



Strasbourg, 19 September 2012



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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**SECOND NEGOTIATION MEETING BETWEEN THE CDDH
AD HOC NEGOTIATION GROUP AND THE EUROPEAN
COMMISSION ON THE ACCESSION OF THE EUROPEAN UNION
TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS**

Meeting report

Strasbourg, Monday 17 September (9.30 am) – Wednesday 19 September 2012 (1.00 pm)

Agora Building, Room G01
Council of Europe

1. Opening of the meeting and adoption of the agenda

1. The second negotiation meeting between the CDDH ad hoc negotiation group and the European Commission on the accession of the European Union to the European Convention on Human Rights was held on 17-19 September 2012, in Strasbourg, under the chairmanship of Ms Tonje Meinich (Norway). The list of participants appears in Appendix I. The agenda, as adopted, appears in Appendix II.

2. Draft legal instruments on the accession of the European Union to the European Convention on Human Rights: examination of proposals for amendments

2. The Chair invited delegations having submitted comments on the EU proposals or new proposals to briefly present them, and also invited other delegations to present their position. Several delegations from States which are not members of the EU recalled the balance achieved at the level of the expert “7+7” group, and stressed their preference for that compromise text, or for a text which would not differ substantially from it. They also underlined that the amendments to the Convention and more generally the adaptations of the existing system should be limited to what is strictly necessary to allow for EU accession. Then the Chair opened the discussion on the various provisions of the draft Accession Agreement.

3. As regards the Preamble, one delegation proposed an alternative wording to the EU proposal to add to the sixth paragraph the expression “which is not a State”. After an explanation of the respective arguments, that delegation maintained a reservation on the wording proposed by the EU.

4. The representative of the European Union presented the EU proposal to amend Article 1, paragraph 2, letter c) of the draft. As regards the introduction of a new subparagraph aa), he explained that the purpose was to make explicit the attribution rule whereby acts of member States are and remain only attributable to them even if they are acts of implementation of EU law. Some delegations considered however that this proposal seemed to contradict the logic of the co-respondent mechanism, or at least to limit its scope. It was clarified that the proposed amendments are based on the distinction between attribution of an act and the responsibility for the violation that may derive from it. The co-respondent accepts to take responsibility for an act which is not attributable to it. After this exchange of views, the Chair concluded that at this stage there was no agreement on the substance of this proposal nor as to where it should eventually appear.

5. Concerning the introduction of the new subparagraph bb), the representative of the European Union explained that its purpose was to avoid that the European Court of Human Rights (hereafter: the Court) attributes to the EU an act which would not be attributable to it according to its internal legal order. Addressing some concerns expressed in this respect, the representative of the European Union clarified, *inter alia*, that this rule would not have as effect to exclude any acts taken under the Common Foreign and Security Policy from the Court’s jurisdiction but only to identify to whom the act is attributable. While taking note of the clarifications provided, a number of delegations expressed doubts on the effects of this provision and on where it should eventually appear.

6. As regards the text of Article 1, paragraph 2, letter c), one delegation raised the question of the proposed deletion of the expression “or of persons acting on their behalf”. Clarifications were also sought about the wording proposed by the EU for paragraphs 21a and 21c of the explanatory report, which in the view of some delegations may change the perspective of the text proposed for new Article 1, paragraph 2, letter d). The Chair noted that many of these issues were related to the co-respondent mechanism and should be discussed in that context.

7. The representative of the European Union presented then the arguments underlying the proposed new wording for Article 1, paragraph 2, letters e) to g). Delegations exchanged views on the proposal, and in particular on the proposed deletion of two provisions, namely Article 2, paragraph 1 of Protocol No. 4 and Article 2 of Protocol No. 6. The representative of the European Union explained that the first was justified by the existing limits to freedom of movement within the EU, and the second by the fact that the EU would never be able to apply it. It was then underlined that these provisions should serve as interpretation rules and not as reservations, and it was therefore suggested to reintroduce, in brackets, the reference to Article 2, paragraph 1 of Protocol No. 4 under letter g) (now Article 1, paragraph 5). Many delegations also underlined that the drafting proposed was excessively detailed and that it was not appropriate to have it included in the text of the Convention. A proposal to move this text to the Accession Agreement received considerable support from delegations of States which are not members of the EU. The EU was also invited to present a complete proposal for the third indent of letter e) (now Article 1, paragraph 3) as soon as possible.

8. Concerning the co-respondent mechanism (Article 3 of the draft Accession Agreement), one delegation proposed to amend the text of paragraph 2 in order to ensure that the EU could become a co-respondent not only when an application is directed against an EU member State, but also when it is directed against a State which is not a member of the EU, for example when an application puts into question the compatibility with the Convention of an international agreement between that State and the EU. While a number of delegations supported this proposal, the representative of the European Union noted that the “7+7” group had considered that such cases were more suitable for a third-party intervention, and that the legal relationship between the two parties to an international agreement was fundamentally different from the relationship between the EU and a member State justifying the creation of the co-respondent mechanism. As a compromise solution, it was proposed to amend paragraphs 39 and 40 of the explanatory report in order to make it clear that the EU shall intervene in such cases. This proposal was considered as a valid basis for further discussion, but no final consensus was reached on it.

9. It was tentatively agreed to amend Article 3, paragraph 5 to introduce in the text of the Agreement the idea, already expressed in the explanatory report, that the Court could invite a High Contracting Party to participate as a co-respondent to the proceedings, it being understood that in such a case that Party would become a co-respondent only if it accepted such invitation.

