



Strasbourg, 24 June 2011



COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

CDDH-UE(2011)15

**8th 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**

Meeting report

Strasbourg, Monday 20 June (9.30 am) – Friday 24 June 2011 (4.00 pm)

Agora, Room G04
Council of Europe

Item 1: Opening of the meeting and adoption of the agenda

1. The eighth 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 was held in Strasbourg on 20-24 June 2011 with Ms Tonje MEINICH (Norway) in the Chair. The list of participants can be found in Appendix I. The agenda as adopted and the references to the working documents appear in Appendix II.

Item 2: Exchange of views with representatives of civil society

2. In accordance with the decisions taken at the last meeting, the participants held a second round of consultation with representatives of civil society (the first round having taken place at the occasion of the fifth meeting in January 2011). The representatives of civil society which took part in that second round were : the Advice on Individual Rights in Europe (AIRE) Centre, speaking also on behalf of Amnesty International; the International Commission of Jurists; and the European Trade Union Confederation.

3. The representatives of civil society expressed their gratitude that some proposals they had made at the first round of consultation had been subsequently incorporated in the draft Accession Agreement and its explanatory report. They reiterated some of their previous proposals and made further comments and suggestions in the light of the changes made in the draft Accession Agreement since January.

4. In particular, the representatives of civil society recalled their preference for the accession by the European Union to all additional Protocols to the Convention. With regard to the co-respondent mechanism, they expressed their preference that it should apply to the minimum possible number of cases, insofar as the mechanism may be more burdensome for the applicants. In this respect, the current criteria for triggering the mechanism were seen as unnecessarily wide compared to earlier versions of the draft Accession Agreement. The importance of ensuring sufficient time for third party interventions when the co-respondent mechanism is applied - including with respect to the prior involvement of the Court of Justice of the European Union - in order to adequately support applicants was also reiterated. The representatives of civil society further questioned whether the legal basis for the “prior involvement” procedure had been sufficiently clearly identified and expressed concern that the current wording concerning the duration of the procedure (“sufficient time”) lacked precision. They welcomed the fact that applicants would receive legal aid for their participation in such procedure, and recommended that the Agreement itself, not merely its explanatory report, reflects this. As regards the apportionment of responsibility, the representatives of civil society suggested an internal EU mechanism, subject to the scrutiny of the Committee of Ministers, in order to guarantee the full implementation of judgments to the benefit of applicants. They stressed the importance of avoiding block voting when supervising the execution of judgments in order not to jeopardise the credibility of the Convention system. Finally, the representatives expressed the wish to be consulted also in the context of the negotiation of the European Union’s internal rules, particularly with regard to those issues mentioned in the explanatory report of the Accession Agreement.

5. At the end of the consultation, the participants thanked the representatives of civil society for their in-depth consideration of the working documents. They also underlined that the consultation would serve as a very valuable contribution in view of the finalisation of the draft Accession Agreement and its explanatory report.

Item 3: Elaboration of the accession instrument(s): examination of a draft agreement on the accession of the EU to the Convention and of its explanatory report

6. Participants examined the draft Accession Agreement as revised at the May meeting (see Appendix III to the meeting report of the 7th working meeting, CDDH-UE(2011)10, of 16 May 2011) and its draft revised explanatory report (as it appears in CDDH-UE(2011)11, of 15 June 2011). In doing so, they also took account of the previous consultation with civil society as well as written submissions from the European Trade Union Confederation and the Standing Committee of Experts on International Immigration, Refugee and Criminal Law (“Meijers Committee”), both of which are available from the CDDH-UE website.

7. The participants agreed a number of changes to the structure of the Accession Agreement, in particular the deletion of chapter headings and the renumbering of provisions¹. They also agreed on a number of drafting changes to the Preamble and to most Articles of the draft.

