon the Convention and the case law of the ECtHR also after the Maastricht Treaty introduced human rights in its preamble. The Amsterdam Treaty provided Article F with “the EU based on principles of ... human rights and fundamental freedoms protection” and the Lisbon Treaty introduced Article 6 of the TEU and the Charter of fundamental rights. In times between the Treaty on European Union (1993) and the Lisbon Treaty, the CJEU used the Convention and the ECtHR case law in number of cases [22] as reflected also in the CJEU “[case-law fact sheets](#)”.

Q. 9. How did the Lisbon Treaty and the proclamation of the EU Charter influence the relationship between the 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) TEU refers to both the ECHR and the Charter and the CJEU cites both sources in the judgements. The CJEU has referred to other sources of international human rights law such as the Convention on the Rights of the Child, CJEU suggesting that the sole mention of the ECHR in Article 6(3) has not constrained the Court, the special significance and privileged position of the ECHR in the EU law context is also evident in its [23] case law.

Under EU law, general principles on fundamental rights serve two main purposes: [24]

- 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 fall back or alternative source of legal protection for rights not explicitly enshrined in the Charter.

Q. 10. What is the interplay between the ECHR and EU 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 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 which correspond to rights guaranteed by the Convention shall be the same as those laid down by the Convention; (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 (partly) corresponding ECHR right. [25]

The Charter protects the full range of civil, political, economic and social rights which had previously been enshrined only in the ECHR and European Social Charter, 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 European Convention on human rights). 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 and international law and by international agreements to which the Union or all the 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 [26] 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 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](#) or when balancing rights within the EU legal framework, all the while safeguarding the primacy of EU law.

Table 1 below 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 the table provides a snapshot of the textual correspondence between the ECHR and Charter.

Table 1 – Human rights in the Charter compared with the ECHR [AT6][LM7]

						No ECHR equivalent	More extensive ECHR
						EU context specific	Equivalent protection
I Dignity (Articles 1-5)	1 Human dignity	2 Life	3 Integrity of the person	4 Torture; inhuman, degrading treatment	5 Slavery and forced labour		
II Freedoms (Articles 6-19)	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 and sciences	14 Education	15 Choose occupation and engage in work		
	16 Conduct a business	17 Property	18 Asylum	19 Removal, expulsion or extradition			
III Equality (Articles 20-26)	20 Equality before the law	21 Non-discrimination	22 Cultural, religious and linguistic diversity	23 Equality: men and women	24 The child	25 Elderly	26 Integration of persons with disabilities
IV Solidarity (Articles 27-38)	27 Workers right to information and consultation	28 collective bargaining and action	29 Access to placement services	30 Unjustified dismissal	31 Fair and just working conditions		
	32 Prohibition of child labour and work	33 Family and professional life	34 Social security and assistance	35 Health care	36 Access to services of general economic interest	37 Environmental protection	38 Consumer protection
V Citizens' rights (Articles 39-46)	39 Vote and stand as candidate to EP	40 Vote and candidate at municipal elections	41 Good administration	42 Access to documents	43 European ombudsman	44 Petition (EP)	45 Movement of persons
	46 Diplomatic and consular protection						
VI Justice (Articles 47-50)	47 Effective remedy and fair trial	48 Presumption of innocence; right of defence	49 Legality and proportionality of offences and penalties	50 <i>Ne bis in idem</i>			
VII General provisions (Articles 51-54)	51 Application	52 Scope and interpretation	53 Level of protection	54 Prohibition of abuse of rights			

Source: FRA, own visualisation

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 MS court implementing the EU law may seek clarification through a preliminary ruling of the CJEU (Article 267 TFEU) to determine the validity or interpretation of the EU law in question.

Q. 11. What are the principal tenets in the Draft revised Agreement on the Accession?

A revised 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 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; [\[AT8\]\[LM9\]](#)
2. leave unaffected the existing rights and obligations of the EU Member States, i.e., the 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 ECtHR and CJEU [\[27\]](#).