10. Concerning the prior involvement of the CJEU in co-respondent proceedings (Article 3, paragraph 6 of the draft Accession Agreement), the participants agreed that it was necessary to clarify the scope of the amendment proposed by the EU, and in particular to specify that CJEU would rule on the validity of a legal provision contained in EU secondary law, or on the interpretation of a provision of EU primary law. The representative of the European Union explained that this proposal was necessary since the

CJEU could only invalidate EU secondary law, but not EU primary law which it could only interpret. To this effect, a new sentence was added to Article 3, paragraph 6. One delegation reserved its position on the introduction of the prior involvement procedure.

11. With respect to Article 3, paragraph 7, the representative of the European Union presented the proposed amendment. It was tentatively agreed that the main rule should be that the respondent and the co-respondent shall be jointly responsible, and that it should be possible for the parties to jointly request that only one of them be held responsible. However, no agreement was reached on the margin of discretion of the Court in deciding on such request.

12. As regards the participation of the EU in the Committee of Ministers (Article 7 of the draft Accession Agreement), one delegation of a State which is not a member of the EU proposed to restrict the participation of the EU in the Committee of Ministers to those functions which the Convention explicitly attributes to the latter, and consequently to delete the remainder of paragraph 1 of Article 7 which refers to participation in Committee of Ministers' statutory functions. Participation in such functions would fall outside the scope of the Convention and would fundamentally change the nature and composition of the Committee of Ministers as provided for in Articles 14 and 15 of the Statute of the Council of Europe. This proposal was not supported by the Group because under the Vienna Convention on the Law of the Treaties all parties to a Treaty are entitled to take decisions regarding the implementation and amendment of that treaty. That delegation reserved its position on Article 7, paragraph 1, letters b) and c) of the draft Accession agreement. The group subsequently agreed on a number of drafting amendments to Article 7, paragraph 1, letter c) of the draft Accession Agreement.

13. The Group discussed then the exercise of the right to vote and the expression of positions by the EU and its member States while the Committee of Ministers exercises its supervisory functions under Articles 39 and 46 of the Convention (Article 7, paragraph 2 of the draft Accession Agreement). The EU proposed to delete the sentence in letter (a) of that provision ("it derives from the European Union treaties that the European Union and its member States express positions and vote in a coordinated manner") because of its mere declaratory nature. Several delegations of States which are not members of the EU opted for retaining this sentence, as it served the description of the specific situation of the EU as a High Contracting Party.

14. The representative of the European Union introduced the proposal to replace draft Rule 18 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements with a gentlemen's agreement to be adopted by the Committee of Ministers. He explained that the objective was to have a supervisory mechanism that is effective, that the EU would neither seek a privileged position nor to distort the present supervisory system, but that at the same time, this had to be reconciled with the obligation under EU law to coordinate the position and the vote accordingly under certain circumstances and with the principle of collective responsibility of all High Contracting Parties for the implementation of the Convention. As regards "final resolutions" by the Committee of Ministers, the EU proposed to establish a rule requiring their adoption by a three-quarters majority of High Contracting Parties. For the other decisions, the proposal was to set up a panel mediation procedure for cases in which a significant dispute would arise between the EU and its member States on the one side and the States which are not members of the EU on the other. The representative of the

European Union presented the main features of this procedure and underlined that it should be seen as safeguards to be applied only in exceptional circumstances.

15. Many delegations of States which are not members of the EU expressed reservations on various aspects of this proposal, underlining notably the extreme complexity of the panel procedure, questioning its necessity and also raising doubts on the appropriateness of a gentlemen's agreement as the instrument for the introduction of these new rules in the system. These delegations expressed a clear preference for the solution presented by the "7+7" group, underlining that it constituted a balanced compromise between different interests.

16. With respect to letters (b) and (c) of Article 7, paragraph 2, one delegation questioned the approach proposed by the "7+7" group, underlining that it created a difference in the treatment by the EU of the High Contracting Parties to the Convention according to their status of members of the EU or not. This delegation proposed therefore that the EU should refrain from expressing a position and from voting also in cases concerning States which are not members of the EU, and that EU member states should be free to express their position and to vote in such cases. Other delegations of States which are not members of the EU supported this view. The representative of the European Union explained that such difference was based on the different competences attributed to the EU in the field of fundamental rights and in the field of common foreign and security policy, and that the limitation not to express opinions against its own member States was based on the distribution of competences under EU law. He also added that it would not be acceptable for the EU to be denied the right to vote on cases concerning other parties, while those parties could vote at the same time on cases involving the EU. The Group decided to return to this proposal at a later stage.

17. The Secretariat recalled that the second indent of paragraph 2, letter b) of Article 8 (Participation of the EU in the expenditure related to the Convention) was in square brackets and that it had been proposed to delete it. The Group took note of this and decided to revert to this question at its next meeting.

18. The EU proposal to add to the introductory sentence of Article 9 of the draft Accession Agreement ("Relations with other Agreements") the words "within the limits of its competences" was accepted.

19. Appendix III contains a revised text of the draft Accession Agreement, as well as of relevant provisions of the explanatory memorandum, presented by the Chair at the end of the meeting as her synthesis of the work carried out by the Group.