8. With regard to the provision on the co-respondent mechanism in Article 3 (previously Article [4]), the participants discussed again in particular the conditions for the application of the mechanism, as set out in paragraphs 2 and 3. Some participants considered that the proposed wording widened the scope of the mechanism in comparison to the previous version of it (contained in document CDDH-UE (2011)06, Appendix III, of 18 March 2011) and introduced a degree of legal uncertainty to the test to be applied. An addition to the provisions of both paragraphs, spelling out the specific circumstances in which the mechanism may apply, was agreed in that respect. Nevertheless, one of the participants reiterated a strong preference for a text defining a narrower scope, for example the text contained in document CDDH-UE (2011)06, Appendix III.

9. Concerning the prior involvement of the Court of Justice of the European Union (CJEU), as set out in Article 3 (previously Article [4]), paragraph 6, the participants agreed to add a sentence stating that this shall not affect the powers of the European Court of Human Rights. One participant maintained the position that the envisaged procedure would not be consistent with the principle of subsidiarity, that the procedure would constitute a privilege for one High Contracting Party and that the impact of the assessment made by the CJEU on the European Court of Human Rights should not be underestimated.

10. Participants then discussed the provision on the participation of the EU in the Committee of Ministers in Article 7 (previously Article [8]). They agreed on a number of minor drafting amendments regarding paragraph 1.

11. The participants agreed that for the purposes of legal certainty it was preferable to incorporate all the relevant provisions concerning the exercise of the right to vote in the Committee of Ministers under Articles 39 and 46 of the Convention in the Accession Agreement, rather than in a declaration. To that effect, three subparagraphs were added to Article 7 (previously Article [8]), paragraph 2, to deal respectively with the supervision of the fulfilment of obligations by the European Union alone or by the European Union and one or more of its member States jointly (subparagraph a), by a member State of the

¹ The present meeting report refers to the new numbering, but also adds the previous numbers in brackets in order to avoid any confusion.

European Union (subparagraph b), and by a State which is not a member of the European Union (subparagraph c).

12. With respect to subparagraph a), the participants agreed that the “Rules of the Committee of Ministers for the supervision of the execution of judgments and the terms of friendly settlements” (hereinafter: “the Rules”) should be adapted to ensure that the Committee of Ministers effectively exercises its functions. To that effect, it was proposed to insert a new provision (Rule 18) in the above-mentioned Rules, which should be submitted to the Committee of Ministers for adoption in connection with the adoption of the Accession Agreement. For taking decisions in the context of the supervision of the fulfilment of obligations by the European Union, such provision sets out a general rule and specific rules for the adoption of decisions under Rules 10 (Referral to the Court for interpretation of a judgment), 11 (Infringement proceedings), and 17 (Final resolutions).

13. With respect to sub-paragraphs b) and c), the participants agreed to set out the extent to which EU law affects the actions of the EU and its member States in the context of the supervision of the fulfilment of obligations by the EU member States and by High Contracting Parties which are not member States of the EU respectively.

14. As regards the supervision of the fulfilment of obligations by High Contracting Parties which are not member States of the EU, some participants noted that the Steering Committee for Human Rights (CDDH) should however also consider other possible alternatives, such as not granting the European Union the right to vote.

15. In the light of a presentation made by the Secretariat identifying some shortcomings in the text proposed in document CDDH-EU(2011)13 of 10 June, the participants agreed to amend Article 8 (previously Article [9]) on the financial contribution of the EU to the Convention system. It was also suggested to seek the views of the Budget Committee on it. One expert expressed the view that no detailed provisions should appear in the Accession Agreement on this issue.

16. The participants discussed whether Article 10, paragraph 4, concerning the entry into force of the Agreement, is needed and agreed to retain it.

17. Finally, the participants revised the text of the draft explanatory report to the Accession Agreement in the light of the amendments agreed to the text of the draft Accession Agreement.

Item 4: Other business

18. It was recalled that the participants were sitting in the working group during the meetings with the European Commission in their capacity as experts, and not as representatives of their respective member States of the Council of Europe. It was underlined that the draft instruments do not commit their respective governments, and that the conclusions of the group were without prejudice to the discussion in the CDDH.