1. EU-specific procedural mechanisms before the ECtHR [\[AT10\]](#)

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 the EU MS whether that state has applied EU law or not. However, in the specific context of the EU as a party to the ECHR alongside its MSs, the DAA contains a co-respondent mechanism, which aims to respect the distribution of powers between the EU and its Member States [\[28\]](#). Three points are worth recalling under the 2023 DAA: (1) the ECtHR takes the formal decision to admit the EU (or its Member State(s)) as a co-respondent, but where the criteria for co-respondent are met, the ECtHR shall admit the EU (or its Member State(s)); (2) 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 EU 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 CoE Member States to request non-binding advisory opinions from the [ECtHR\[AT11\]\[LM12\]](#) on questions of principle related to the interpretation or application of Convention rights. This aims to strengthen dialogue between the Court and national authorities, improve the implementation of the Convention, and promote the principle of subsidiarity. However, only a limited number of EU MS have ratified the Protocol. [\[29\]](#), and therefore, the DAA (2023) provides that when the highest court or tribunal of an EU 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 (2023) 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, which 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 (CFSP)

Under the TEU, the CJEU has limited jurisdiction in CFSP matters. Art. 24(1) TEU states that the CJEU shall not have jurisdiction with respect to the 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 CJEU limited jurisdiction in the CFSP matters, the DAA (2023) 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 DAA (2023) was agreed within the 46+1 working group [\[30\]](#), 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 [\[31\]](#) on the revised AA (especially foreseen that the DAA will be subject of the stricter scrutiny upon the new request for the CJEU's opinion) and CJEU competence in area of CFSP (see Q19). The [Final consolidated version of the draft accession instruments](#) is currently considered as preliminarily approved, hence 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.

Q. 12. What is the main legal change effected by accession?

The EU's accession to 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 safeguarding direct legal accountability of the EU itself. Accession will also expand the legal basis for monitoring and assessment. At an institutional level it will entail important procedural changes and may impact the role and responsibilities of EU institutions and agencies, including 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 the part of the EU legal order [\[32\]](#). 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 EU level, remedies for violations of EU law-including those involving fundamental rights-are primarily determined by national courts, and the system for remedies vary across Member States (as established in Case 106/77 *Simmenthal*). 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 EU level may still show variations which could result in gaps in effective redress, depending on how judgments are executed.

Q. 13. 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 draft of the DAA, in particular:

- A delegation of European Parliament (EP) participating in the Parliamentary Assembly of the Council of Europe (PACE) meetings with voting rights, for election of judges;
- A representative of EU at 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 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 judgement as underlined in the 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 Convention and the Protocols thereto;
 - and Article 54(1) concerning the powers of the Committee of Ministers.
- Obligatory consultation with EU regarding to amendments to Convention, protocol(s), or rules relating to selection of candidates for election of judges by PACE
-

Q. 14. How does EU 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 Convention, with all provisions of the latter continuing to apply; this confirms the accessory nature of the protocols to the Convention. [33]

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 [34] 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.

Q. 15. What are the expected procedural impacts of EU accession to the ECHR?

1. Addressing the current procedural limitation[AT13]: 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 the accession will not provide automatic (ex-officio) legal standing of the EU, 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 Court if it appears that such allegation calls into question the compatibility of a provision of EU law with the Convention (see below).

2. Third-Party Intervention: Article 36(2) of the Convention allows states and, in some instances other entities (such as CSOs, 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 such entities full party status.

Practice Directions [35] by the President of the ECtHR clarify [the third-party intervention](#) as a procedural device whose chief purpose is to enable the ECtHR to become acquainted with the views of States and other persons who are not parties to a case before it on the issues raised by that case. The definition of the "other states" in the Article 36 (2) of the ECHR has been extended to EU *ad hoc* in several cases.

The EU has indeed been permitted to intervene as a third party in cases involving EU law, such as *Matthews v. UK* (linked to EU primary law) and *Bosphorus v. Ireland* (linked to EU secondary law). [36] However, this intervention is limited compared to the rights of a respondent party.

3. Prior involvement and co-respondent mechanism: In the *Bivolaru* case, the Court 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 Court concluded, that the protection of human rights by EU law was manifestly deficient resulting in a violation of Article 3 of 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 Draft Accession Agreement provides for new procedures, notably **the co-respondent mechanism and the "prior involvement" procedure**.

