EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

**Seminar**

# "The articulation between the European Convention of Human Rights and the European Law: past, present and future"

# Perspectives on the accession of the European Union to the European Convention on Human Rights

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## 1. Introduction

The accession of the European Union to the European Convention on Human Rights is one of the major unresolved issues stemming from the entry into force of the Lisbon Treaty in 2009. When the Member States, sitting as the Union's *pouvoir constituant*, enacted the Lisbon Treaty following a traumatic failure of the Constitutional Treaty and decided to introduce Article 6(2) TEU, the mandate to accede to the Convention was settled as a point of Union primary law. It is now unquestionable that the Union *can* and *must* accede; the doubt relates as to the *how*.

Since the entry into force of the Lisbon Treaty, the willingness of the Union to accede to the Convention has not been questioned, but the process has certainly not been an easy one. Following a blunt and unexpected Opinion of the Court of Justice posing objections to the draft accession treaty negotiated immediately after the entry into force of the Lisbon Treaty, the negotiations between both organisations continued and have come to fruition in 2023. But challenges remain, as well as issues that still lack a conclusive answer, thus keeping the process of accession retained and subject to still more reflection, mostly on part of the Union.

In this contribution, I will focus not so much on the details of the state of the negotiations, but on the ongoing nature of the process. The state of the Union's evolution is a matter that is generally sidelined when discussing accession. Unlike the Convention system, which has remained admirably consistent and coherent with its own identity, the Union is a project of political integration that has evolved, mutated and changed its face continuously, as the requirements of integration demanded from time to time. This evolutionary nature of the Union is essential to understanding its position *vis-à-vis* accession and the Convention system. The European Community that struggled with its competence to accede to the Convention in the early nineties of the 20th century, is a very different organisation from the one that attempted accession in 2013T. The Union of today, as this contribution will explain, is hardly a reflection of its 2013 self. As the Union evolves, so do the challenges attached to its accession to the Convention. The current state of that evolution is the subject of this contribution.

## 2. Two charters, two courts, two different endeavours

It is unnecessary to insist on the differences between the Union and the Council of Europe; despite their common roots and their links to the efforts in preserving peace in Europe, as a result of the catastrophe ensued by two world wars in the first half of the 20th century. Whilst the Union pursues the objective of peace through political and economic integration, the Council of Europe attains equivalent goals through cooperation among States. When focusing on the specific tools of human rights protection, differences still remain. The role of fundamental rights in the Union is still very much attached to the aims of integration and construction of an internal market, whilst the Convention system provides a safety net to its members through external judicial review of State action.

In the words of Felix Ronkes Agerbeek,

*"Fundamentally, the EU and the Convention are two systems stemming from a shared moral and political endeavour, each approaching that endeavour from its own perspective. The EU legal system integrates political communities; the Convention system over-sees political communities."*[1]

The differences between the dynamics of integration and those of oversight should not be understated. They reflect not only the very core of the autonomous identity of each legal order, but also the limits that are set upon them. The Union protects fundamental rights through national courts armed with the powerful weapons of primacy and direct effect, as well as a privileged channel of communication with the Court of Justice in the shape of the preliminary reference procedure. Contrastingly, the Convention system performs its endeavours through a repository of *auctoritas*, which its unique, and almost centennial specialisation on human rights, has granted it. While the Union operates through the powers and robust enforcement tools at its disposal, the Convention works its way through the very authority of its long-standing reputation as an overseer of State action. This sharp contrast inevitably has an impact in the way in which the accession of the Union to the Convention must be articulated.

The 2013 draft accession agreement undertook a holistic view of the diversity of goals and endeavours of both systems. It provided an astute response to the challenges that underly accession. It should also be highlighted that the draft evidenced the extraordinary willingness to cooperate of the Convention States who are not part of the Union, accepting to introduce within the system an international organization to which many of their co-signatories are a part of. The fact the Union's Member States would assume dual participation within the Convention system, in contrast with the non-Union Member States, and acceptance of this new reality by the latter merits recognition.

Among the main features of the 2013 draft accession agreement, two mechanisms stood out: the co-respondent mechanism, and the prior involvement procedure. The first was intended to guarantee Union participation in cases before the European Court of Human Rights that involved points of Union law. The second was a course of action that enabled the European Court of Human Rights to refer maters of validity of Union law to the Court of Justice. Other important developments were taking place in parallel, but outside the remit of the draft accession agreement. In 2013, the signatory States of the Convention signed Protocol 16, through which a new procedural tool for the referral of questions on points of Convention law was enacted and put in the hands of the national courts of last instance. The parallelisms between the advisory opinion procedure and the preliminary reference procedure are obvious in themselves.

