



Strasbourg, 25 February 2011

CDDH-UE(2011)04

**6th WORKING MEETING OF THE CDDH INFORMAL WORKING
GROUP ON THE ACCESSION OF THE EUROPEAN UNION TO THE
EUROPEAN CONVENTION ON HUMAN RIGHTS (CDDH-UE)
WITH THE EUROPEAN COMMISSION**

Draft agreement on the accession of the EU to the Convention

Strasbourg, Tuesday 15 March (9.30 am) – Friday 18 March 2011 (1.30 pm)

Agora Building, Room G05
Council of Europe

INTRODUCTION

The draft agreement has been prepared by the Secretariat on the basis of the discussion at the previous working meetings. The source of the various provisions is indicated in the comments aside each provision. Where an agreement had been reached on a precise wording, such wording has been used. Where an agreement of principle had been reached, the wording proposed tries to reflect the substance of the agreement. In some cases, no agreement had been reached at the meeting on a given issue. The proposals made by the Secretariat in such cases should be intended as an attempt to propose a possible solution and engage exclusively the Secretariat. They are without prejudice of possible alternatives to be raised and discussed at the meeting.

DRAFT AGREEMENT ON THE ACCESSION OF THE EUROPEAN UNION TO THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Preamble

The member States of the Council of Europe High Contracting Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as “the Convention”) and the European Union, signatories to this Agreement,

Having regard to Article 59 of the Convention, as amended by Protocols Nos. 11 and 14,

Convinced that the accession of the European Union to the Convention is essential to ensure coherence in human rights protection throughout Europe,

Considering that the accession of the European Union, as a non-state entity with a specific legal system, requires certain adaptations to the Convention system, including the need to amend certain of its provisions,

Considering that it is necessary, for this reason, to establish by common agreement the conditions of accession and the adjustments to be made to the Convention system,

Have agreed as follows:

A – General Provisions and Scope of the Accession

Article 1 - Object

1. The European Union hereby accedes to the Convention.
2. [The European Union hereby accedes to Protocols Nos. ... to the Convention.]
3. Accession to the Convention and to its protocols shall respect the conditions set out in this Agreement as well as in the relevant provisions of the Convention and of each protocol.

Comment [c1]: Wording agreed at the 2nd meeting

Comment [c2]: Wording discussed at the 2nd meeting

Comment [c3]: Wording discussed at the 2nd meeting, amended by the Secretariat.

Comment [c4]: Proposal to place amendments in Article 59 made by the Secretariat on the basis of discussions at the 2nd meeting

Article 2 – Scope of the accession

1. Paragraph 2 of Article 59 of the Convention shall be amended to read as follows:
 - “2. a. The European Union may accede to this Convention and to its protocols in accordance with the conditions and modalities set out in the Agreement on the Accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms.
 - b. Accession to the Convention and its Protocols shall impose on the European Union obligations with regard only to acts, measures and omissions of its institutions, bodies, offices or agencies, or of persons acting on their behalf.

Comment [c5]: Reference to the protocols proposed by the Secretariat in accordance with the Comments by the CoE Legal Advice Department (doc CDDH-UE(2010)13)

Comment [c6]: New wording proposed by the Secretariat.

Nothing in the Convention or its Protocols shall require the European Union to perform an act or adopt a measure for which it has no competence.

Comment [c7]: Wording agreed at the 2nd meeting. Reference to “omissions” added by the Secretariat

c. 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, Articles 1 and 2 of the Protocol, Articles 2 and 3 of Protocol No. 4, Article 2 and Article 6 of Protocol No. 6, Articles 3, 4, 5 and 7 of Protocol No. 7, Article 3 of Protocol No. 12, and Article 5 of Protocol No. 13 to the Convention, they shall be understood as referring also to the European Union as a High Contracting Party.

Comment [c8]: Wording agreed at the 2nd meeting

d. Where any of the terms “national security”, “national law”, “national laws”, “national authority”, “life of the nation”, “country”, “administration of the State”, “territorial integrity” and “domestic” appear in Articles 5, 6, 8, 10, 11, 12, 13, 15 and 35 of the Convention, in Article 2 of Protocol No. 4 and in Article 1 of Protocol No. 7 to the Convention, they shall be understood as relating also, mutatis mutandis, to the European Union as a High Contracting Party.”

Comment [c9]: Wording agreed at the 2nd meeting except for the reference to Article 35, proposed by the Secretariat on the basis of an agreement reached at the 3rd meeting.

2. Paragraph 5 of Article 59 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.”

Comment [c10]: Wording agreed at the 2nd meeting

Article 3 – Reservations to the Convention and to its Protocols

1. The European Union shall be entitled to make reservations to the Convention and to its Protocols in accordance with Article 57 of the Convention and with the relevant provisions of each protocol.

2. Paragraph 1 of Article 57 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 provision of its legal order then in force is not in conformity with it. Reservations of a general character shall not be permitted under this article.”

Comment [c11]: Paras 1 and 2: Wording agreed at the 2nd meeting

3. The European Union shall make its reservations to the Convention and to Protocols No. ... when signing or when expressing its consent to be bound by the provisions of this Agreement in accordance with Article 11.