The "**co-respondent mechanism**" should only be applied to cases which have been notified to a High Contracting Party of the ECHR according to the Article 54 (2)(b) of the Rules of the Court. The co-respondent mechanism differs from third party interventions under Article 36 (2) of the Convention. 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:

1. 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, paragraph 2 of the DAA). Where the application is directed against the EU, but not against one or more of its Member States, the EU 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, paragraph 3 of the DAA). This should happen in a timely manner once the EU has received the relevant information.[\[AT14\]\[LM15\]](#)
2. The co-respondent mechanism also makes it possible, where appropriate, to bring collective actions against all the Member States alongside the Union, if the European Court of Human Rights concludes that a provision of EU primary law itself violates the Convention. Were such case to be directed against both the EU and one or more of its Member States in respect of at least one alleged violation, the status of any respondent may be changed to that of a co-respondent if the conditions in paragraph 2 or paragraph 3 were met (Article 3, paragraph 4). The procedure outlined in letter (a) above would apply mutatis mutandis.

The **"the prior involvement of the CJEU" mechanism** [\[37\]](#) remedies situations where a national court fails to request a preliminary reference from the CJEU under Article 267 TFEU [\[38\]](#). It applies only to cases in which a Member State is the defendant/respondent, and the European Union 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 of Fundamental Rights of the European Union.

The "prior 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), as well as 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 TFEU, the ECtHR would have to dismiss the case (Article 35(1) of the ECHR). The "prior 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 [\[39\]](#) 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 a human right(s). [\[40\]](#) 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](#), that request has been sustained.

Q.16. How will the advisory opinion mechanism under Protocol 16 operate post-accession?

Article 5 of the Draft Articles on Accession 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 an EU 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. [\[41\]](#)

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

The Draft revised Agreement on Accession 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.

Q. 17. What is the current status of accession process?

The last meeting of working group 46+1 took place in March 2023 and the updated of its outcome is available on [EU accession to the ECHR \("46+1" Group\) - Human Rights Intergovernmental Cooperation](#).

The accession agreement provisionally agreed on the negotiators' level (group 46+1) requires adoption by the Committee Ministers of the Council of Europe. 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 EU 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 European Convention on Human Rights have ratified it.

In addition, any EU Member State, the European Parliament, the Council 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 Court of Justice 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. [\[42\]](#)

Q.18. What are the key points of the EULEX Kosovo judgment and what are its implication for EU accession to ECHR?

The CJEU judgment of 10th September 2024 in the EULEX Kosovo case [\[43\]](#) concluded that the Court has jurisdiction over "acts and omissions [that] are not directly related to political or strategic choices." This conclusion follows the caselaw that the CJEU developed after its Opinion 2/13. The Court 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 EU Charter of Fundamental Rights. In particular, the Court 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 EU accession to ECHR:

The Court of Justice of the EU (CJEU) confirmed its jurisdiction to hear actions for damages related to Common Foreign and Security Policy (CFSP) matters, an area which had not previously been addressed by the CJEU. This addresses one of the key obstacles to EU 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 Common Foreign and Security Policy (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 (AG) had proposed a more proactive stance, suggesting that fundamental rights violations should not fall under this political question doctrine, advocating for broader jurisdiction.[\[AT16\]\[LM17\]](#)
- The judgment confirms CJEU 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 Court introduced a two-step approach to determine its jurisdiction in CFSP cases:

1. Verify if the situation falls within the express exceptions in Articles 24 TEU and 275 TFEU.
2. Examine if the situation is not directly related to political or strategic choices in CFSP. The Court 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.

Q. 19. What are the potential legal and operational implications of EU accession to the ECHR?[\[AT18\]\[LM19\]](#)

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. ^[44] While EU 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: (1) 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; (2) 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.

EU accession to the ECHR can advance the following:

3. **Accountability:** [\[AT20\]](#) 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 Convention which 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.
4. **Coherence and consistency:** Accession will enhance coherence between the EU and ECHR systems of rights protection and should also promote consistency between the Strasbourg 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 Council of Europe Member States.
5. **External policy implications:** accession will likely enhance the credibility of the EU among broader constituencies including third countries. The EU routinely calls upon third 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.
6. **Closure of protection gap:** EU 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 European Court of Human Rights, 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[\[AT21\]\[LM22\]](#)

Council of Europe (2010): [Accession by the European Union to the European Convention on Human Rights - Answers to frequently asked questions](#) (coe.int)[\[AT23\]\[LM24\]](#)

Council of Europe (2023): [Draft revised Agreement on the Accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms](#), 18 January 2023

Council of Europe (2025): [Council of Europe Parliamentary Assembly Resolution 2601/2025 on "Legal aspects of the accession of the European Union to the European Convention on Human Rights"](#)

