



Resolution 2601 (2025)¹
Provisional version

Legal aspects of the accession of the European Union to the European Convention on Human Rights

Parliamentary Assembly

1. The European Convention on Human Rights (ETS No. 5, “the Convention”), which is marking its 75th anniversary in 2025, can be considered as the most outstanding achievement of the Council of Europe and the cornerstone of all its activities. Although ratification of the Convention is a precondition for accession to the European Union and the fundamental rights guaranteed by the Convention are part of the Union’s general principles of law, the European Union is not yet a party to the Convention and its institutions are not directly bound by it. This means that the European Union member States – all member States of the Council of Europe and parties to the Convention – can be held responsible for breaches of Convention rights before the European Court of Human Rights (“the Court”) even when implementing or applying European Union law, while the actions of the European Union institutions themselves are not subject to the same external judicial review. This is problematic given the increasingly broad competences transferred to the European Union, which makes it more difficult to accept that the European Union institutions should be the only public authorities and “legal space” operating in Council of Europe member States that are not subject to external oversight by the Court. This imbalance may lead to confusion and to perceived or actual disparate legal protection, to the detriment of European Union citizens and human rights protection in Europe.

2. Referring to its previous resolutions and recommendations, which for more than forty years have called on the then European Communities and later the European Union to accede to the Convention, most recently its [Resolution 2430 \(2022\)](#) “Beyond the Lisbon Treaty: strengthening the strategic partnership between the Council of Europe and the European Union” and its [Recommendation 2245 \(2023\)](#) “The Reykjavik Summit of the Council of Europe – United around values in the face of extraordinary challenges”, the Parliamentary Assembly considers that European Union’s accession to the Convention will:

2.1. strengthen the protection of human rights in Europe by giving European Union citizens and persons within the jurisdiction of the European Union the right to lodge an application with the Court when they consider that their fundamental rights have been violated by an European Union institution. They will therefore enjoy the same protection vis-à-vis acts of the Union as they presently enjoy vis-à-vis all European Union member States;

2.2. be the best way to ensure the harmonious development of the case law of the European Court of Human Rights and the Court of Justice of the European Union in human rights matters, thereby securing a coherent system of human rights protection across Europe, based on common minimum standards, for the benefit of public authorities, in particular courts, in all member States;

2.3. confirm the essence of the European Union as a Union based on the rule of law, and strengthen the principle of legal certainty, given that the European Union institutions will be subject to the same external judicial review on human rights matters as the member States;

1. *Assembly debate* on 10 April 2025 (16th sitting) (see [Doc. 16126](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Titus Corlăţean). *Text adopted by the Assembly* on 10 April 2025 (16th sitting).



2.4. resolve the problems resulting from the fact that currently the European Union cannot be party to proceedings before the Court, in cases where the implementation or application of European Union law by member States is at stake, and facilitate the execution of the Court's judgments requiring amendments to European Union law;

2.5. convey a strong political message of clear commitment to the protection of human rights and international law not only within the European Union boundaries but also Europe-wide and worldwide, at a time when war has returned to Europe and the common values shared by the Council of Europe and the European Union are under threat. The accession will therefore enhance the credibility of the European Union, its neighbourhood policies and external relations;

2.6. reinforce synergy, complementarity and co-operation between the Council of Europe and the European Union, which is the main institutional partner of the Council of Europe, in line with the Reykjavik Declaration.

3. The Assembly recalls that the Treaty of Lisbon, which entered into force on 1 December 2009, created a legal obligation for the European Union to accede to the European Convention on Human Rights. On the Council of Europe side, Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention (CETS No. 194), which entered into force in 2010, amended Article 59 of the Convention in order for the European Union to be able to accede. Consequently, negotiations for accession opened in 2010, and a draft Accession Agreement was agreed in April 2013. However, in December 2014, the Court of Justice of the European Union concluded in its Opinion 2/13 that the draft Accession Agreement was incompatible with the EU treaties, triggering disappointment and some criticism. It was not until 2020 that negotiations on the accession resumed, with the aim of overcoming the objections identified by the Court of Justice of the European Union in its opinion and revising the draft accession instruments to the extent necessary.

4. The Assembly warmly welcomes the fact that the *ad hoc* negotiation group "46 + 1" established under the Council of Europe Steering Committee for Human Rights (CDDH) reached a unanimous provisional agreement on revised draft accession instruments in March 2023. This is a collective achievement which shows a considerable sense of compromise by all parties involved, including non-European Union member States, to overcome the numerous legal obstacles found by the Court of Justice of the European Union. The Assembly considers that the provisional agreement reached on most issues (co-respondent mechanism, prior involvement procedure, inter-party applications, principle of mutual trust, advisory opinions under Protocol No. 16 to the Convention on the Protection of Human Rights and Fundamental Freedoms (CETS No. 214) accommodates the position of the Court of Justice of the European Union on the specificities and autonomy of European Union law, while preserving the integrity and effectiveness of the Convention system, the role of the Court as the ultimate master of its proceedings and the position of individual applicants before the Court. Furthermore, the new rule on majority requirements in the Committee of Ministers of the Council of Europe when supervising the execution of judgments in cases against the European Union duly protects the interests of non-EU member States.