19. At the conclusion of their work, the participants decided to transmit the draft Accession Agreement, the draft amendment to the Rules of the Committee of Ministers for the supervision of the execution of judgments and the terms of friendly settlements, and the draft explanatory report to the Accession Agreement (jointly appearing in document

CDDH-UE(2010)16) with a view to their examination and adoption at the extraordinary meeting of the CDDH to be held from 11 to 14 October 2011.

20. The participants considered that the mandate given to the CDDH-UE had been fulfilled and expressed their gratitude to the Secretariat for the support provided. The Group also voted its thanks to its Chair. The Chair thanked the group for the constructive attitude.

APPENDIX I

LIST OF PARTICIPANTS

ARMENIA / ARMENIE

M. Levon AMIRJANYAN, Chef du département des affaires juridiques, Ministère des affaires étrangères, Place de la République, Yerevan

CROATIA / CROATIE

Ms Vesna BATISTIĆ KOS, Head of the Department for International Organisations and Human Rights, Directorate for Multilateral Affairs, Ministry of Foreign Affairs and European Integration, Zagreb

FINLAND / FINLANDE

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

Mrs Marjatta HIEKKA, Legislative Counsellor, Unit for Human Rights Courts and Conventions, Legal Service, Ministry for Foreign Affairs

FRANCE

Mme Anne-Françoise TISSIER, Sous-directeur des droits de l'homme, Agent du Gouvernement, Ministère des affaires étrangères, Paris

M. Emmanuel JAUFFRET, Sous-direction des droits de l'homme, Direction des affaires juridiques, Ministère des affaires étrangères et européennes, Paris

GERMANY / ALLEMAGNE

Mr Hans-Jörg BEHRENS, Permanent Deputy Agent for Human Rights, Bundesministerium der Justiz, Berlin

LATVIA / LETTONIE

Ms Inga REINE, Government Agent, Representative of the Government of Latvia before International Human Rights Organizations, Ministry of Foreign Affairs, Riga

MONTENEGRO / MONTÉNÉGRO

Ms Ivana JELIC, Professor in Human Rights Law and Legal Expert to the Ministry, Law Faculty of University of Montenegro, Ministry for Human and Minority Rights of Montenegro, Pravni fakultet, Univerzitet Crne Gore, Podgorica

THE NETHERLANDS / PAYS-BAS

Mr Roeland BÖCKER, Government Agent, Ministry of Foreign Affairs, Dept. DJZ/IR, The Hague

Mr Ivo VAN DER STEEN, Head of the Centre of Expertise on European Law, Ministry of Foreign Affairs, The Hague

NORWAY / NORVEGE

Ms Tonje MEINICH, [*Présidente/Chair*], Head of Department of European and International Affairs, Norwegian Ministry of Justice, Oslo

ROMANIA / ROUMANIE

M. Razvan ROTUNDU, Conseiller, Mission Permanente de la Roumanie auprès de l'Office des Nations Unies à Genève et des organisations internationales en Suisse, Genève

RUSSIAN FEDERATION / FEDERATION DE RUSSIE

Mr Oleg MALGINOV, Director, Department for Humanitarian Cooperation and Human Rights, Ministry of Foreign Affairs, Moscow

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

SWITZERLAND / SUISSE

M. Frank SCHÜRMAN, Agent du Gouvernement, Chef de l'Unité du droit européen et de la protection internationale des droits de l'homme, Office fédéral de la justice, Berne

Mme Silvia GASTALDI, Unité du droit européen et de la protection internationale des droits de l'homme, Office fédéral de la justice, Berne

TURKEY / TURQUIE

Mme Deniz AKÇAY, Adjointe au Représentant permanent de la Turquie auprès du Conseil de l'Europe, Strasbourg

UNITED KINGDOM / ROYAUME-UNI

Mr Rob LINHAM, Joint Head of Litigation, Legislation and European Institutions; Human Rights Division, Ministry of Justice; London

Ms Kate JONES; Deputy Permanent Representative, United Kingdom Chancery; Strasbourg

