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*Committee on Civil Liberties, Justice and Home Affairs*

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**2009/2241(INI)**

8.3.2010

## **DRAFT OPINION**

of the Committee on Civil Liberties, Justice and Home Affairs

for the Committee on Constitutional Affairs

on institutional aspects of accession by the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms (2009/2241(INI))

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(\*) Procedure with associated committees – Rule 50 of the Rules of Procedure

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## SUGGESTIONS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Welcomes the important achievement represented by the Treaty of Lisbon, whereby the Charter of Fundamental Rights of the European Union ('the Charter') becomes binding, and which, pursuant to Article 6(2) TEU, creates an obligation for the EU to accede to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Welcomes, furthermore, the forthcoming entry into force of Protocol No 14 to the ECHR, set for 1 June 2010, under which the EU may accede to the ECHR;
2. Notes that, while all the Member States have already ratified the ECHR, the accession to this instrument of the EU as a legal entity – which will not affect the situation of the Member States vis-à-vis the ECHR – will give the new momentum envisaged for over a decade. It will be of great political and legal importance in the creation of a continent-wide area of human rights, and will strengthen relations between the EU and the 'wider Europe', bringing a new dynamic into the field of human rights throughout Europe. The accession will enhance the credibility of the EU in the field of human rights protection worldwide;
3. Underlines that the accession will first and foremost contribute to a more coherent internal human rights system within the EU. The accession will strengthen the EU's credibility in the eyes of its own citizens in the field of human rights protection, ensuring full and effective respect for fundamental rights whenever EU law is in play;
4. Notes that, following the accession, the ECHR will intervene as a minimum standard of protection in cases where the protection granted by the EU is inferior to that provided in the ECHR. The ECHR reinforces protection of the rights recognised by the Charter that fall within its competence. The Charter goes further and also enshrines other rights and principles, including economic and social rights, as well as the right to data protection and good governance;
5. Notes that EU accession to the ECHR will provide the Union's citizens with an additional mechanism for enforcing their rights, namely the possibility of lodging a complaint with the European Court of Human Rights (ECtHR) in relation to an act or failure to act by an EU institution or a Member State implementing EU law and falling at the same time within the remit of the ECHR. Stresses, however, that this does not alter the present system of jurisdiction of the Court of Justice of the European Union (ECJ), and that the requirement that all domestic judicial remedies should have been exhausted will remain the condition for the eligibility of any application;
6. Stresses that at the same time the accession will require enhanced cooperation between national courts, the ECJ and the ECtHR in protecting fundamental rights. The cooperation between the two European courts will further the development of a coherent case-law system in the field of human rights;

7. Points out that there are a number of legal, technical and institutional issues which are still outstanding and which will have to be addressed in the mandate to be adopted under Article 218 TFEU, as well as in the negotiations with the Council of Europe on accession to the ECHR. The most sensitive of them include:
  - the fact that the scope of the accession should be precisely defined in the mandate; the EU should also accede, at the least, to all those additional protocols to the ECHR which complement the rights enshrined in the ECHR and which have already been ratified by all the EU Member States, thus forming part of the EU's human rights corpus. Furthermore, the accession to the revised European Social Charter should be taken into consideration;
  - the need for the EU's representation and participation in the Council of Europe's bodies to be clarified; although with the accession to the ECHR the EU will not become a member of the Council of Europe, it should be represented on all those bodies where as a result of the accession EU matters are affected, while the European Parliament should be represented in the procedure to elect a judge to the ECtHR;
  - the need for relations between the ECJ and the ECtHR to be refined, leaving the two courts the necessary flexibility to determine how best to cooperate in order to achieve an enhanced regular dialogue. This could, in addition, contribute to the development of the abovementioned case-law system;
  - the need for the problems faced by the ECtHR to be dealt with; EU accession to the ECHR, rather than diminishing its effectiveness, should lead to an improved system of implementation of the subsidiarity principle, and thus to fewer repetitive applications at the ECtHR; this in turn would relieve the burden on the ECtHR itself. It is of the utmost importance that the right balance should be struck between provision of access to the additional remedy and the need to avoid overloading the ECtHR. Welcomes the fact, therefore, that the accession of the EU will coincide with the reform of the ECtHR;
8. Emphasises that, alongside the political commitment, it is of the utmost importance that adequate answers and solutions be found to the main technical questions in order to enable the EU's accession to the ECHR to be used for the benefit of citizens. Unresolved and unclear details may create confusion and endanger the very purpose of the accession. This should not mean, however, that technical impediments delay the process;
9. Underlines that, as the accession to the ECHR concerns not only the EU institutions, but also the Union's citizens, the European Parliament should be consulted and involved throughout the negotiation process, and should be immediately and fully informed at all stages of the negotiations, as provided for in Article 218(10) TEU;
10. Suggests that, in order to disseminate the added value of the accession to citizens, the Council of Europe and the EU should consider developing guidelines with clear explanations of all the implications and effects that accession would bring;
11. Welcomes the commitment shown by the current Spanish Presidency in treating the accession as a 'matter of urgency' and the positive and cooperative attitude of the Council

of Europe in this respect. Finally, calls on the Belgian and Hungarian Presidencies to do their utmost to finalise the accession at the earliest suitable opportunity.