Council of Europe (2025): [PACE Report on Legal aspects of the accession of the European Union to the European Convention on Human Rights](#)

European Commission and Council of Europe (2020): [European Commission's and Council of Europe common statement](#)

European Parliament (2024): [Completion of EU accession to the European Convention on Human Rights](#)

European Parliament (2016), Morano-Foadi, S. - Andreadakis, S. (2016): [The EU Accession to the ECHR after Opinion 2/13: Reflections, Solutions and the Way Forward](#), pp. 11-12

European Union Delegation to the Council of Europe: [Major Progress on the path to EU accession to the ECHR](#)

European Union (2008): [Treaty on European Union, consolidated version, Article 6](#), OJ 115, 2008, p. 0019-0019

FRA (n.d.): [EU charter of Fundamental Rights, Article 52 \(Scope and interpretation\)](#)

List of documents and draft revised accession instruments

Council of Europe (2023): [List of documents related to the accession process of EU to ECHR](#)

Council of Europe (2023) [Final consolidated version of the draft accession instruments](#)

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] 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 recognized in their national laws.

[3] CJEU (2021), [Field of application of the Charter of fundamental rights of the European Union](#)

[4] Ledra Advertising Ltd and Others v European Commission and European Central Bank (ECB), [Joined Cases C-8/15 P to C-10/15 P](#)

[5] [EU accession to the ECHR \(“46+1” Group\) - Human Rights Intergovernmental Cooperation](#)

[6] 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 ADDENDUM 04/04/2023, [1680aace4e](#)

[7] [Protocol No. 14 to the Convention](#), CoE Treaty Series No. 194, 13 May 2004

[8] [Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel](#), case 11/70, judgement of 17 December 1970, ECLI:EU:C:1970:114

[9] [Cinéthèque SA and others v Fédération nationale des cinémas français](#), case C-60/84, judgement of 11 July 1985, ECLI:EU:C:1985:329

[10] [J. Nold, Kohlen- und Baustoffgroßhandlung v Commission of the European Communities](#), case 4/73, judgement of 14 May 1974, ECLI:EU:C:1974:51

[11] [Amministrazione delle Finanze dello Stato v Simmenthal SpA](#), case 106/77, judgement of 9 March 1978

[12] [CFDT v the European Communities, alternatively: their Members States](#), a) jointly and b) severally, application No. 8030/77, judgement of 10 July 1978

[13] [Dufay contre les Communautés européennes, subsidiairement, la collectivité de leurs Etats membres et leurs Etats membres pris individuellement](#), application No. 13539/88, judgement of 9 January 1989

[14] [Connolly v 15 Member States of the European Union](#), application No 73274/01, judgement of 9 December 2008

[15] [Andreasen v the UK and 26 other Member States of the European Union](#), application No. 28827/11, judgement of 31 March 2015

[16] [Bosphorus Hava Yollari Turizm ve Ticaret Anonim Sirketi v Ireland](#) 2005-VI; 42 EHRR 1, case 45036/98, judgement of 30 June 2005

[17] See [What are fundamental rights? | European Union Agency for Fundamental Rights](#): “Traditionally, the term fundamental rights is used in a constitutional context whereas the term ‘human rights’ is used in international law. The two terms refer largely to the same substance as can be seen, for instance, by the many similarities between the Charter of Fundamental Rights of the EU and the European Convention on Human Rights. The EU has come to use fundamental rights to describe the obligations of the EU and its Member States towards everyone in the EU. To keep it simple, the toolkit uses the expression ‘fundamental rights’ throughout. Human rights are inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible. Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.”

[18] [Roland Rutili v Ministre de l'intérieur](#), case 36/78, judgement of 28 October 1975, ECLI:EU:C:1975:137

[19] [Liselotte Hauer v Land Rheinland-Pfalz](#), case 44/79, judgement of 13 December 1979, ECLI:EU:C:1979:290

[20] [Hoechst AG v Commission of the European Communities](#), C-46/87, judgement of 21 September 1989, ECLI:EU:C:1989:337

[21] [Elliniki Radiophonia Tiléorassi AE and Panellinia Omospondia Syllogon Prossopikou v Dimotiki Etairia Pliroforissis and Sotirios Kouvelas and Nicolaos Avdellas and others](#), C-260/89, judgement of 18 June 1991, ECLI:EU:C:1991:254