Comment [c12]: New wording proposed by the Secretariat.

B – Procedure before the European Court of Human Rights

Article 4 – Introduction of a co-respondent mechanism

“1. Taking into account the specificities of the legal order of the European Union and the interest of the proper administration of justice, 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 interventions and co-respondents”.

b. The following paragraphs shall be added at the end of Article 36 :

OPTION A:

“4. In applications notified to one or more member States of the European Union in which an alleged violation of the Convention appears to have a substantive link with European Union legal acts or measures, the European Union may, by decision of the Court, be joined to the proceedings as a co-respondent.

5. In applications notified to the European Union, any member State of the latter may, by decision of the Court, be joined to the proceedings as a co-respondent.

6. The decision to join a party to the proceedings as co-respondent shall be taken after having heard the views of all the parties involved, including the applicant.

7. In applications which have been notified to both the European Union and one or more of its member States in respect of at least one of the alleged violations, the Court may decide to consider either of the High Contracting Parties concerned as a co-respondent.

8. In cases involving co-respondents, the Court may hold the High Contracting Parties concerned jointly responsible for a violation of the Convention. “

Comment [c13]: New wording proposed by the Secretariat

OPTION B:

“4. In applications which have been notified to the European Union and one or more of its member State(s), or to either of them, and where a substantive link appears to exist between an alleged violation and legal acts or measures of the European Union, the Court may consider, and where necessary join to the proceedings either of the High Contracting Parties concerned as a co-respondent. The decision to join a party to the proceedings shall be taken after having heard the views of all the parties involved, including the applicant.

5. In such cases, the Court may hold the High Contracting Parties concerned jointly responsible for a violation of the Convention.”

Comment [c14]: New wording proposed by the Secretariat aiming at encompassing all relevant cases into a single provision

2. The European Union shall adopt internal rules setting out the respective obligations of the European Union and its member States in relation to the operation of the co-respondent mechanism. Such rules shall be in conformity with the functioning of the co-respondent mechanism as outlined in this Agreement.

Comment [c15]: New wording proposed by the Secretariat

3. Prior to a decision by the European Court of Human Rights on the merits of a case in which the European Union is a co-respondent, the Court of Justice of the European Union shall have the opportunity to rule, if it has not yet done so, on the [validity /conformity] of the act of the European Union [if the question of the validity/conformity is raised by the applicant] with [regard to] fundamental rights as set out in the notification of the application to the parties.

4. The Court of Justice of the European Union shall give such a ruling in accordance with internal rules of the European Union which shall, in particular, ensure that the ruling is delivered quickly so that the proceedings before the European Court of Human Rights are not unduly delayed.

5. It is understood that the procedure of the European Court of Human Rights takes into account the proceedings before the Court of Justice of the European Union as referred to in paragraphs 3. and 4. above.

Comment [c16]: Paragraphs 3 to 5: Wording discussed at the 5th meeting

6. Before amending the internal rules mentioned under paragraphs 2 and 4 above, the European Union shall inform the other High Contracting Parties to the Convention. The European Union shall communicate the rules adopted and any amendment thereof to the other High Contracting Parties to the Convention through the Secretary General of the Council of Europe."

Comment [c17]: New wording proposed by the Secretariat

7. The co-respondent mechanism, including the possible prior involvement of the Court of Justice of the European Union, shall apply to applications submitted from the date of entry into force of this Agreement.

Comment [c18]: New wording proposed by the Secretariat

Article 5 – Inter-Party cases

The heading of Article 33 of the Convention shall be amended to read: "Article 33 - Inter-Party cases"

Comment [c19]: Wording agreed at the 3rd meeting

Article 6 – Interpretation of Article 55 of the Convention

Article 55 of the Convention shall not be understood as preventing the operation of the rule set out in Article 344 of the Treaty on the Functioning of the European Union.

Comment [c20]: Wording agreed at the 2nd meeting

C – Institutional and Financial Issues

Article 7 - Election of judges

1. A new paragraph 2 shall be inserted into Article 22 of the Convention, which shall read as follows:

"2. 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 the preceding paragraph. [The European Parliament shall be entitled to the same number of representatives in the Assembly as the State(s) entitled to the highest number of representatives pursuant to 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 consultation with the European Parliament.

Article 8 - Participation of the European Union in the Committee of Ministers of the Council of Europe

Article 54 of the Convention shall be amended to read as follows:

1. New paragraphs 1 and 2 shall be inserted reading as follows:

“1. Whenever the Committee of Ministers acts as an organ of the Convention, and in particular under Article 26, paragraph 2, Article 39, paragraph 4, Article 46 and Article 47, it shall take its decisions with the participation, with the right to vote, of all High Contracting Parties to the Convention.

2. The Committee of Ministers, acting as an organ of the Convention, shall take decisions regarding the adoption or the implementation of amending and additional protocols to the Convention, as well as of any other instrument or text directly linked with the functioning of the Convention. Such decisions shall be taken with the participation, with the right to vote, of all High Contracting Parties to the Convention.”

