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The effectiveness of the European Convention on Human Rights: the Brighton Declaration and beyond

Addendum to the report¹

Committee on Legal Affairs and Human Rights

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1. Introduction

1. At its meeting on 10 December 2014, the Committee on Legal Affairs and Human Rights approved my report entitled “The effectiveness of the European Convention on Human Rights: the Brighton Declaration and beyond” ([Doc. 13719](#)) and unanimously adopted a draft resolution and a draft recommendation.

2. Since that date, there have been two noteworthy new developments which have prompted me to prepare the present addendum to the committee's report, in accordance with Rule 50.5 of the Parliamentary Assembly's Rules of Procedure:

- on 18 December 2014, the Court of Justice of the European Union (CJEU, “the Luxembourg Court”) adopted its [Opinion 2/13](#) on the draft agreement on the accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms and the compatibility of the draft agreement with the EU and FEU Treaties;
- a High-level Conference entitled “Implementation of the European Convention, our shared responsibility” took place in Brussels on 26 and 27 March 2015, resulting in the adoption of the [Brussels Declaration](#) on 27 March.

2. Developments in the reform process since the adoption of the report by the Committee on Legal Affairs and Human Rights

2.1. The opinion of the Court of Justice of the European Union on the draft accession agreement

3. On 18 December 2015, the Court of Justice of the European Union issued its long-awaited opinion on the compatibility with European Union law of the [draft agreement](#) for EU accession to the European Convention on Human Rights (ETS No. 5, “the Convention”). To my great disappointment (and to that of many others), the CJEU concluded that, as it currently stands, the draft accession agreement was

“not compatible with Article 6(2) TEU or with 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” (paragraph 258).

4. The Luxembourg Court identified a number of obstacles to the accession which will, I am afraid, not be easy to overcome, especially since some of the Court's objections seem to require amendments to the treaties. I will refrain from commenting in detail on the Court's Opinion, and instead restrict myself to noting

1. Addendum to the report approved by the committee on 20 April 2015.



that I fail to see how subjecting the actions and omissions of EU institutions to the jurisdiction of the European Court of Human Rights may threaten or jeopardise the autonomy of EU law – a concern which appears to be at the heart of the Luxembourg Court's reasoning.

5. Quite on the contrary, with the Luxembourg Court having found that the draft accession agreement does not provide a lawful basis for the European Union to accede to the Convention, I cannot but insist on what I have already stressed in my report: speedy accession, by the European Union, to the Convention is crucial in order to close the existing protection gap resulting from the fact that the Strasbourg Court cannot presently review alleged breaches of individuals' human rights stemming from actions or omissions of EU institutions. Remedying this situation must, undoubtedly, also be in the interest of all EU institutions, including the CJEU, given that fundamental rights are among the core values of the Union, as illustrated by the fact that the Charter of Fundamental Rights has been part of primary EU law since the entry into force of the Lisbon Treaty.

6. In light of this, I call for swift resumption of the accession negotiations, in line with [Resolution 2029 \(2015\)](#) on the implementation of the Memorandum of Understanding between the Council of Europe and the European Union (relevant excerpts of which appear in Part B of the appendix to this addendum) which the Assembly adopted on 27 January 2015. All actors involved should redouble their efforts to overcome the obstacles identified by the Luxembourg Court.

7. Similarly, I reiterate the Assembly's call on the Committee of Ministers, made in [Recommendation 2060 \(2015\)](#) on the implementation of the Memorandum of Understanding between the Council of Europe and the European Union (likewise adopted by the Assembly on 27 January 2015 and featuring, in its pertinent parts, in Part C of the appendix) to give high priority to such renewed negotiations. A concerted effort is needed to bring about the European Union's accession to the Convention, which is a prerequisite for the creation of a common European framework for the protection of human rights, democracy and the rule of law.

2.2. The High-level Conference on “Implementation of the European Convention on Human Rights, our shared responsibility”

8. Government representatives of all 47 member States reaffirmed their support for the European Convention on Human Rights by unanimously adopting the [Brussels Declaration](#) on the “Implementation of the European Convention on Human Rights, our shared responsibility” (see Part D of the appendix), together with an accompanying action plan, at the end of a [conference](#) held on 26 and 27 March 2015 and organised as part of Belgium's current [chairmanship](#) of the Council of Europe.