[22] See e.g. Case 270/99 [P Z v European Parliament](#), ECLI:EU:C:2001:639; , case C-117/01 K.B. and National Health Service Pensions Agency, Secretary of State for Health, ECLI:EU:C:2004:7 [Joined cases C-402/05 and C-415/05 P Kadi \(Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities\)](#), ECLI:EU:C:2008:461; case C-36/02 OMEGA (Omega Spielhallen- und Automatenaufstellungs-GmbH v Oberbürgermeisterin der Bundesstadt Bonn), ECLI:EU:C:2004:614; case C-112/00 Schmidberger ([Eugen Schmidberger, Internationale Transporte und Planzüge v Republik Österreich](#)), ECLI:EU:C:2003:333; Case C-105/03 [Criminal proceedings against Maria Pupino](#), ECLI:EU:C:2005:386; Case C-438/05 [Viking Lin \(International Transport Workers' Federation and Finnish Seamen's Union v Viking Line ABP and OÜ Viking Line Eesti\)](#), ECLI:EU:C:2007:772

[23] see e.g. [Hoechst AG v Commission of the European Communities](#), joined cases 46/87 and 227//88, judgement of 21 September 1989, ECLI:EU:C:1989:337

[24] [European e-Justice Portal - Part I - Protecting fundamental rights within the European Union \(europa.eu\)](#)

[25] [Pascale, G. – Tonolo, S. \(2023\)](#), pp. 504-505

[26] An accompanying document prepared by the authority of the Praesidium of the Convention – the body that drafted the Charter of Fundamental Rights of the European Union: [Explanations relating to the Charter of Fundamental Rights](#), 2007/C 303/02. It does not have the status of law but serves as an interpretation tool.

[27] see more: Meinich, T. (2024), [The revised Draft Agreement on the Accession of the EU to the ECHR](#), European papers, vol. 9, No. 2, pp. 685-694

[28] According to art. 3(2) and (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 by the judgment of the ECtHR. Conversely, if the EU has acted and was obliged to do so under the TEU or the Treaty on the Functioning of the European Union (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.

[29] Thirteen EU Member States have [ratified Protocol no. 16](#) (by 08/2025): Belgium, Estonia, Finland, France, Greece, Lithuania, Luxembourg, Netherlands, Romania, Slovak Republic, Slovenia, Spain

and Sweden

[30] "46+1 working group" is ad hoc group within the Council of Europe's Steering Committee on Human Rights, assigned to (re-)negotiate the terms of the EU's accession to ECHR.

[31] CJEU, Opinion 1/17, Comprehensive Economic and Trade Agreement between Canada, on the one part, and the European Union and its Member States, of the other part (CETA), ECLI:EU:C:2019:341

[32] CJEU, Opinion 2/13; Article 216 of the TEU

[33] [17th Meeting of the CDDH ad hoc negotiation group on the Accession of the EU to ECHR](#), p. 16

[34] [Accession by the European Union to the European Convention on Human Rights - Answers to frequently asked questions \(coe.int\)](#)

[35] A Practice Direction is an official document issued by the President of the European Court of Human Rights (ECtHR) to clarify and supplement the Court's procedural rules.

[36] Divergence in the application of the ECHR in EU law and vice versa is visible in following cases, e.g.: In Bosphorus 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 v LE*, the CJEU held that, where Charter rights are the same as those in ECHR, they must be given the same meaning and the same scope as „interpreted by the case-law of the ECtHR“. In *Jarmillo*, the Court 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.

[37] Co-respondent mechanism under the Article 3 of the [Final consolidated version of the draft accession instruments](#)

[38] see e.g. Judgment of the Court of 6 October 1982. - *Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health*, [Case 283/81](#).

[39] CJEU (2011), [Communication commune des présidents Costa et Skouris](#), 24 January 2011

[40] European Parliament (2016): Morano-Foadi, S. - Andreadakis, S., The EU Accession to the ECHR after Opinion 2/13: Reflections, Solutions and the Way Forward, pp. 11-12

[41] See also: Protocol 16 ECHR. Background, meaning, effects and experiences. [Protocol 16 EVRM. Achtergronden, betekenis, effecten en ervaringen](#)

[42] European Commission (2025), [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

[43] CJEU judgement in the joined cases C-29/22 P and C-44/22 P, *KS and Others v Council and Others*

[44] Imanovic, S. (2021) The architecture of fundamental rights in the European Union. Hart Publishing, p. 91