

Opinion 2/94 Accession to the ECHR [1996] ECR I-01759

Facts: The CJEU was asked its opinion on whether Article 352 TFEU, i.e. the residual ground, could be used as a basis for the EU's accession to the European Convention on Human Rights, as there was no express power in the Treaty at the time which could be used as a basis for the accession.

Held: The Court, in its opinion, clarified the scope of Art 352 TFEU and recognised that there is an implied limitation to the Union's residual competence. It decided that the provision could be used for small Treaty amendments but not 'qualitative leaps' that would change the constitutional identity of the European Union. Article 352 'cannot be used as a basis for the adoption of provisions whose effect would, in substance, be to amend the Treaty without following the procedure which it provides for that purpose.' [30]