EUROPEAN COMMISSION / COMMISSION EUROPÉENNE

Mr Hannes KRAEMER, Member of the Legal Service of the European Commission, Brussels

Mme Eglantine CUJO, Membre du Service juridique de la Commission européenne, Bruxelles

Ms Caroline TEN DAM, Legal Service of the European Commission, Brussels

Ms Julie VONDUNG, Legal Service of the European Commission, Brussels

EUROPEAN EXTERNAL ACTION SERVICE / SERVICE EUROPÉEN D'ACTION EXTÉRIEURE

Ms Luisella PAVAN-WOOLFE, EUDEL, Ambassador, European Union Delegation to the Council of Europe, Strasbourg

M. Jérôme LEGRAND, Desk Officer chargé des relations avec le Conseil de l'Europe / Desk Officer for relations with the Council of Europe, Relations Multilatérales / Multilateral Relations, Service Européen d'Action Extérieure / European External Action Service, Union Européenne/European Union, Bruxelles

Mr Luis TARIN MARTIN, Deputy to the Head of Delegation, EU Delegation to Council of Europe, Strasbourg

PRIVATE OFFICE OF THE SECRETARY GENERAL AND DEPUTY SECRETARY GENERAL / CABINET DU SECRÉTAIRE GÉNÉRAL ET DE LA SECRÉTAIRE GÉNÉRALE ADJOINTE

M. Alexandre GUESSEL, Conseiller / Adviser

COMMITTEE OF MINISTERS / COMITE DES MINISTRES

Ms Ulrika FLODIN-JANSON,

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

Mr Erik WENNERSTROEM, Principal Legal Adviser on International Law, Ministry for Foreign Affairs, International Law and Human Rights Department, Stockholm

Mme Elise CORNU, Legal Advisor, Direction du Conseil Juridique/Directorate of Legal Advice

THE REGISTRY OF THE EUROPEAN COURT OF HUMAN RIGHTS / LE GREFFE DE LA COUR EUROPÉENNE DES DROITS DE L'HOMME

Mr Michael O'BOYLE, Greffier adjoint de la Cour /Deputy Registrar of the Court

M. Johan CALLEWAERT, Greffier Adjoint de la Grande Chambre / Deputy Grand Chamber Registrar

SERVICE DE L'EXECUTION DES ARRETS DE LA COUR / DEPARTMENT FOR THE EXECUTION OF THE JUDGMENTS OF THE COURT

Mme Geneviève MAYER, Chef de Service/Head of Department,

Mr Fredrik SUNDBERG, Adjoint à la Chef de Service/Deputy to the Head of Department

CIVIL SOCIETY REPRESENTATIVES /REPRÉSENTANTS DE LA SOCIÉTÉ CIVILE

Amnesty International

(Excused/excusé)

The Aire Center (Advice on Individual rights in Europe)

Mr Adam WEISS, London

European Human Rights Advocacy Centre (EHRAC)

(Excused/excusé)

European Trade Union Confederation (ETUC) / Confédération européenne des syndicats (CES)

Mr Klaus LÖRCHER, Human rights adviser of ETUC, Brussels, Belgium

International Commission of Jurists (ICJ) / Commission internationale de Juristes (CIJ)

Róisín PILLAY, Senior Legal Adviser, Europe Programme International Commission of Jurists, Geneva, Switzerland

Massimo FRIGO, Legal Advisor, Europe programme, Geneva, Switzerland

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**Directorate General of Human Rights and Legal Affairs – DG-HL /
Direction générale des droits de l'Homme et des affaires juridiques – DG-HL
Council of Europe/Conseil de l'Europe, F-67075 STRASBOURG CEDEX**

M. Philippe BOILLAT, Director General / Directeur Général

Mr Jan KLEIJSEN, Director of Standard-Setting / Directeur des activités normatives

Mr Jörg POLAKIEWICZ, Head of Department / Chef de Service, Human Rights Development Department / Service du développement des droits de l'Homme

Mr Daniele CANGEMI, Head of Division / Chef de Division, Human Rights Law and Policy Division / Division du droit et de la politique des droits de l'Homme, Secretary of the CDDH-UE / Secrétaire du CDDH-UE

Mr Matthias KLOTH, Administrator, Human Rights Law and Policy Division / Division du droit et de la politique des droits de l'Homme

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

Mlle Diane BONIFAIX, visiteuse d'étude, Human Rights Intergovernmental Cooperation Division / Division de la coopération intergouvernementale en matière de droits de l'Homme.