3. Organisation of future work

20. The Group discussed the letter sent to the Chair by the AIRE Centre, on behalf also of Amnesty International and of the International Commission of Jurists concerning the possible organisation of an exchange of views with representatives of the civil society and of national human rights institutions. The Group agreed to hold such an exchange of views at the next meeting, on 7 November, in the afternoon. It agreed notably to invite at the exchange of views the organisations which had been invited to similar exchanges during the work of the "7+7" group, namely: the AIRE Centre, Amnesty International, the Conference of INGOs of the Council of Europe, the European Group of National Human Rights Institutions, the European Human Rights Advocacy Centre (EHRAC), the

European Trade Union Confederation, Human Rights Watch, the International Commission of Jurists, JUSTICE and Liberty.

21. The Chair recalled that the next meeting will be held in Strasbourg from 7 to 9 November 2012.

APPENDIX I**List of participants****MEMBERS / MEMBRES****ALBANIA / ALBANIE**

Ms Ledina MANDIA, General State Advocate of the Republic of Albania, Ministry of Justice, TIRANA

ANDORRA / ANDORRE

Mme Florència ALEIX, Représentation Permanente de l'Andorre auprès du Conseil de l'Europe, Strasbourg, France

ARMENIA / ARMENIE

Mr Levon AMIRJANYAN, Chef du département des affaires juridiques, Ministère des affaires étrangères, Yerevan

AUSTRIA / AUTRICHE

Mrs Brigitte OHMS, Deputy Government Agent, Division for International Affairs and General Administrative Affairs, Federal Chancellery, Dpt. V/5, Constitutional Service, Wien

AZERBAIJAN / AZERBAIDJAN

Mr Chingiz ASKAROV, Agent of the Government of the Republic of Azerbaijan at the European Court of Human Rights, Baku

BELGIUM / BELGIQUE

Mme Marjan JANSSENS, Représentante Permanente Adjointe, Chancellerie, Strasbourg, France

BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE

Ms Monika MIJIC, Agent of the Council of Ministers of Bosnia and Herzegovina before the European Court of Human Rights, Sarajevo

BULGARIA / BULGARIE

Mr Dimitar PHILPOV, Director, Human Rights Directorate, Ministry of Foreign Affairs of Bulgaria, Sofia

CROATIA / CROATIE

Mrs Romana KUZMANIĆ OLUIĆ, Counselor in the Division for Human Rights and International Regional Organizations and Initiatives, Ministry of Foreign Affairs and European Integration, Directorate for Multilateral Affairs and Global Issues, Department for Human Rights and International Organization, Zagreb

CYPRUS / CHYPRE

Mr. Nikolas KYRIAKOU, Counsel for the Republic, Law Office of the Republic, European Law Section, Nicosia

CZECH REPUBLIC / REPUBLIQUE TCHEQUE

Mr Vit SCHORM, Government Agent, Ministry of Justice, Praha

DENMARK / DANEMARK

Mr Jacob WAAGE, Senior Legal Adviser, Ministry of Justice, Copenhagen K

ESTONIA / ESTONIE

Ms Merje JÕGI, legal advisor, legal department, Ministry of Foreign Affairs, Tallinn

FINLAND / FINLANDE

Mr Arto KOSONEN, Government Agent, Director, Unit for Human Rights Court and Conventions, Legal Service, Ministry of Foreign Affairs

Ms Tuire SIMONEN, Legal Officer, Unit for Human Rights Courts and Conventions, Legal Service, Ministry for Foreign Affairs

FRANCE

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GEORGIA / GEORGIE

Ms Ketevan TSKHOMELIDZE, Deputy Head of the Department of State Representation to the International Courts of Human Rights, Ministry of Justice of Georgia, Tbilisi

GERMANY / ALLEMAGNE

Mr Hans-Jörg BEHRENS, Head of Unit IVC1, Human Rights Protection; Government Agent before the European Court of Human Rights, Bundesministerium der Justiz, Berlin

GREECE / GRECE

Mr Elias KASTANAS, Deputy Legal Adviser, Ministry of Foreign Affairs, Legal Department, Athens

HUNGARY / HONGRIE

Ms Monika WELLER, Co-Agent for the Hungarian Government before the European Court of Human Rights, Ministry of Public Administration and Justice, Budapest

ICELAND / ISLANDE

Ms. Guðfríður Lilja GRÉTARSDÓTTIR, Ministry of the Interior, Reykjavík

IRELAND / IRLANDE

Mr Peter WHITE, Agent for the Government of Ireland, Assistant Legal Adviser, Legal Division, Department of Foreign Affairs and Trade, Dublin

Mr David KELLY, Legal Counsellor at the Permanent Representation of Ireland to the European Union, Bruxelles, Belgium

ITALY / ITALIE

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LIECHTENSTEIN

Mr Manuel FRICK, Deputy Permanent Representative to the Council of Europe, Office for Foreign Affairs, Vaduz

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Mme Brigitte KONZ, Conseillère à la Cour d'Appel, Luxembourg

Mme Anne KAYSER-ATTUIL, Représentante Permanente Adjointe, Représentation Permanente du Luxembourg auprès du Conseil de l'Europe et Consulat Général,

REPUBLIC OF MOLDOVA/ REPUBLIQUE DE MOLDOVA

Mr Lilian APOSTOL, Expert, Ministère de la justice, Chisinau

MONTENEGRO

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Mr. Fredrik BOCKMAN FINSTAD, Deputy Director General, Norwegian Ministry of Justice and the Police, Legislation Department, Oslo

