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Europaudvalget
(Alm. del - bilag 1561)
traktatændringer
(Offentligt)

Medlemmerne af Folketingets Europaudvalg og deres
stedfortrædere

BilagJournalnummer

Kontor

1 400.C.2-0

EU-sekr.

28. september 2000

Til underretning for Folketingets Europaudvalg vedlægges i forbindelse med regeringskonferencen en note fra den finske delegation om Fællesskabets tiltrædelse af Den Europæiske Menneskerettighedskonvention, CONFER 4775/00.

**CONFERENCE OF THE
REPRESENTATIVES OF
THE GOVERNMENTS OF THE
MEMBER STATES**

Brussels, 22 September, 2000

CONFER 4775/00 LIMITE

TRANSMISSION NOTE

From: The Delegation of Finland
To: The Representatives of the Member States at the Intergovernmental Conference
Subject: **IGC 2000:** The competence to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950

Delegations will find attached hereto a draft proposal from Finland concerning the competence of the European Community to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms in view of the Representatives' meeting on 25 September 2000.

ANNEX

DRAFT PROPOSAL FROM FINLAND CONCERNING THE ACCESSION OF THE EUROPEAN COMMUNITY TO THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, SIGNED IN ROME ON 4 NOVEMBER 1950

Along with the preparations of the Charter of Fundamental Rights of the European Union, the question of accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) has become more and more

pertinent. The Charter and the accession do not exclude but rather complement one another. Even if national constitutions list fundamental rights their existence have not made it meaningless for the Member States to become parties to the ECHR.

Although all the Member States are bound by the ECHR and have subjected themselves to the control of the European Court of Human Rights, the present situation is not satisfactory. The transfer of competencies by the Member States to the Community means that the decision-making authority in the matters falling within that competence is vested in the Community, whereas the responsibility of the Member States for securing the rights protected by the ECHR has still not been settled in this respect. Recently the European Court of Human Rights has received applications made by individuals against all the 15 Member States of the Union, relating to matters falling within the competence of the Union itself. The Court of Human Rights has requested the Member States to provide their observations as to the admissibility and merits of the case concerning a German company DSR-Senator GmbH (application no. 56672/00).

The accession of the Community to the ECHR would also help to alleviate the fears that the adoption of the Charter of Fundamental Rights would create a new borderline inside Europe, this time in the field of human rights.

In order to make it possible to start negotiations concerning an accession of the Community to the ECHR an amendment should be made to the Treaty establishing the European Community. This provision would have no effect on the respective competencies of the Community and its Member States.

It should also be remembered that, before the Community may accede to the ECHR, it is also necessary to amend the ECHR itself, as under the existing provisions of the Convention only a member State of the Council of Europe may become a party to it. Already the entry into force of the last-mentioned amendment would take years because the amendment would have to be ratified by all the member States of the Council of Europe. Although it is unlikely that the negotiations between the Community and the Council of Europe would be too difficult, a reasonable period of time should be reserved for those negotiations. In that connection the question of the relationship between the European Court of Human Rights and the European Court of Justice should, *inter alia*, be addressed.

In the event that the Commission would succeed in negotiating a draft treaty on the accession of the Community to the ECHR, the adoption of the treaty of accession would naturally be subject to the normal procedures under Article 300 TEU.

EC Treaty, Article 303

The Community shall establish all appropriate forms of cooperation with the Council of Europe. **The Community shall have the competence to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950.**
