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COMMISSION
DES
AFFAIRES EUROPÉENNES

EUROPEAN RESOLUTION

ON THE COMMON FOREIGN AND SECURITY POLICY ASPECTS OF THE NEGOTIATIONS ON THE ACCESSION OF THE EUROPEAN UNION TO THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

- ① The Senate,
- ② Having regard to Articles 53 and 88-4 of the French Constitution,
- ③ Having regard to Articles 2, 3, 6, 19, 24 and 48 of the Treaty on European Union (TEU),
- ④ Having regard to Article 275 of the Treaty on the Functioning of the European Union (TFEU),
- ⑤ Having regard to Protocol (No. 8) relating to Article 6(2) of the Treaty on European Union on the accession of the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms, annexed to the Treaties on European Union and on the Functioning of the European Union,
- ⑥ Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms,
- ⑦ Having regard to Opinion 2/13 of the Court of Justice of the European Union of 18 December 2014,

- ⑧ Having regard to the judgment of the Court of Justice of the European Union (Fifth Chamber) of 12 November 2015, *Elitaliana SpA v EULEX Kosovo*,
- ⑨ Having regard to Senate Report No. 562 (2019-2020) of 25 June 2020 by Mr Philippe Bonnecarrère and Mr Jean-Yves Leconte on behalf of the European Affairs Committee, on the accession of the European Union to the European Convention on Human Rights,
- ⑩ Having regard to the ongoing negotiations in the Council of the European Union and within the ad hoc negotiating group of the Council of Europe’s Steering Committee for Human Rights (46+1) on the accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms,
- ⑪ Having regard to Recommendation 2226 and Resolution 2430, entitled “Beyond the Lisbon Treaty: strengthening the strategic partnership between the Council of Europe and the European Union”, adopted by the Parliamentary Assembly of the Council of Europe (PACE) on 26 April 2022,
- ⑫ Having regard to the communication from Ms Gisèle Jourda and Mr Dominique de Legge to the Senate European Affairs Committee on 20 October 2022,
- ⑬ Having regard to the decision of the Committee of Ministers of the Council of Europe, adopted on 7 November 2022, to convene a Fourth Summit of Heads of State and Government of the Council of Europe on 16 and 17 May 2023,
- ⑭ Having regard to the reply to the above-mentioned PACE Recommendation 2226, adopted by the Committee of Ministers of the Council of Europe at the 1,452nd meeting of the Ministers’ Deputies on 14 December 2022,
- ⑮ Whereas compliance with the Treaties is an essential element of the rule of law, which is one of the European Union’s fundamental values under Article 2 of the Treaty on European Union;
- ⑯ Whereas Article 6(2) of the Treaty on European Union stipulates, since the Treaty of Lisbon, that “the Union shall accede to the European Convention for the Protection of Human Rights

and Fundamental Freedoms” and that “such accession shall not affect the Union’s competences as defined in the Treaties”;

⑰ Whereas Article 6(3) of the Treaty on European Union stipulates that “fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union’s law”;

⑱ Whereas Article 1 of Protocol No. 8 annexed to the Treaties states that “the agreement relating to the accession [...] shall make provision for preserving the specific characteristics of the Union and Union law, in particular with regard to: (a) the specific arrangements for the Union’s possible participation in the control bodies of the European Convention; (b) the mechanisms necessary to ensure that proceedings by non-Member States and individual applications are correctly addressed to Member States and/or the Union as appropriate”;

⑲ Whereas Article 2 of Protocol No. 8 annexed to the Treaties states that the agreement relating to the accession “shall ensure that accession of the Union shall not affect the competences of the Union or the powers of its institutions”;

⑳ Whereas, in accordance with Article 24 of the Treaty on European Union and Article 275 of the Treaty on the Functioning of the European Union, the Court of Justice of the European Union has no jurisdiction with respect to provisions relating to the common foreign and security policy or with respect to acts adopted on the basis of those provisions, with the exception of its jurisdiction to monitor compliance with Article 40 of the Treaty on European Union and to rule on proceedings reviewing the legality of decisions providing for restrictive measures against natural or legal persons adopted by the Council on the basis of Chapter 2 of Title V of the Treaty on European Union;

㉑ Whereas the case-law of the Court of Justice of the European Union, and in particular the EULEX Kosovo ruling of 12 November 2015, in which the Court held that paragraph 2 of Article 24(1) of the Treaty on European Union and Article 275 of the Treaty on the Functioning of the European Union, which remove the area of the common foreign and security policy from its

jurisdiction, must be interpreted restrictively insofar as they constitute an exception to its general jurisdiction provided for in Article 19 of the Treaty on European Union;

②② Whereas, firstly, all acts of the Contracting Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms must be capable of being effectively challenged before domestic bodies and, secondly, the unsuccessful exhaustion of such a remedy is a condition for the admissibility of an individual application before the European Court of Human Rights;

②③ Whereas Opinion 2/13 of 18 December 2014 of the Court of Justice of the European Union, according to which jurisdiction to carry out a judicial review of acts, actions or omissions of the Union, including with regard to fundamental rights, cannot be conferred exclusively on an international court which is outside the institutional and judicial framework of the Union, makes it necessary to agree on an appropriate domestic remedy;

②④ Remains committed to the objective of the accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms, as enshrined in Article 6 of the Treaty on European Union;

②⑤ Stresses that, in accordance with the Treaties and Protocol No. 8 annexed thereto, the accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms must not affect either the jurisdiction of the Union or the powers of its institutions;

②⑥ Points out that the powers of the institutions would be affected by an intergovernmental interpretive declaration aimed at conferring jurisdiction on the Court of Justice of the European Union in matters relating to the common foreign and security policy in cases of actions brought by applicants entitled to bring proceedings before the European Court of Human Rights for violations of fundamental rights by the European Union, in the interests of the useful effect of all the stipulations of the Treaties and to reconcile contradictory stipulations;

②⑦ Notes that such a declaration would be contrary to the Treaties which have been ratified by the Member States in accordance with their respective constitutional rules and that it would in fact amount to a revision of the Treaties, removed from the scrutiny of the

national parliaments, in a manner which is not provided for by Article 48 of the Treaty on European Union, which would constitute a breach of the rules of the rule of law;

- ②⑧ Calls therefore solemnly on Member States to firmly reject such an interpretative declaration and to continue negotiations with a view to finding an appropriate legal solution;
- ②⑨ Asserts that the holding of a Fourth Summit of Heads of State and Government of the Council of Europe in May 2023 cannot constitute a factor leading to the calling into question of the framework set by the Treaties and Protocol No. 8 annexed thereto;
- ③⑩ Emphasises that other issues remain open in the negotiations on the European Union's accession to the Convention for the Protection of Human Rights and Fundamental Freedoms, including the voting arrangements in the Committee of Ministers of the Council of Europe;
- ③① Calls on the Government to put forward this position during negotiations in the Council.