Ms. Marthe Kristine FJELD, Adviser, Norwegian Ministry of Justice and the Police, Legislation Department, Oslo

Ms Tonje MEINICH, (**Chairperson/Présidente**), European and International Affairs, Norwegian Ministry of Justice, Oslo

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ROMANIA / ROUMANIE

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Mr Vassily NEBENZIA, Director of the Department of Humanitarian Cooperation and Human Rights, Ministry of Foreign Affairs of the Russian Federation, Moscow

Mme Maria MOLOTSOVA, 1st Secretary, Department for International Humanitarian Cooperation and Human Rights, Ministry of Foreign Affairs, Moscow

Mr Vladislav ERMAKOV, Deputy to the Permanent Representative, Chancery, Strasbourg

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Irena VOGRINČIČ, Adviser, Ministry: Ministry of Justice and Public Administration of the Republic of Slovenia, International Cooperation Service, Ljubljana

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Mr Jorge CARRERA, Counselor of Justice at the Spanish Permanent Representation at the European Union, Brussels – Belgium

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Ms Jessica SJÖSTRAND, Deputy Director for the Swedish Ministry for Foreign Affairs, Department for International Law, Human Rights and Treaty Law, Stockholm

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SWITZERLAND / SUISSE

Mr Frank SCHÜRMAN, Agent du Gouvernement, Chef de l'unité Droit européen et protection internationale des droits de l'homme, Office fédéral de la justice, Berne

M. Charles-Edouard HELD, Ambassadeur Extraordinaire et Plénipotentiaire, Représentant Permanent, Chancellerie, Strasbourg, France

Mr Daniel FRANK, Head Human Rights Section, Federal Department of Foreign Affairs, Berne

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“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA” / “L’EX-RÉPUBLIQUE YOUGOSLAVE DE MACÉDOINE”

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UNITED KINGDOM / ROYAUME-UNI

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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI) / COMITÉ DES CONSEILLERS JURIDIQUES SUR LE DROIT INTERNATIONAL PUBLIC (CAHDI)

Mr Erik WENNERSTROEM, Director General, National Council for Crime Prevention, Stockholm

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Mme Valérie PEARD, Principal Assistant, Human Rights Law and Policy Division / Division du droit et de la politique des droits de l'homme

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Mme Corinne GAVRILOVIC, Assistant / Assistante, Human Rights Intergovernmental Cooperation Division / Division de la coopération intergouvernementale en matière de droits de l'Homme

Private office of the Secretary General and Deputy Secretary General / Cabinet du Secrétaire Général et de la Secrétaire Générale Adjointe

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DLAPIL - Direction du Conseil Juridique et du droit international public/Directorate of Legal Advice and Public International Law

Mme Elise CORNU, Legal Advisor, Directorate of Legal Advice and Public International Law

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INTERPRETERS / INTERPRÈTES

Chef d'équipe : Bettina LUDEWIG

Corinne McGEORGE

Christopher TYCZKA

APPENDIX II**Agenda**

- 1. Opening of the meeting and adoption of the agenda**
- 2. Draft legal instruments on the accession of the European Union to the European Convention on Human Rights: examination of proposals for amendments**

Working documents

CDDH report to the Committee of Ministers on the elaboration of legal instruments for the accession of the European Union to the European Convention on Human Rights	CDDH(2011)009
Negotiation document submitted by the European Union on 14 June 2012	(Restricted)
Comment from Armenia	47+1(2012)003 bil
Comments from Norway	47+1(2012)004 bil
Comments from Switzerland	47+1(2012)005 bil
Letter from the Russian Federation	47+1(2012)002 bil

Reference documents

Report of the 1 st negotiation meeting (21 June 2012)	47+1(2012)R01
Relevant excerpts of the Report of the 75 th meeting of the CDDH (19-22 June 2012)	47+1(2012)002
Decisions of the 1145 th meeting of the Ministers' Deputies (13 June 2012)	47+1(2012)001
Report of the Extraordinary meeting of the CDDH (12-14 October 2011)	CDDH(2011)R Ex

- 3. Organisation of future work**
- 4. Any other business**

APPENDIX III

Conclusions presented by the Chair

Draft Revised Agreement on the Accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms

Preamble

The High Contracting Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (ETS No. 5, hereinafter referred to as “the Convention”), being member States of the Council of Europe, and the European Union,

Having regard to Article 59, paragraph 2, of the Convention;

Considering that the European Union is founded on the respect for human rights and fundamental freedoms;

Considering that the accession of the European Union to the Convention will enhance coherence in human rights protection in Europe;

Considering, in particular, that the individual should have the right to submit the acts, measures or omissions of the European Union to the external control of the European Court of Human Rights (hereinafter referred to as “the Court”);

Considering that, having regard to the specific legal order of the European Union, **which is not a State**, its accession requires certain adjustments to the Convention system to be made by common agreement,

Have agreed as follows:

Article 1 – Scope of the accession and amendments to Article 59 of the Convention

1. The European Union hereby accedes to the Convention, to the Protocol to the Convention and to Protocol No. 6 to the Convention.
2. Article 59, Paragraph 2 of the Convention shall be amended to read as follows:
 - “2.a. The European Union may accede to this Convention and the Protocols thereto. Accession of the European Union to the Protocols shall be governed, *mutatis mutandis*, by Article 6 of the Protocol, Article 7 of Protocol No. 4, Articles 7 to 9 of Protocol No. 6, Articles 8 to 10 of Protocol No. 7, Articles 4 to 6 of Protocol No. 12 and Articles 6 to 8 of Protocol No. 13.
 - b. The status of the European Union as a High Contracting Party to the Convention and the Protocols thereto shall be further defined in the Agreement on the Accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms.