As is well known, the Court of Justice delivered Opinion 2/13[2] on the compatibility of the draft accession agreement with the Treaties, ruling that the text suffered from several inconsistencies with

[1] Ronkes Agerbeek, F., "EU Accession to the European Convention on Human Rights: An EU Negotiator's Perspective", *EU Law Live Weekend Edition*, nº 192, 2024, pg. 8.

[2] Opinion 2/13 of the Court, EU:C:2014:2454.

Union law. The flaws spotted by the Court of Justice were so numerous and principled, that the reaction was of both perplexity and frustration at the prospects of accession. The perplexity was partly due to the fact that some of the points to which the Court raised objections had been proposed by the Court itself.[3] The frustrations that emerged portrayed a generalised feeling of scepticism with the future of any chance of fulfilling the mandate in Article 6(2) TEU. The details of the Court's objections, and the criticisms made thereto, have been analysed and commented in detail in multiple academic writings, to which I refer at this point.[4]

On March of 2023, a new consensus on a revised version of the accession treaty emerged, resulting from the negotiations between the Union and the Council initiated in 2020. The negotiations resulted in multiple corrections to the original design of the 2013 draft agreement, addressing all but one of the objections raised by the Court of Justice in Opinion 2/13. The co-respondent mechanism and the prior involvement procedure have been adjusted to respond to the Court of Justice's objections from being affected by the dynamics of the Convention system. Multiple provisos have been introduced to avoid situations that may be problematic from the Union's standpoint, such as a prohibition of inter-State claims among the Union's Member States or precautionary mandates to avoid principles of Union law, such as mutual recognition.. However, the one point that remains unresolved has been referred to the Union, inasmuch it concerns a matter that only the Union can resolve, the limited jurisdiction of the Court of Justice in matters that pertain to the Common Foreign and Security Policy.[5]

As it can be seen, the project of accession is an ongoing reality and the prospects of a future consolidation of the project are not entirely imaginary. However, the process takes time and the date in which the accession will come to fruition is uncertain. This uncertainty is reinforced further by the fact that the Union continues its process of mutation and adaptation to the current realities and changing environment. The immediate past and the immediate future have been rich in existential challenges for European society, as well as for the Union. This environment of high-stakes endeavours in a successive chain of events, from facing a global pandemic, an economic downturn unprecedent since World War II, and a war in the continent to the backsliding of liberal values, have forced the Union to adapt mutate once again. The face of the Union that will emerge from the latest round of mutations remains unclear. But one thing is certain, the Union that is now being fleshed out will condition the terms in which the accession will take place.

A brief outlook of these mutations will be explored and developed in the following section.

## 3. A changing Union in a changing environment

The financial and economic crisis of 2008, triggered a process of social, economic, and political development that still resonates in European society. What began as a financial downturn located in the US market of securitised mortgages in the real estate sector, soon became a full-blown economic crisis in several Union Member States and other countries, which were left questioning their fiscal sustainability and currencies to the point of sovereign default. The result of this chain of events is well known, social contestation, the emergence of populist parties, sentiments of frustration towards traditional political parties, and a generalised sentiment of failure and mistrust towards State

[3] See the Discussion document of the Court of Justice of the European Union on certain aspects of the accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms, available at https://curia.europa.eu/jcms/upload/docs/application/pdf/2010-05/convention_en_2010-05-21_12-10-16_272.pdf

[4] A representative example of the views from scholarly quarters on Opinion 2/13 is the one of De Witte, B. and Imamovic, S., "Opinion 2/13 on Accession to the ECHR: defending the EU Legal Order against a Foreign Human Rights Court", *European Law Review*, nº 5, 2015.

[5] For a broad overview of the current situation of the negotiations, see Ronkes Agerbeek, F., "EU Accession to the European Convention on Human Rights: An EU Negotiator's Perspective", cited above.

institutions. These events were followed by a global pandemic that drove the Union's Member States into the worst economic recession in decades, triggering the enactment of unprecedent measures of economic recovery led by the Union itself. The return of war in the continent forced the Union's Member States to take steps into developing an ever-stagnate defence Union. The geopolitical implications of war in Ukraine revolutionised the Union's foreign policy, turning it into one of its priorities. All these developments took place in the backdrop of an emerging climate crisis, which posed an existential challenge to humanity itself. A risk that materialised in the enactment of the Union's Green New Deal, the most ambitious environmental policy programme ever put into place by the Union and its Member States.