9. The Brussels Conference was the fourth high-level conference devoted to the reform of the Convention system, following on from those held in Interlaken (2010), İzmir (2011) and Brighton (2012). I am pleased to note that the Declaration congratulates the European Court of Human Rights on the positive results achieved in the reform process so far (notably the significant drop in the number of cases pending before the Court) – as indeed I myself did in my report. It is also laudable that emphasis is put on the dialogue between the European Court of Human Rights and national authorities (including the highest domestic courts). In this respect, I remain convinced that fruitful interaction can be facilitated by States Parties signing and/or ratifying Protocol No. 16 to the Convention ([CETS No. 214](#)), as well as by ensuring the full and rapid implementation of the Court's judgments at the domestic level. Both of these aspects are highlighted in the draft resolution to my report.

10. With regard to the latter point, I cannot but echo what was stressed by Assembly President, Ms Anne Brasseur, in her [opening address](#) to the Conference, and what I have also underscored in my report as well as in the draft resolution: national parliaments can play a vital role in overseeing the execution of judgments of the European Court of Human Rights, and hold their respective governments to account in case of dilatory or inadequate execution. In light of this, I note with satisfaction that the [Brussels Declaration](#) “encourage[s] national parliaments to follow in a regular and efficient manner the execution of judgments”, while expressly acknowledging the Parliamentary Assembly's contribution to this end (paragraph C.3.f).

11. At the same time, the Declaration points to a number of challenges, most notably the need to prevent repetitive applications reaching the Court, which my report has identified as meriting (some) Contracting Parties' urgent attention. Against this background, it is fair to conclude that the [Brussels Declaration](#) largely corresponds to what I have highlighted in my report, and the recommendations made are adequately reflected in the draft resolution and draft recommendation.

3. Conclusions

12. Both of the developments outlined above – notwithstanding their divergent assessment from a human rights perspective – deserve to be brought (again) to the Assembly's attention. I do not consider, however, that they require any amendment to the draft resolution or the draft recommendation adopted by the Committee on Legal Affairs and Human Rights on 10 December 2014.

Appendix

A. Press release No. 180/14 concerning Opinion 2/13 of the Court of Justice of the European Union on the draft agreement on the accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms and the compatibility of the draft agreement with the EU and FEU Treaties²

[Text of the press release: <http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-12/cp140180en.pdf>]

B. Excerpts from **Resolution 2029 (2015)** on the implementation of the Memorandum of Understanding between the Council of Europe and the European Union, adopted by the Assembly on 27 January 2015

“6. The Assembly is convinced that only the accession of the European Union to the European Convention on Human Rights (ETS No. 5, “the Convention”) can ensure in-depth legal co-operation, enhance the coherence of legal standards and provide a unique framework for human rights, democracy and the rule of law in Europe. The Assembly welcomes the agreement reached at the negotiators’ level in April 2013 on the draft accession agreement and considers that the obstacles identified by the Court of Justice of the European Union in its Opinion 2/13 must be overcome as soon as possible, in line with political commitments undertaken by all sides, as reflected in the Lisbon Treaty. It therefore invites those member States of the Council of Europe which are also members of the European Union to exercise their influence in such a way as to resume, without delay, the negotiations on EU accession to the Convention and to give high political priority to this process.

7. The Assembly welcomes stronger European Union action in the fields of justice and home affairs and the rule of law, inasmuch as democracy, the rule of law and respect for human rights are thereby better upheld in the 28 member States of the European Union. With a view to pursuing further the building of a common space for human rights protection, ensuring complementarity and coherence of standards and the monitoring of their implementation, while avoiding duplication of work, the Assembly invites the European Union to:

7.1. resume, without delay, negotiations on the accession of the European Union to the Convention in light of Opinion 2/13 of the European Union Court of Justice and give high political priority to this issue;

...”

C. Excerpts from **Recommendation 2060 (2015)** on the implementation of the Memorandum of Understanding between the Council of Europe and the European Union, adopted by the Assembly on 27 January 2015

“4. With a view to ensuring in-depth legal co-operation, enhancing complementarity and coherence of legal standards and providing a unique framework for human rights, democracy and the rule of law in Europe, the Assembly asks the Committee of Ministers to:

4.1. resume, without delay, negotiations on the accession of the European Union to the European Convention on Human Rights (ETS No. 5) in the light of Opinion 2/13 of the European Union Court of Justice and give high political priority to this issue, in line with political commitments undertaken by all parties involved, as reflected in the Lisbon Treaty;

...”

D. Brussels Declaration on the “Implementation of the European Convention on Human Rights, our shared responsibility” (27 March 2015)

[Text of the declaration:

www.coe.int/t/dghl/monitoring/execution/Source/Documents/Declaration_Bruxelles_EN.pdf]

2. The full text of the Opinion:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=160882&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=40247>.