c. Accession to the Convention and the Protocols thereto shall impose on the European Union obligations with regard only to acts, measures or omissions of its institutions, bodies, offices or agencies, or of persons acting on their behalf. Nothing in the Convention or the Protocols thereto shall require the European Union to perform an act or adopt a measure for which it has no competence under European Union law.¹”

3. Where any of the terms:

- ‘State’, ‘State Party’ ‘States’, or ‘States Parties’ appear in Article 10, paragraph 1 and in Article 17 of the Convention, as well as in Articles 1 and 2 of the Protocol, in Article 6 of Protocol No. 6, in Article 3 of Protocol No. 7, Article 4, paragraphs 1 and 2 of Protocol No. 7, in Articles 5 and 7 of Protocol No. 7, in Article 3 of Protocol No. 12, and in Article 5 of Protocol No. 13, they shall be understood as referring also to the European Union as a non-State party to the Convention;
- ‘national law’, ‘administration of the State’, ‘national laws’, ‘national authority’, or ‘domestic’ appear in Article 7, paragraph 1, in Article 11, paragraph 2, in Article 12, in Article 13, and in Article 35, paragraph 1 of the Convention, they shall be understood as relating also, *mutatis mutandis*, to the internal legal order of the European Union as a non-State party to the Convention and to its institutions, bodies, offices or agencies;
- ‘national security’, ‘economic well-being of the country’, ‘territorial integrity’, or ‘life of the nation’ appear in paragraph 1 of Article 6, in Article 8, paragraph 2, in Article 10, paragraph 2, in Article 11, paragraph 2 and in Article 15, paragraph 1 of the Convention, as

¹ The following amendment has been proposed:

c. Accession to **this** Convention and the Protocols thereto shall impose on the European Union obligations with regard only to acts, measures or omissions of its institutions, bodies, offices or agencies [...]. **For the purposes of this Convention, of the Protocols thereto and of the Agreement on the Accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the "Accession Agreement"):**

(aa) acts, measures or omissions of organs or agents of the member States of the European Union are attributable only to these States, even if such acts, measures or omissions occur when the member States of the European Union implement the law of the European Union,

(bb) acts and measures are not attributable to the European Union where they have been performed or adopted in the context of the provisions of the Treaty on European Union on the common foreign and security policy of the European Union, except in cases where attributability to the European Union on the basis of European Union law has been established by the Court of Justice of the European Union.

d. Nothing in this Convention, the Protocols thereto or the Accession Agreement shall require the European Union to perform an act or adopt a measure for which it has no competence under European Union law.

well as in Article 2, paragraph 3 of Protocol No. 4 and in Article 1, paragraph 2 of Protocol No. 7, they shall be considered, in proceedings brought against the European Union or to which the European Union is a co-respondent [... to be completed].

4. Insofar as the term 'everyone within their jurisdiction' appearing in Article 1 of the Convention refers to persons within the territory of a High Contracting Party, it shall be understood, with regard to the European Union, as referring to persons within the territories of the member States of the European Union to which the Treaty on the European Union (hereinafter: the "TEU") and the Treaty on the Functioning of the European Union (hereinafter: the "TFEU") apply. Insofar as that term refers to persons outside the territory of a High Contracting Party, it shall be understood, with regard to the European Union, as referring to persons which, if the alleged violation in question had been attributable to a High Contracting Party which is a State, would have been within the jurisdiction of that High Contracting Party.

5. With regard to the European Union, the term 'country' appearing in Article 5, paragraph 1 of the Convention and in Article 2, paragraph 2 of Protocol No. 4 and the term 'territory of a State' appearing [in Article 2, paragraph 1 of Protocol No. 4 and] in Article 1, paragraph 1 of Protocol No. 7 shall mean the territories of the member States of the European Union to which the TEU and the TFEU apply.

6. Article 59, paragraph 5 of the Convention shall be amended to read as follows:

“5. The Secretary General of the Council of Europe shall notify all the Council of Europe member States and the European Union of the entry into force of the Convention, the names of the High Contracting Parties who have ratified it or acceded to it, and the deposit of all instruments of ratification or accession which may be effected subsequently.”

Article 2 – Reservations to the Convention and its Protocols

1. The European Union may, when signing or expressing its consent to be bound by the provisions of this Agreement in accordance with Article 10, make reservations to the Convention and to the Protocol in accordance with Article 57 of the Convention.

2. Article 57, Paragraph 1 of the Convention shall be amended to read as follows:

“1. Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. The European Union may, when acceding to this Convention, make a reservation in respect of any particular provision of the Convention to the extent that any law of the European Union then in force is not in conformity with the provision. Reservations of a general character shall not be permitted under this Article.”