Mlle Marie BARBIER, Stagiaire, Human Rights Intergovernmental Cooperation Division / Division de la coopération intergouvernementale en matière de droits de l'Homme.

Mme Frédérique BONIFAIX, Assistant / Assistante, Human Rights Law and Policy Division / Division du droit et de la politique des droits de l'Homme

Interpreters / Interprètes:

Corinne McGEORGE
Julia TANNER
Christopher TYZCKA
Didier JUNGLING

APPENDIX II**AGENDA**

1. **Opening of the meeting and adoption of the agenda**
2. **Exchange of views with representatives of civil society**

Working documents

3. **Elaboration of the accession instrument(s): finalisation of the draft revised agreement on the accession of the EU to the Convention and of its draft revised explanatory report**

Working documents

Draft revised agreement on the accession of the EU to the Convention accession as revised on the basis of the discussion of May meeting	CDDH-UE(2011)10 Appendix III and Appendix IV
Draft revised explanatory report to the draft revised agreement on the accession of the EU to the Convention	CDDH-UE(2011)11
Draft revised Article [9] – Participation of the European Union in the expenditure related to the Convention	CDDH-UE(2011)13
Memorandum by the Secretariat – Amendment of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements	CDDH-UE(2011)14

Reference documents

7 th working meeting report (10-13 May 2011)	CDDH-UE(2011)10
6 th working meeting report (15-18 March 2011)	CDDH-UE(2011)06
5 th working meeting report (25-28 January 2011)	CDDH-UE(2011)03
4 th working meeting report (6-8 December 2010)	CDDH-UE(2010)17
3 rd working meeting report (19-22 October 2010)	CDDH-UE(2010)14
2 nd working meeting report (20-22 September 2010)	CDDH-UE(2010)10
1 st working meeting report (6-7 July 2010)	CDDH-UE(2010)05
Relevant excerpts from 72th CDDH meeting report (Strasbourg, 29 March – 1st April 2011)	CDDH-UE(2011)07
Comments of the Italian Delegation on the draft revised agreement on the accession of the EU to the Convention accession	CDDH-UE(2011)09

Observations by the Italian Delegation on the draft agreement on the accession of the EU to the European Convention on Human Rights	CDDH(2011)06
Draft elements for an accession agreement on General Issues and on Technical adaptations to provisions of the ECHR and other instruments with respect to the EU as a contracting party (Chapters A and B of the draft list of issues)	CDDH-UE(2010)11
Memorandum by the Secretariat on legal issues raised during the 2nd working meeting	CDDH-UE(2010)13 Restricted
Draft elements prepared by the Secretariat on the Procedure before the European Court of Human Rights (Chapter C of the draft list of issues)	CDDH-UE(2010)12
Draft revised elements prepared by the Secretariat on the Introduction of a co-respondent mechanism	CDDH-UE(2010)16
Draft additional elements prepared by the Secretariat on Procedural means guaranteeing the prior involvement of the Court of Justice of the EU in cases in which it has not been able to pronounce on compatibility of an EU act with fundamental rights (Item C.5 of the provisional list of issues)	CDDH-UE(2011)02
Draft elements prepared by the Secretariat on Institutional and Financial issues (Chapter D of the draft list of issues)	CDDH-UE(2010)15
Draft elements prepared by the Secretariat on Final Clauses (Chapter E of the draft list of issues)	CDDH-UE(2011)01

4. Any other business