5. With regard to the revised provision on the election of judges to the Court (new Article 7 of the draft Accession Agreement), the Assembly notes that the amendments to the 2013 version of the draft agreement do not alter the substance and purpose of the original provision, which was to provide a basis for the participation of the European Parliament in the sittings of the Assembly and the meetings of its relevant bodies when the latter exercise their functions under Article 22 of the Convention. However, the agreement on the modalities of this participation reached in June 2011 between representatives of the Assembly and of the European Parliament within a Joint Informal Body will need to be updated in view of the developments since then, in particular the fact that the then Sub-Committee on the Election of Judges to the European Court of Human Rights (of the Committee on Legal Affairs and Human Rights) is now an Assembly committee in its own right. The updated agreement will then have to be approved by the Assembly and the European Parliament in due course, in accordance with their own internal procedures. The Assembly also understands that the Guidelines of the Committee of Ministers on the selection of candidates for the post of judge at the European Court of Human Rights and its own resolutions and practice on the election of judges will apply to the European Union internal procedure for the selection of the candidates to be submitted in respect of the European Union. In this regard, it also expects that the European Union will duly consult the Advisory Panel of Experts before submitting its list of candidates to the Assembly, as all Parties to the Convention do.

6. The Assembly notes with satisfaction that, with respect to the "Basket 4" issue (Common Foreign and Security Policy-related acts), the Court of Justice of the European Union, in a judgment delivered on 10 September 2024, has clarified the scope of its jurisdiction in relation to these acts. The Court of Justice found that the limitation of its jurisdiction in this area can be reconciled both with Article 47 of the Charter of

Fundamental Rights of the European Union (right to an effective remedy and to a fair trial) and with Articles 6 and 13 of the Convention. This judgment has generally been perceived as a positive step that could potentially solve the problem of the limited scope of jurisdiction of the Court of Justice of the European Union in this area and help overcome what appears to be the last remaining obstacle to accession. The CDDH welcomed the judgment “as a promising avenue to be explored for resolving the outstanding issue” and encouraged the European Union to take the necessary decisions at the earliest opportunity. In fact, the only way to be sure that this judgment fully resolves the issue would be to ask the Court of Justice of the European Union for an opinion on the new draft Accession Agreement.

7. In view of these considerations and in order to maintain the current momentum after the provisional agreement on revised draft accession instruments, the 2024 judgment of the Court of Justice of the European Union, and the entry into office of the new European Commission, the Assembly:

7.1. invites the European Union institutions, in particular the European Commission and the Council of the European Union, to take the necessary decisions aimed at facilitating the European Union accession process to continue advancing, including by submitting a request for an opinion on the compatibility of the revised draft accession instruments with the European Union Treaties to the Court of Justice of the European Union without delay and, if the opinion is positive, to proceed with the conclusion of the agreement as soon as possible in accordance with their internal procedures;

7.2. invites the European Parliament to support the draft Accession Agreement and start the consultations with the Assembly with a view to updating the 2011 agreement on arrangements related to the participation of the European Parliament representatives in the sittings of the Assembly and the meetings of its relevant bodies when the Assembly exercises its functions concerning the election of judges to the Court;

7.3. calls on the member States of the Council of Europe that are also members of the European Union to exercise their influence within the European Union institutions to enable the rapid conclusion of the accession agreement, as well as its entry into force, including by submitting observations in support of the current draft Accession Agreement before the Court of Justice of the European Union in the context of any opinion sought;

7.4. urges the parliaments and governments of member States of the Council of Europe to take all measures within their areas of competence to facilitate the conclusion of the accession agreement and its entry into force, in particular by signing and ratifying it in accordance with their national procedures in a timely manner;

7.5. calls on parliaments and governments of member States of the Council of Europe, in particular those that are also members of the European Union, as well as all European Union institutions, to raise awareness among citizens about the strengthened protection of their fundamental rights that would result from European Union’s accession to the Convention;

7.6. in the meantime, invites the Court and the Court of Justice of the European Union to maintain and further develop their well-established judicial dialogue in order to avoid any inconsistencies in the interpretation of the Convention that would undermine the protection of fundamental rights, by showing mutual respect, cross-referencing each other and harmonising their positions to the extent possible.