The succession of existential challenges has proven to be fertile ground for development of significant change in the Union and its basic features. Five basic changes will be mentioned, all of which have a direct impact in the relations between the Union and the Convention in case of accession.

### a. The Union's constitutional identity

The tense relations between the Court of Justice and several Member State constitutional courts are well known. Such tensions are rooted in the claim of sovereign prerogative, which constitutional courts still defend with the aim of preserving jurisdiction to rule on a select, but relevant, number of constitutional red lines. To date, this tension has been handled pragmatically, through cooperation and dialogue. However, no formal channel exists to resolve situations of conflict between Union law and national constitutional law. The claims of the constitutional courts are based on the existence of a "constitutional core" or "identity" at the very heart of the national legal order. This core acts as a barrier for both international and Union law intrusion in fields of constitutional principle or relevance for the State.

Whether the Union has a "constitutional core" or "identity" has been a subject of debate for decades. Some signs of emergence of such a core appeared in the judgments of the Court of Justice in *Kadi*[6] and *Ruiz Zambrano*,[7] as well as in *Pringle*.[8] But the formal recognition of such a core did not make an official appearance until 2022, in the judgments delivered in Poland and Hungary/Parliament and Council. In which, the Court of Justice ruled on the validity of the financial conditionality Regulation, a tool to ensure rule of law compliance when the Member State implement Union funds. The Court of Justice referred to the values of Article 2 TEU, which include the rule of law, and categorised them as follows:

*"The values contained in Article 2 TEU have been identified and are shared by the Member States. They define the very identity of the European Union as a common legal order. Thus, the European Union must be able to defend those values, within the limits of its powers as laid down by the Treaties."*[9]

This passage's importance is two-fold. First, it formally recognises the role of the values in Article 2 TEU as the "very identity" of the Union, an expression that is now expanding in the case law and can be found in other decisions and Opinions of the Court.[10] Second, that this identity is not only a passive limit, a constraint for external intrusion into the Union legal order, but also an active tool that requires the Union to step into action and defend the said values. As the Court of Justice clearly

[6] Kadi and Al Barakaat International Foundation v. Council & Commission (C-402/05 P, EU:C:2008:11).
[7] Ruiz Zambrano (C-34/09, EU:C:2010:560).
[8] Pringle (C-370/12, EU:C:2012:675).
[9] Hungary v. Parliament & Council (C-156/21, EU:C:2022:97), paragraph 127 and Poland v. Parliament & Council (C-157/21, EU:C:2022:98), paragraph 145.
[10] See Commission/Poland (C-204/21, EU:C:2023:443), paragraph 67; Opinion of AG Çapeta in case TP (C-356/21, EU:C:2022:653), point 109, and Opinion of AG Szpunar in case Real Madrid Club de Fútbol (C-633/22, EU:C:2024:127, at point 101.

states, the Union "must be able to defend those values" and, therefore, it is entitled to take measures to that end.

The development of a "constitutional core" or "identity" of the Union is an important step in the development of the Union's constitutional framework. It sets limits to external control, a point that becomes particularly poignant when turning to the accession. The accession's primary and immediate objective is to provide the Union with a robust mechanism of external control, mostly in the hands of the European Convention of Human Rights. It is true that the target of a "constitutional core" is not an external system that guarantees the protection of human rights, but it is nevertheless a development that was absent in 2013 and now has stepped into the Union's toolkit with force.

### b. Dealing with existential challenges

The emergence of existential challenges has become a standard feature of our times. Such challenges, by nature, are horizontal and impact a broad number of policy areas. The strict separation of tasks between the Union and its Member States, sits uncomfortably with the broad impact existential challenges entail, as it can be seen from the emergence of climate change as a multi-sectoral area that impacts environmental policy, industrial policy, internal markets, fiscal policy, transport, agriculture, health and food, among other policy areas.