Article 3 – Co-respondent mechanism

1. Article 36 of the Convention shall be amended as follows:
 - a. The heading of Article 36 shall be amended to read as follows: “Third party intervention and co-respondent”.
 - b. The following paragraph shall be added at the end of Article 36:

“4. The European Union or a member State of the European Union may become a co-respondent to proceedings by decision of the Court in the circumstances set out in the Agreement on the Accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms. A co-respondent is a party to the case. The admissibility of an application shall be assessed without regard to the participation of a co-respondent in the proceedings.”
2. Where an application is directed against one or more member States of the European Union, the European Union may become a co-respondent to the proceedings in respect of an alleged violation notified by the Court if it appears that such allegation calls into question the compatibility with the Convention rights at issue of a provision of European Union law, notably where that violation could have been avoided only by disregarding an obligation under European Union law.²
3. Where an application is directed against the European Union, the European Union member States may become co-respondents to the proceedings in respect of an alleged violation notified by the Court if it appears that such allegation calls into question the

² Amendment proposal: “Where an application is directed against one or more **High Contracting Parties other than the European Union, the latter** may become a co-respondent to the proceedings in respect of an alleged violation notified by the Court if it appears that such allegation calls into question the compatibility with the Convention rights at issue of a provision of European Union law, notably where that violation could have been avoided only by disregarding an obligation under European Union law, **or, as regards States which are not members of the European Union, an obligation under international law incorporating European Union law.**”

Amendment proposed to Paragraphs 39 and 40 of the Explanatory Report:

39. The co-respondent mechanism differs from third party interventions under Article 36, paragraph 2, of the Convention. The latter only gives the third party (be it a High Contracting Party to the Convention or, for example, another subject of international law or a non-governmental organisation) the opportunity to submit written comments and participate in the hearing in a case before the Court, but it does not become a party to the case and is not bound by the judgment. A co-respondent becomes, on the contrary, a full party to the case and will therefore be bound by the judgment. **The introduction of the co-respondent mechanism should thus not be seen as precluding the EU from participating in the proceedings as a third party intervener, where the conditions for becoming a co-respondent are not met.**

40. It is understood that a third party intervention may often be the most appropriate way to involve the EU in a case. For instance, if an application is directed against a State associated to parts of the EU legal order through separate international agreements (for example, the “Schengen” and “Dublin” agreements and the agreement on the European Economic Area) concerning obligations arising from such agreements, third party intervention would be the only way for the EU to participate in the proceedings. **In particular, the EU [shall request]/[will, where appropriate, request] such intervention when an application calls into question the compatibility with the Convention rights of a provision of such agreements.**

compatibility with the Convention rights at issue of a provision of the Treaty on European Union, the Treaty on the Functioning of the European Union or any other provision having the same legal value pursuant to those instruments, notably where that violation could have been avoided only by disregarding an obligation under those instruments.

4. Where an application is directed against and notified to both the European Union and one or more of its member States, the status of any respondent may be changed to that of a co-respondent if the conditions in paragraph 2 or paragraph 3 of this Article are met.

5. **A High Contracting Party shall become a co-respondent either by accepting an invitation by the Court or by decision of the Court upon the request of that High Contracting Party. When inviting a High Contracting Party to become co-respondent and when deciding upon a request to that effect, the Court shall seek the views of all parties to the proceedings. When deciding upon such request, the Court shall assess whether, in the light of the reasons given by the High Contracting Party concerned, it is plausible that the conditions in paragraph 2 or paragraph 3 of this Article are met.**

6. In proceedings to which the European Union is co-respondent, if the Court of Justice of the European Union has not yet assessed the compatibility with the Convention rights at issue of the provision of European Union law as under paragraph 2 of this Article, sufficient time shall be afforded for the Court of Justice of the European Union to make such an assessment, and thereafter for the parties to make observations to the Court. **Assessing the compatibility shall mean to rule on the validity of a legal provision contained in acts of the European Union institutions, bodies, offices or agencies, or on the interpretation of a provision of the Treaty on European Union, the Treaty on the Functioning of the European Union or of any other provision having the same legal value pursuant to those instruments.** The European Union shall ensure that such assessment is made quickly so that the proceedings before the Court are not unduly delayed. The provisions of this paragraph shall not affect the powers of the Court.

7. **If the violation in respect of which a High Contracting Party has become a co-respondent to the proceedings is established, the respondent and the co-respondent shall be jointly responsible for that violation, unless [they have jointly requested the Court that only one of them be held responsible]/[the Court decides, upon a joint request, that only one of them be held responsible.]**

8. This Article shall apply to applications submitted from the date of entry into force of this Agreement.

Article 4 – Inter-Party cases

1. The first sentence of Article 29, paragraph 2 of the Convention shall be amended to read as follows:

“A Chamber shall decide on the admissibility and merits of inter-Party applications submitted under Article 33”.

2. The heading of Article 33 of the Convention shall be amended to read as follows:

“Article 33 – Inter-Party cases”.

Article 5 – Interpretation of Articles 35 and 55 of the Convention

Proceedings before the Court of Justice of the European Union shall be understood as constituting neither procedures of international investigation or settlement within the meaning of Article 35, paragraph 2.b, of the Convention, nor means of dispute settlement within the meaning of Article 55 of the Convention.

Article 6 – Election of judges

1. A delegation of the European Parliament shall be entitled to participate, with the right to vote, in the sittings of the Parliamentary Assembly of the Council of Europe whenever the Assembly exercises its functions related to the election of judges in accordance with Article 22 of the Convention. The number of representatives of the European Parliament shall be the same as the highest number of representatives to which any State is entitled under Article 26 of the Statute of the Council of Europe.

