



The EU's accession to the ECHR

The integration of the substantive provisions of the European Convention on Human Rights (ECHR) has been a goal of Community Institutions since 1953. Moreover, the Court of Justice of the European Union (CJEU) has recognised the ECHR's "special significance" for over 30 years. However until the Lisbon Treaty, the EU lacked the legal competence to enact general rules or to conclude international conventions in the human rights field.

Legal bases

Both the EU and the Council of Europe (CoE) had to introduce new legal provisions to allow for EU accession.

From the EU's perspective, the Lisbon Treaty not only empowers it with legal personality and provides a specific legal basis to accede (Article 6(2)TEU) but makes accession a Treaty requirement. In addition, [Protocol 8](#) emphasises that the special characteristics of the EU and its laws shall be preserved and that the situation of individual MS, all of whom are ECHR signatories, will not be affected.

[Protocol 14](#) of the ECHR provides an exception for the EU, amending the general rule (Article 59) that only states can accede to the Convention. It came into effect in June 2010.

The draft legal instrument

The Council of Europe's Steering Committee for Human Rights (CDDH) has been given responsibility for establishing the legal instruments for accession. Negotiations took place within an informal working group made up equally of EU and non-EU CoE members, as well as the European Commission (which received a negotiating mandate from the Council). The [final draft agreement](#), published on 14 October 2011, addresses the main issues:

- Accession would be limited to the ECHR itself along with those protocols which have been ratified by all MS (Protocols 1 and 6).
- The European Court of Human Rights judge elected to represent the EU would have the same duties and status as other judges. MEPs would participate in the judge's election.

- A co-respondent mechanism would be established allowing either the EU or a MS to join a case in respect of an alleged violation against the other.
- Where the EU is a co-respondent and the CJEU has not had the opportunity to assess the compatibility of the relevant EU law with the ECHR, provision would be made for the CJEU to "quickly" make such an assessment.
- The EU would participate in the work of the CoE Committee of Ministers and have voting rights. However, special voting procedures will be established to prevent the EU bloc (27 of the current 47 CoE members) overruling the others in matters concerning the EU.

Outstanding issues

Despite agreement in the CDDH working group, Commission and Council representatives have indicated that there are still questions to be resolved on the EU side.

Issues remain with the scope of EU accession, submission to the European Court of Human Rights of alleged violations by the EU in the field of Common Foreign and Security Policy, aspects of the co-respondent mechanism and the voting arrangement for the supervision of judgments against the EU.

Many analysts fear this may slow down the accession procedure considerably. In this regard, oral questions to the Council and Commission have been tabled by several political groups enquiring as to the positions of the two institutions as regards the draft agreement and to the planned timeline.

Remaining steps

1. Unanimous agreement on EU position in Council.
2. Agreement of all 47 CoE states in Committee of Ministers.
3. Opinion of the CJEU on compatibility of final accession agreement with EU Treaties.
4. Ratification by all 47 state parties to the ECHR and the EU, including consent of the European Parliament.