



Council of the  
European Union

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**NOTE**

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From:	Presidency
To:	Delegations
Subject:	EU accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms

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Delegations will find in the Annex a note of the Presidency prepared for the meeting of FREMP on 9 April 2015.



## **EU accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms**

### **I. INTRODUCTION**

1. With a view to proceed forward in the process of the *EU accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms*, the Presidency intends to hold the first exchange of views among the delegations on 9 April 2015, at the FREMP Working party.
2. During the first informal discussion at COREPER on 28 January 2015, an agreement was reached on the following modalities of the further technical discussion. Firstly, the delegations agreed that it is necessary to identify those amendments to the text of the Draft Accession Agreement which would be necessary to address the concerns raised in the CJEU opinion. Secondly, it was agreed that it is necessary to identify, whether and which concerns raised in the CJEU opinion may be addressed without amending the text of the Accession Agreement. Thirdly, the delegations noted that the CFSP and issues related to the principle of mutual trust as raised by the CJEU were among the most difficult ones.

3. On 25 March, at COREPER, the Presidency informed the delegations about the procedural outline of further discussions, bringing to the delegations' attention the proposed structure of the forthcoming technical meetings. Notably, FREMP should start its discussions/work by identifying options to address the following issues raised in the CJEU opinion:
- *co-respondent mechanism*: review of plausibility, Member States having a reservation to the ECHR/ joint responsibility, apportionment decision by the European Court of Human Rights, and
  - *prior involvement*: full and systematic information of the EU of any case pending before the European Court of Human Rights, scope of the prior involvement;
  - *specific characteristics and autonomy of EU law*:
    - i. coordination between Article 53 of the ECHR and Article 53 of the Charter as interpreted by the CJEU;
    - ii. relationship between the mechanism established by Protocol No 16 to the ECHR and the preliminary ruling procedure provided for in Article 267 TFEU;
  - *Article 344 TFEU*: a dispute concerning the interpretation or application of the Treaties.

## II. ISSUES FOR DISCUSSIONS

4. Following the COREPER discussions and in line with its guidance, the Presidency invites delegations to exchange views on the following points with respect to each of the issues raised by the CJEU as outlined above:
- In order to ensure uniform understanding of the CJEU's objections under each particular point, the delegations are invited to share their evaluation/interpretation of the CJEU's conclusions.
  - Against that background, the delegations are invited to share their first reactions on the possible way to accommodate the CJEU concerns (e.g., explanatory report, internal rules, unilateral declaration, etc.).

### **III. CONCLUSIONS**

5. The delegations are invited to discuss these points at the FREMP meeting on 9 April 2015. The Presidency intends to provide a summary of the discussions when preparing information for COREPER and the Council.
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