2. The modalities of the participation of representatives of the European Parliament in the sittings of the Parliamentary Assembly of the Council of Europe and its relevant bodies shall be defined by the Parliamentary Assembly of the Council of Europe, in co-operation with the European Parliament.

Article 7 – Participation of the European Union in the Committee of Ministers of the Council of Europe

1. The European Union shall be entitled to participate in the Committee of Ministers, with the right to vote, when the latter takes decisions:

- a. under Article 26, paragraph 2, Article 39, paragraph 4, Article 46, paragraphs 2 to 5, or Article 47 of the Convention;
- b. regarding the adoption of Protocols to the Convention;
- c. regarding the adoption of any other instrument or text:
 - **relating to the Convention or to any Protocol to the Convention to which the European Union is a party and addressed to the Court or to all High Contracting Parties to the Convention or to the Protocol concerned,**
 - **relating to decisions by the Committee of Ministers under the provisions referred to in point a) of this paragraph,**

or

- relating to the functions exercised by the Parliamentary Assembly of the Council of Europe **under Article 22 of the Convention.**

2. The exercise of the right to vote by the European Union and its member States shall not prejudice the effective exercise by the Committee of Ministers of its supervisory functions under Articles 39 and 46 of the Convention. In particular, the following shall apply.

- a. Where the Committee of Ministers supervises the fulfilment of obligations either by the European Union alone, or by the European Union and one or more of its member States jointly, it derives from the European Union treaties that the European Union and its member States express positions and vote in a co-ordinated manner. The Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements shall be adapted to ensure that the Committee of Ministers effectively exercises its functions in those circumstances.³
- b. Where the Committee of Ministers otherwise supervises the fulfilment of obligations by a member State of the European Union, the European Union is precluded for reasons pertaining to its internal legal order from expressing a position or exercising its right to vote. The European Union treaties do not oblige the member States of the European Union to express positions or to vote in a co-ordinated manner.
- c. Where the Committee of Ministers supervises the fulfilment of obligations by a High Contracting Party other than the European Union or a member State of the European Union, the European Union treaties do not oblige the member States of the European Union to express positions or to vote in a co-ordinated manner, even if the European Union expresses its position or exercises its right to vote.⁴

³ The following amendment has been proposed to Article 7.2.a:

- a. **In relation to cases** where the Committee of Ministers supervises the fulfilment of obligations either by the European Union alone, or by the European Union and one or more of its member States jointly, **the Committee of Ministers shall agree on arrangements** to ensure that **it may** effectively exercise its functions in those circumstances.

⁴ The following amendment, merging Articles 7.2.b and 7.2.c, has been proposed:

“b. Where the Committee of Ministers supervises the fulfilment of obligations by a High Contracting Party other than the European Union [*alternative drafting*: by a member State of the European Union or by a State which is not a member of the European Union], the latter cannot express a position or exercise its right to vote. The member States of the European Union shall be free to express their own position and to exercise their right to vote”.

Article 8 – Participation of the European Union in the expenditure related to the Convention

1. The European Union shall pay an annual contribution dedicated to the expenditure related to the functioning of the Convention. This annual contribution shall be in addition to contributions made by the other High Contracting Parties. Its amount shall be equal to 34% of the highest amount contributed in the previous year by any State to the Ordinary Budget of the Council of Europe.
2.
 - a. If the amount dedicated within the Ordinary Budget of the Council of Europe to the expenditure related to the functioning of the Convention, expressed as a proportion of the Ordinary Budget itself, deviates in each of two consecutive years by more than 2.5 percentage points from the percentage indicated in paragraph 1, the Council of Europe and the European Union shall, by agreement, amend the percentage in paragraph 1 to reflect this new proportion.
 - b. For the purpose of this paragraph, no account shall be taken of:
 - a decrease in absolute terms of the amount dedicated within the Ordinary Budget of the Council of Europe to the expenditure related to the functioning of the Convention as compared to the year preceding that in which the European Union becomes a Party to the Convention;
 - [an increase in the amount dedicated within the Ordinary Budget of the Council of Europe to the expenditure related to the functioning of the Convention, expressed as a proportion of the Ordinary Budget itself, where this results from a decrease in absolute terms of the Ordinary Budget and either no change or a decrease in absolute terms of the amount dedicated within it to the expenditure related to the functioning of the Convention.]⁵
 - c. The percentage that results from an amendment under paragraph 2.a may itself later be amended in accordance with this paragraph.
3. For the purpose of this Article, the expenditure related to the functioning of the Convention comprises the total expenditure on:
 - a. the Court;
 - b. the supervision of the execution of judgments of the Court; and
 - c. the functioning, when performing functions under the Convention, of the Committee of Ministers, the Parliamentary Assembly and the Secretary General of the Council of Europe,

increased by 15% to reflect related administrative overhead costs.

⁵ Text in brackets proposed for deletion in accordance with the opinion of the Directorate of Programme, Finances and Linguistic services of the Council of Europe.

4. Practical arrangements for the implementation of this Article may be determined by agreement between the Council of Europe and the European Union.

Article 9 – Relations with other Agreements

1. The European Union shall, **within the limits of its competences**, respect the provisions of:

- a.* Articles 1 to 6 of the European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights of 5 March 1996 (ETS No. 161);
- b.* Articles 1 to 19 of the General Agreement on Privileges and Immunities of the Council of Europe of 2 September 1949 (ETS No. 2) and Articles 2 to 6 of its Protocol of 6 November 1952 (ETS No. 10), in so far as they are relevant to the operation of the Convention; and
- c.* Articles 1 to 6 of the Sixth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe of 5 March 1996 (ETS No. 162).