The Union has so far reacted to the two existential challenges of our times, climate change, and the retreat from liberal-democratic values. The first challenge has been addressed through an ambitious legislative programme, under the title of *The Green New Deal*, mostly passed during the 2019-2024 legislature. It is an unprecedented legislative initiative covering multiple Union policy areas, which transforms several productive sectors and has major impact on the way citizens, companies and governments relate to threatening climatic transformations that. The initiative has not been without criticism, particularly from sectors most directly affected by the measures. However, popular support for the Union's green agenda is robust and citizens have accepted that confronting climate change will not be a painless process.

The second existential challenge is found in the diverse policy tools developed to combat backsliding from well-established liberal-democratic values in some Member States. The most dramatic example is the Polish government's attempt to introduce a radical judiciary reform that purged judges and altered the balance of power that preserved the judiciary from external control or instructions. The result was an unprecedented case law from the Court of Justice, construing a new interpretation of Article 19 TEU, in conjunction with Article 47 of the Charter of Fundamental Rights. The judgment empowered the Union to undertake a judicial review of systemic national measures having a generalised impact on the independence of national courts.[11] This case law is now complemented by other tools in what has been frequently called the "rule-of-law toolbox". In which the European Commission undertakes annual surveys of the rule-of-law in the Member States, in close connection with the instruments made available to the European Commission and the Council in the financial conditionality Regulation. Which are currently being applied for the first time in proceedings against Hungary.

The European Court of Human Rights has also decided to address the same existential challenges. Its case law on the rule-of-law and judicial independence has quickly surpassed the standards of review of the Court of Justice in intensity. It set a reference that will eventually condition the approach of the Union towards judicial independence. The same applies to climate change, an area in which the first contributions of the European Court of Human Rights appear to question the ambitions of the Union, both at the procedural and substantive level. The interaction between both

[11] See Van Elsuwege, P., "Protecting the Rule of Law in the EU Legal Order: A Constitutional Role for the Court of Justice", *European Constitutional Law Review*, 16(1), 2020.

organisations in dealing with existential challenges will probably condition the terms of the relations in the years to come.

### c. Balancing human rights and market freedoms in the internal market

The Union's economic objectives are at the heart of the integration project. The creation and development of an internal market is one of the Union's major successes, and its protection and improvement remains a priority today. Free movement rules are essential to understanding the logic of integration through law. Whilst legislation is usually introduced under legal bases that reflect policy fields under the aegis of the internal market. As a result, the protection of fundamental rights has traditionally been conceived as accessories that contribute to the attainment of the Union's economic objectives.

Such a portrayal, is of course, a simplification of a much more complex reality. However, the tensions that emerged in the past between the logic of the internal market and the protection of fundamental rights, stand witness to the underlying complexities that the Court of Justice must face when interpreting the Charter. The paradigm of these tensions appears in the seminal case of *Viking and Laval*,[12] wherein the Court of Justice had to resolve a dispute in which the right to collective action in Sweden stood in the way of the right to provide services through posted workers from another Member State. The fact the Court of Justice sided with the latter, only seemed to confirm the Union's preferences lie with the internal market and not with fundamental rights. This is a flawed conception of how Union law approaches these conflicts, but *Viking and Laval* left an impression amongst many that the Union was ill prepared as an organisation to deal with fundamental rights. Particularly when the logic of free movement and the attainment of internal market goals stand in the way.

The enactment of the Charter of Fundamental Rights, the Lisbon Treaty's clear signals to enhance the values of the Union, and the development of new policy areas in non-economic sectors, could be interpreted as a sign that the internal market had lost the standing it once had, putting fundamental rights at the forefront of integration. However, the reality is the Union is now entering a new phase between fundamental rights and market rationale. It is introducing instruments that will take these tensions to an entirely different terrain. *The Digital Services Act*[13] is an example of this new approach, whereby a Union legislative act is to govern not only the behaviour of individuals on digital platforms, but the oversight such platforms undertake of third-party behaviour therein. The standards of individual behaviour are set by reference to fundamental rights. Thus forcing the Union to rule on some of the most relevant societal debates of our times, but in a context where a balance struck with the role of economic operators running large online platforms. *The Media Freedom Act*[14] is yet another example of how the Union is facing challenges in the field of fundamental rights, but focuses on media as an economic operator and guardian of freedom of information in a democratic society. It is no coincidence that both the *Digital Services Act* and the *Media Freedom Act* are Regulations enacted under the legal base of Article 114 TFEU, a general legal base empowering the Union to approximate legislations of the Member States for the attainment of the internal market.

[12] Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet (C-341/05, EU:C:2007:291) and The International Transport Workers' Federation and The Finnish Seamen's Union v Viking Line ABP and OÜ Viking Line Eesti (C-438/05, EU:C:2007:292).

