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Brussels, 31 October 1990

Commission seeks Council approval for Community accession
to the European Convention on Human Rights

The Commission today adopted a communication to the Council seeking its approval for an application for the Community to accede to the Convention for the Protection of Human Rights and Fundamental Freedoms and authority to negotiate the terms of accession.

The Member States and the Community Institutions have made solemn undertakings concerning human rights and fundamental freedoms. The preamble to the Single Act, for instance, states that the Member States are "determined to work together to promote democracy on the basis of the fundamental rights recognized in the constitutions and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, notably freedom, equality and social justice".

Yet, at a time when, notably as a result of the upheavals in Central and Eastern Europe, awareness of the need to protect human rights is particularly acute, the Community as such is still not a party to the Convention. Paradoxically, all legal acts of the Member States are subject to scrutiny as regards their implications for human rights by the Commission and Court of Human Rights set up by the Convention of 4 November 1950,¹ whereas the acts of the Community are not. The Community Institutions enjoy, as it were, some sort of "immunity", which could well be prejudicial to the rights of the Community's citizens.

Despite the fact that the Court of Justice of the European Communities draws upon the Convention as a major source of law, the danger of a conflict between Community acts and the rights protected under the Convention or of divergent interpretation of these rights is more than academic, especially in the fields of competition and free movement of workers.

¹ See Memo 54/90: The European Convention on Human Rights and how it works.

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In order to remedy this shortcoming, the Commission, as set out in its programme for 1990, has decided to ask the Council for its agreement in principle to the Community's acceding to the Convention and for authorization to negotiate the terms of accession. Once the Community is a party to the Convention, the acts of the Community institutions will be subject to scrutiny by the Strasbourg authorities, in the same way as the acts of the Member States, including the decisions of their constitutional courts and supreme courts.

Meanwhile, until such time as the acts of its institutions can be reviewed by outside agencies, the Community has undertaken by means of solemn declarations (by Parliament, Council and Commission) to uphold and protect human rights and, through the Court of Justice, has built up a body of case law protecting the interests of individuals and respecting fundamental rights and freedoms.

Accession to the Convention will serve to strengthen the rights of Community citizens and will signal the importance which the Community attaches to the system of values shared by present and future members of the Council of Europe, more especially since the Community will be called on to play an active part in the development of the CSCE. Indeed, the European Council held in Dublin on 28 April 1990 noted the intention of the Community and its Member States to assume a leading role in the CSCE process.

This initiative is in no way inconsistent with the framing of a declaration on the rights and obligations of European citizens - one of the appointed tasks of the Intergovernmental Conference on Political Union. The two developments are complementary since the Community's own declaration on citizens' rights will go beyond the fundamental civil and political rights protected by the Convention. For example, it could establish the right of residence and movement of European citizens, whether or not for reasons of economic activity, or the right to vote in European or local elections.

The Community's accession to the Convention, though supported by the European Parliament and the Economic and Social Committee, has not hitherto been the subject of a formal proposal by the Commission because of the reservations expressed in the past by some Member States in the Council. In April 1979 the Commission did, however, send a memorandum to the other institutions as a basis for discussion, and in April 1986 the Council agreed to consider what further action should be taken.

After completing a thorough legal analysis, the Commission now takes the view that there is no reason to defer a decision in this matter any longer. It is a question of political resolve on the part of the Member States, which, incidentally, as members of the Council of Europe, will have to give their full support to the Community in the negotiations with the organs of the Council of Europe.