2. The current text of Article 54 shall become paragraph 3.

Article 9 - Participation of the European Union in the expenditure related to the Convention

1. As a High Contracting Party to the Convention, the European Union shall contribute to the expenditure related to the functioning of the Convention, including with respect to the functioning of the European Court of Human Rights, the supervision of the execution of the judgments of the Court, the functioning of the Committee of Ministers, the Parliamentary Assembly and the Secretary General of the Council of Europe when performing their functions under the Convention, and the related administrative overhead costs. The contribution of the European Union shall be in addition to the contributions made by the other High Contracting Parties.

2. The financial contribution of the European Union shall be calculated according to the following method:

- a. The amount of the expenditure related to the functioning of the Convention for the year A, as referred in the previous paragraph, shall be considered as corresponding to X % of the Ordinary Budget of the Council of Europe (including employer's contributions to pensions) for the previous year (A-1).

Comment [c21]: Wording proposed by the Secretariat. An agreement of principle had been reached at the 4th meeting on the substance, but not on how to reflect such agreement of principle in the Convention and/or in the Accession Agreement. Representatives of the Parliamentary Assembly and the European Parliament are to discuss this matter in the framework of a joint informal body.

Comment [c22]: Proposal by the Secretariat, not discussed at previous meetings.

Comment [c23]: Wording proposed by the Secretariat, not discussed at previous meetings.

Comment [c24]: Wording proposed by the Secretariat on the basis of an agreement of principle reached at the 5th meeting

Comment [c25]: Proposal by the Secretariat, not discussed at previous meetings.

- b. The rate of contribution of the European Union to the amount of expenditure related to the functioning of the Convention shall be identical to the highest rate of contribution to the Ordinary Budget of the Council of Europe borne by any State in the relevant year.
 - c. The percentage indicated under letter a. above shall be revised, by agreement between the Council of Europe and the European Union, if the actual percentage for two consecutive years is below or above the percentage indicated under letter a. above by more than 2,5 percentage points. This revision mechanism shall apply to any new percentage resulting from subsequent agreements between the Council of Europe and the European Union.
3. Practical arrangements for this contribution shall be determined by the Council of Europe and the European Union before the entry into force of this Agreement.

Comment [c26]: Wording proposed by the Secretariat.

D – Miscellaneous and Final Provisions

Article 10 – Relations with other Agreements

1. As regards the European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights of 5 March 1996:
 - a. The European Union shall respect the provisions of Articles 1 to 6 of the European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights. The Contracting Parties to the European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights shall [respect its provisions also with regard to the European Union, as a Contracting Party to the Convention] [treat the European Union also as if it were a Contracting Party].
 - b. The European Union shall be consulted before amending the European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights.
 - c. The Secretary General of the Council of Europe shall notify the European Union of:
 - any signature;
 - the deposit of any instrument of ratification, acceptance or approval;
 - any date of entry into force of this Agreement in accordance with Articles 8 and 9 thereof;
 - any other act, notification or communication relating to this Agreement.
2. As regards the Sixth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe of 5 March 1996:
 - a. The European Union shall respect the provisions of Articles 1 to 6 of the Sixth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe. The Contracting Parties to this Protocol shall [respect its provisions also with regard to the European Union, as a Contracting Party to the Convention] [treat the European Union also as if it were a Contracting Party].

- b. The European Union shall be consulted before amending the Sixth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe.
- c. The Secretary General of the Council of Europe shall notify the European Union of:
 - any signature;
 - the deposit of any instrument of ratification, acceptance or approval;
 - any date of entry into force of this Protocol in accordance with Articles 8 and 9 thereof;
 - any other act, notification or communication relating to this Protocol.

3. As regards the General Agreement on Privileges and Immunities of the Council of Europe of 2 September 1949 and its Protocol of 6 November 1952:

The European Union shall respect the provisions of Articles 1 to 19 of the General Agreement on Privileges and Immunities of the Council of Europe and of Article 2 to 6 of its Additional Protocol in so far as they are relevant to the operation of the Convention. The Contracting Parties to the General Agreement and to its Additional Protocol shall [respect its provisions also with regard to the European Union, as a Contracting Party to the Convention] [treat the European Union also as if it were a Contracting Party].

Comment [c27]: Wording of Article 10 agreed – with the exception of the text in square brackets, at the 2nd meeting. Slight amendments made by the Secretariat.

Article 11 – 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 [x] months after the date on which all High Contracting Parties to the Convention and the European Union have expressed their consent to be bound by the Agreement in accordance with the provisions of the preceding paragraph.

Comment [c28]: Wording agreed at the 5th meeting

4. The European Union shall become a party to the Convention and to its Protocols No... at the date of entry into force of this Agreement.

Comment [c29]: New wording proposed by the Secretariat

Article 12 – Reservations

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

Comment [c30]: Wording agreed at the 2nd meeting

Article 13 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe and the European Union 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. any date of entry into force of this Agreement in accordance with Article 11;
- 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.”

Comment [c31]: Wording agreed at the 5th meeting