[13] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (OJ L 277, 27.10.2022, p. 1–102).

[14] Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (OJ L, 2024/1083, 17.4.2024).

### d. A changing EU judiciary

The Court of Justice sits at the apex of a highly centralised court system, in which it shares jurisdictional tasks with the General Court only. Seen in this light, the Union judiciary is a uniform infrastructure devised to produce uniform interpretations with common effects in all the Member States. When seen in more detail, the picture is more nuanced. National courts have been essential in the success of the Union's judiciary, mostly through the intense cooperation channelled through the preliminary reference procedure. The role of national courts is difficult to minimise, and it is no coincidence the vast majority of leading judgments of the Court of Justice result from questions issued by national courts via preliminary reference.

This model of Union judiciary is undergoing change. The latest reforms of the Statute of the Court of Justice of the EU are good proof of ongoing changes that are taking shape in a slow but relentless way. These changes come with an effectiveness that will eventually change the face of the Union judiciary in ways that were unimaginable only a decade ago.

The first reform concerns the transfer of preliminary references to the General Court,[15] a process that will take place in the end of 2024 and will, for the very first time, deposit the uniform interpretation of rules of Union law in the sole hands of the Union's court of first instance. This reform will affect "specific areas" only; in fields with well-established case law or subject matters that have a highly technical profile. The first step has been taken and it will only be a matter of time until further "specific areas" are eventually transferred to the General Court in a process that will transform this jurisdiction.

The second reform has been more modestly divulged, but it is of equal significance. In 2019, a mechanism for the filtering of appeals was introduced in the Court of Justice with the aim of turning the General Court into the main appellate jurisdiction for cases first heard in boards of appeal of Union agencies or bodies.[16] As a result, the Court of Justice will hear appeals on points of law on exceptional situations which merit a decision of the ultimate interpreter of the Treaties. For the rest, the jurisdiction shall remain mostly in the General Court, under the assumption the review undertaken by the board of appeal, followed by the direct action brought before the General Court, is sufficient to provide an effective remedy to the applicant. In 2024, the list of boards of appeal whose jurisdiction allows the General Court to rule almost on a last-instance role was expanded. In addition, the Court of Justice delivered an important ruling in the case of *ACER v. Aquind*,[17] in which it clearly signalled the duty of the boards of appeal to undertake a full review, including on matters of a technical nature, insomuch the members of these boards can include non-lawyers with technical expertise in the areas under scrutiny.

The third reform is the oldest one in chronological order. However, it is the one that paved the way to the two previous ones. It refers to doubling in size of the General Court to turn it into a jurisdiction comprised of fifty-four judges; two per Member State. This influx of human resources enabled the General Court to assume the previous tasks, and others that will arrive in the future.[18]

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[15] See Iglesias Sánchez, S., "Preliminary Rulings Before the General Court. Crossing the last frontier of the reform of the EU Judicial System?", *EU Law Live Weekend Edition*, nº 125, 2022 and Bobek, M., "Preliminary References before the General Cour: What Judicial Architecture for the European Union?", *Common Market Law Review*, 60(6), 2023.

[16] Oró Martínez, C., "Filtering of Appeals on Points of Law Before the Court of Justice", in *Yearbook on Procedural Law of the Court of Justice of the European Union*, Max Planck Institute for Procedural Law, 2019.

[17] ACER v. Aquind (C-46/21 P, EU:C:2023:182).

[18] Sarmiento, D. "The Reform of the General Court: An Exercise in Minimalist (but Radical) Institutional Reform", *Cambridge Yearbook of European Legal Studies*, Vol. 19, 2017 and Alemanno, A. and Pech, L. "Thinking justice outside the Docket: A critical assessment of the reform of the EU's court system", *Common Market Law Review*, 54(1), 2017.

Where does this trend leave the Court of Justice? It is obvious the overall effect of the reforms will alleviate the Court of Justice of a non-negligible number of cases. This outcome will allow the Court of Justice to focus closely on cases of principle or of constitutional relevance. The filtering mechanisms, as well as the review procedure that empowers the Court to reverse a ruling of the General Court in a preliminary reference procedure, will give the Court of Justice the power to select cases and decide where it wishes to have a say. The overall outcome is one in which the General Court and the boards of appeal will handle most disputes, whilst the Court of Justice will hear cases of principle or constitutional relevance; a slow but relentless transformation that will allow it to mutate into a constitutional court of the Union.[19]

### e. Prospects of enlargement

The fifth transformative feature comes in the shape of an enlarged Union. The invasion of Ukraine paved the way to a U-turn in the Union's enlargement policy, previously anchored in discussions with the Balkan countries, but now mostly focused on an unprecedented expansion towards Eastern Europe that could eventually include Ukraine and Moldova.