2. For the purpose of the application of the Agreements and Protocols referred to in paragraph 1, the Contracting Parties to each of them shall treat the European Union as if it were a Contracting Party to that Agreement or Protocol.

3. The European Union shall be consulted before any Agreement or Protocol referred to in paragraph 1 is amended.

4. With respect to the Agreements and Protocols referred to in paragraph 1, the Secretary General of the Council of Europe shall notify the European Union of:

- a.* any signature;
- b.* the deposit of any instrument of ratification, acceptance, approval or accession;
- c.* any date of entry into force in accordance with the relevant provisions of those Agreements and Protocols; and
- d.* any other act, notification or communication relating to those Agreements and Protocols.

Article 10 – Signature and entry into force

1. The High Contracting Parties to the Convention at the date of the opening for signature of this Agreement and the European Union may express their consent to be bound by:

- a.* signature without reservation as to ratification, acceptance or approval; or
- b.* signature with reservation as to ratification, acceptance or approval, followed by ratification, acceptance or approval.

2. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
3. This Agreement shall enter into force on the first day of the month following the expiration of a period of three months after the date on which all High Contracting Parties to the Convention mentioned in paragraph 1 and the European Union have expressed their consent to be bound by the Agreement in accordance with the provisions of the preceding paragraphs.
4. The European Union shall become a Party to the Convention, to the Protocol to the Convention and to Protocol No. 6 to the Convention at the date of entry into force of this Agreement.

Article 11 – Reservations

No reservation may be made in respect of the provisions of this Agreement.

Article 12 – Notifications

The Secretary General of the Council of Europe shall notify the European Union and the member States of the Council of Europe of:

- a.* any signature without reservation in respect of ratification, acceptance or approval;
- b.* any signature with reservation in respect of ratification, acceptance or approval;
- c.* the deposit of any instrument of ratification, acceptance or approval;
- d.* the date of entry into force of this Agreement in accordance with Article 10;
- e.* any other act, notification or communication relating to this Agreement.

In witness whereof the undersigned, being duly authorised thereto, have signed this Agreement.

Done at the, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to the European Union.

Draft Rule to be added to the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements

Rule 18 – Judgments and friendly settlements in cases to which the European Union is a party

Where the Committee of Ministers supervises the fulfilment of obligations either by the European Union alone, or by the European Union and one or more of its member States jointly, the High Contracting Parties shall:

a. without prejudice to the provisions under sub-paragraphs *b* and *c*, consider decisions by the Committee of Ministers as adopted if a simple majority of the representatives entitled to sit on the Committee on behalf of those High Contracting Parties that are not member States of the European Union is in favour;

b. consider decisions by the Committee of Ministers under Rules 10 and 11 as adopted if two thirds of the representatives entitled to sit on the Committee on behalf of those High Contracting Parties that are not member States of the European Union are in favour; and

c. consider decisions by the Committee of Ministers under Rule 17 as adopted if, in addition to the majority set out in Article 20.*d* of the Statute of the Council of Europe, a simple majority of the representatives casting a vote on behalf of those High Contracting Parties that are not member States of the European Union is in favour.⁶

⁶ It has been proposed to replace this text with the following:

II. Draft decision of the Committee of Ministers' deputies: gentleman's agreement on voting in cases to which the European Union is a party

Regarding the voting procedures in the circumstances referred to in paragraph 2 (a) of Article 7 of the Agreement on the Accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms, the Deputies agreed upon the following Gentleman's Agreement amongst themselves:

(1) A decision by the Committee establishing that the respondent and, as the case may be, the co-respondent or co-respondents have taken all the necessary measures to abide by the judgment or establishing that the terms of a friendly settlement have been executed shall be considered as adopted if a majority of three quarters of the representatives casting a vote is in favour.

(2) If a decision by the Committee under paragraph 3 or 4 of Article 46 of the Convention has not been adopted, although its adoption has been requested by two thirds of the representatives entitled to sit on the Committee on behalf of those High Contracting Parties that are not member States of the European Union, a panel shall be constituted.

That panel shall consist of one member designated either by the respondent or jointly by the respondent and the co-respondent or co-respondents, as the case may be, of one member designated by the High Contracting Parties that have requested the adoption of the decision at issue and of one chairperson, designated by the two aforementioned members.

The panel, after consulting with the respondent and the co-respondent or co-respondents, as the case may be, and with the High Contracting Parties that have requested the adoption of the decision at issue, shall propose the adoption of a decision by the Committee.

The Committee shall, not earlier than after 2 months and not later than after 4 months proceed to a vote on the panel's proposal.

Any representative entitled to sit on the Committee shall be deemed to have voted in favour of the panel's proposal, unless he or she has explicitly stated reasons to the contrary; these reasons shall be recorded in the minutes of the proceedings of the Committee.

(3) Paragraph (2) shall also apply where a decision by the Committee other than under paragraph 3 or 4 of Article 46 of the Convention and other than establishing that the respondent and, as the case may be, the co-respondent have taken all the necessary measures to abide by the judgment or establishing that the terms of a friendly settlement have been executed has not been adopted, although its adoption has been requested by a simple majority of the representatives entitled to sit on the Committee on behalf of those High Contracting Parties that are not member States of the European Union.