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**OUTCOME OF PROCEEDINGS**

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of : Working Party on Fundamental Rights, Citizens Rights and Free Movement of Persons

on : 27 September 2010

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Subject : Accession Agreement of the European Union to the European Convention for the protection of Human Rights and Fundamental Freedoms (ECHR)  
- Negotiating process

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The Working Party on Fundamental Rights, Citizens Rights and Free Movement of Persons (FREMP) met on 27 September 2010 in the afternoon, to discuss issues pertaining to the negotiations process concerning the Accession of the European Union to the European Convention for the protection of Human Rights and Fundamental Freedoms (ECHR).

The Commission reported on the negotiating round which has taken place in the informal Working Group CDDH-UE on 20-22 September 2010. A meeting report by the Council of Europe Secretariat had been previously circulated to delegations (CDDH-UE(2010)10). The negotiations have covered all of the "General Issues" (points under letter A), as well as a first part of the questions on "Technical adaptations to provisions of the ECHR and other instruments with respect to the EU as a contracting party" (points under letter B) of the Draft list of issues to be discussed as agreed at the first meeting in Strasbourg on 6-7 July 2010 (CDDH-UE(2010)6). The resulting "Draft elements for an accession agreement" are laid out in doc. CDDH-UE(2010)11, which has been examined in detail in the course of the meeting.

On point A.1 (Operative article providing for accession of the EU to the Convention) no observations were made.

On point A.2 (Scope of the accession), COM illustrated the content of the proposed amendment to Article 59 (2) ECHR. One delegation requested further clarification of the rules on the distribution of competences among the EU and its Member States; COM replied suggesting to include any such explanation in a future explanatory memorandum which would accompany the accession agreement.

On point A.3 (Accession to additional Protocols), COM informed the Working Party that the content of Negotiating Directive no. 5 had been communicated to the negotiating partners; the list of technical amendments to Protocols other than those to which the EU will accede at a first stage thus has only the reason to allow for potential future accession. One delegation pointed out that the scope of the accession with respect to the Protocols, if made part of a provision of the accession agreement, would have to be subject to negotiations with the High Contracting Parties. COM replied that this matter is not subject to any negotiation with the EU's counterparts.

On point A.4 (Reservations, declarations and derogations) COM explained the possible solution to the question of the relationship between the entry into force of the accession agreement and the attribution to the EU of the right to enter reservations. It also informed delegations of the concerns that had been voiced in the CDDH-UE about the issue of EU reservations to the accession.

On point A.5 (Accession to other instruments, e.g. European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights), COM explained the proposed solution to foresee an obligation of the EU to respect these other instruments without acceding to them, given the lack of a mandate in this sense, with an obligation on the part of the EU's counterparts not to amend these instruments without prior consultation of the EU.

Further explanations were given by COM on the issues under points B.1 (Amendments to substantive provisions of the ECHR), B.2 (Amendments to other instruments), and B.3 (General interpretation clauses).

COM proceeded to illustrate the next steps in the negotiations, with a new round scheduled for 19-22 October 2010 which will focus on the questions regarding "Procedure before the European Court of Human Rights" (points under letter C. in CDDH-UE(2010)6).

Several delegations asked for clarification as to the drafting of the options which will be included in the next CDDH document which will serve as basis for discussion during the next round of negotiations and enquired as to the possibility of discussing this document at a future meeting of FREMP taking place before the next negotiating round. The Presidency replied that there would not be sufficient time to schedule such a meeting between the date foreseen for the issuing of the new discussion document and the dates of the negotiations. However, the Presidency proposed to distribute the next CDDH document to the delegations who are subsequently invited to provide commentaries in writing if they wish to do so. The contributions received by the Council Secretariat will be circulated amongst delegations and the Commission.

The Presidency concluded by inviting COM to report on the outcome of the next round of negotiations at the meeting of FREMP on 26 October 2010.