An enlarged Union in a more hostile geopolitical context will have serious repercussions in the Union's Common Foreign and Security Policy, as well as in its defence strategy and the relations with NATO. An enlargement of such scope will introduce further tensions within the institutional arrangements of the Union, most probably paving the way to reforms that will ease the decision-making procedures, particularly in areas still subject to unanimity vote in the Council. The reconstruction of Ukraine will pose significant financial challenges that may require the use of new financial instruments channelled by the Union or its Member States. The new Member States will need to address serious shortcomings affecting the rule of law and the fight against corruption in the new Member States, areas in which the Union has now assumed a much more aggressive stance. Needless to say, the face of the Union will start looking more like the composition of the Council of Europe, as a growing number of third countries sitting in the Council of Europe join the ranks of the Union, bringing both organisations closer together.

## 4. A changing Union and the prospects of accession to the Convention

The evolution described above will have a major impact in whatever form the accession to the Convention takes place. The scope of the changes that the Union is undertaking will condition the terms of the negotiations, but also the long-term prospects of implementation of the Convention within the Union and its Member States. The following are but a few examples of the consequences that the ongoing changes will have in the accession to the Convention system.

First, the subject matters in which the European Court of Human Rights will exercise external control over Union action will be broader than originally expected. The areas of policy in which the Union will be scrutinised will range from existential policy decisions (rule of law, climate change) to key societal tensions in the digital environment, or decision in very diverse fields such as immigration, frontier control, banking supervision and resolution, law enforcement, and anti-money laundering measures, to name a few. The prospect of an external review focused mostly on competition and state aid is a mirage that will be quickly dispelled once the accession turns into concrete practice.

Second, the judicial subject of external review will be mostly the General Court and not the Court of Justice. Whilst the Court of Justice and the European Court of Human Rights will continue their "dialogue" over fundamental rights, the external review under the Convention system will focus mostly on the jurisdictional tasks of the General Court, in its role as the Union's main jurisdiction in

[19] Sarmiento, D., "On the Road to a Constitutional Court of the European Union: The Court of Justice after the transfer of the preliminary reference jurisdiction to the General Court", *Croatian Yearbook of European Law & Policy*, vol. 19, 2023.

terms of quantitative workload. If the prospect of accession anticipated tensions between the Court of Justice and the Strasbourg court, the reality is that most of the jurisdictional interactions will take place with the General Court.

Third, the mechanisms introduced thus far to articulate the accession, mostly the co-respondent mechanism and the prior involvement procedure, will have to adapt to the reality of hybridized enforcement models within the Union. The tendency in the development of new or reformed policy fields is to fuse the roles of Union and national authorities, turning them into a sole administrative body.[20] The creation of "mechanisms" in the fields of Banking Union, or the groundbreaking model of the European Public Prosecutor's Office, are only but the tip of an iceberg in which hybridised ways of designing policy enforcement are becoming the rule in the Union. How will the co-respondent mechanism and the prior involvement procedure be articulated in a context in which the defining lines between Union and State action are more and more blurred?

These are only a few examples of the challenges to come, as the Union evolves in reaction to a changing environment. The evolution of the Union is still a mystery, insomuch the future is a mystery. But one thing is certain, the Union is a moving entity adapting to reality in short and long periods. The more it changes, the deeper the impact in the way in which accession to the Convention should be articulated. However, the long-term challenges are the same, the protection of liberal and democratic values with the aim of preventing war ever again in the European continent. Presently, war has returned to Europe and the values are under threat. In these circumstances, it is imperative the Union and the Council of Europe unite their efforts in addressing the current challenges together. Seen in this light, the discussions over how to articulate the accession seem modest and technical. For this reason, accession should be in the agenda and resolved before it is too late and the common values become irreparably wounded with no prospect of repair.

[20] Sarmiento, D., "Integrated Decision-Making in the EU and Judicial Review. Can the puzzle be fixed?", *EU Law Live Weekend Edition*, nº 188, 2024.