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**FIFTH 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**

Revised chairperson's proposal on outstanding issues

Strasbourg, Wednesday 3 April (10.00 am) – Friday 5 April 2013 (4.30 pm)

Agora Building, Room G02
Council of Europe

Revised chairperson's proposal on outstanding issues

Introduction

1. On the basis of discussions during the 4th negotiation meeting and subsequent bilateral informal talks, I would like to present a revised compromise proposal. The package proposed should be considered in its entirety and requires all negotiating parties to show flexibility and to depart from their respective original positions. The draft revised accession instruments, appear in the Appendix, with changes visible in bold.

Article 1 of the draft Accession Agreement – scope of the Agreement and attribution clauses

2. Following the conclusions of the 4th negotiation meeting, where a compromise proposal presented by the Secretariat had been considered as a valid basis for further discussion, and on the basis of this proposal, I would like to propose the following:

- To insert a general attribution clause in Article 1 of the accession agreement. This clause does not refer explicitly to the EU Common Foreign and Security Policy (CFSP), but specifies that the expression “law of the European Union” also includes decisions taken under the Treaty on the European Union and under the Treaty on the Functioning of the European Union.
- For reasons of consistency, this specification should be added to Article 3, paragraph 2, where the expression “law of the European Union” is also used.
- In addition, a provision shall be added to the explanatory report explicitly mentioning also the CFSP, along the lines of the text presented at the 4th meeting, with some amendments aiming at simplifying it.

Article 3 of the draft Accession Agreement - Co-respondent mechanism

a) Article 3, paragraph 2 – Scope

3. At the previous meetings, delegations discussed the situation where an application is directed against a State which is not a member of the EU and the application puts into question the compatibility with the Convention of a provision of EU law applicable to that State through an international agreement with the EU obliging that State to apply provisions of EU law.

4. In order to take into account the concerns expressed by the negotiating parties on the respective solutions, I would like to reiterate my previous proposal, according to which Article 3 of the Accession Agreement should not be amended. Instead, a Memorandum of Understanding should be concluded between the EU and the relevant States stating that:

- The EU will intervene in a case brought against such state in which an alleged violation calls into question a provision of EU law which, pursuant to an

international agreement concluded with the EU, such state is under an obligation to apply.

- Where the Court, in a judgment against that State, has established a violation calling into question a provision of EU law which, pursuant to an international agreement concluded with the EU, such State is under an obligation to apply, the EU will examine with this State which measures are required by the EU to abide by such judgment. To this end, use will be made of the procedures provided for under the relevant international agreement.

5. Moreover, the EU should make a declaration to ensure that States being able to participate in CJEU proceedings in accordance with Article 23, paragraphs 3 and 4 of the Statute of the CJEU¹ be entitled to participate in the proceedings before the CJEU when cases are submitted to the CJEU in accordance with Article 3, paragraph 6 of the Accession Agreement, where one of the fields of application of the agreements mentioned in these provisions is concerned.

6. The Memorandum of Understanding and the declaration should be agreed together with the Accession Agreement and a reference to their conclusion should be inserted into the explanatory report (see Appendix, points 3 and 4).

b) Article 3, paragraph 5 – Non-binding character of the Co-respondent Mechanism

7. At the fourth negotiation meeting, different views were expressed on the need to ensure the effectiveness of the co-respondent mechanism, and in particular on how to ensure that the EU would accept an invitation by the Court to join the proceedings as a co-respondent when the criteria are met. While it may not be appropriate to modify the text proposed so far for Article 3, paragraph 5, it is evident that the internal rules that the EU should adopt would be of crucial importance for the effectiveness of the whole mechanism.

8. I would propose therefore that the EU undertakes to make a declaration at the moment of the signature of the accession agreement, ensuring that the EU will join the proceedings as co-respondent when the conditions set out in Article 3, paragraph 2 are met (see Appendix, point 4).

¹ Article 23, paragraphs 3 and 4 of the Statute of the CJEU read:

“3. In the cases governed by Article 267 of the Treaty on the Functioning of the European Union, the decision of the national court or tribunal shall, moreover, be notified by the Registrar of the Court to the States, other than the Member States, which are parties to the Agreement on the European Economic Area and also to the EFTA Surveillance Authority referred to in that Agreement which may, within two months of notification, where one of the fields of application of that Agreement is concerned, submit statements of case or written observations to the Court.

4. Where an agreement relating to a specific subject matter, concluded by the Council and one or more non-member States, provides that those States are to be entitled to submit statements of case or written observations where a court or tribunal of a Member State refers to the Court of Justice for a preliminary ruling a question falling within the scope of the agreement, the decision of the national court or tribunal containing that question shall also be notified to the non-member States concerned. Within two months from such notification, those States may lodge at the Court statements of case or written observations.”

c) Article 3, paragraph 6 – Prior Involvement of the CJEU

9. As regards the prior involvement procedure, in order to meet some concerns expressed at the 4th negotiation meeting, I would like to propose to move to the explanatory report the part of paragraph 6 which defines the scope of the CJEU assessment, and which had been considered as not strictly pertinent for the Accession agreement.

d) Article 3, paragraph 7 – Responsibility of respondent and co-respondent

10. Having regard to the concerns expressed on the margin of appreciation that should be left to the Court, and on the relation between the Court's judgment and the requests of the parties, I would propose to amend the second part of Article 3, paragraph 7, to the effect that the respondent and the co-respondent shall be jointly responsible unless the Court, in the light of the reasons given by the respondent and the co-respondent, and having sought the views of the applicant, decides that only one of them be held responsible.

Participation of the EU in the Committee of Ministers when the latter takes decisions other than under Article 26, paragraph 2, Article 39, paragraph 4, Article 46, paragraphs 2 to 5, or Article 47 of the Convention (Article 7, paragraph 1, letters b and c of the draft Accession Agreement)

11. In the light of Secretariat document 47+1(2013)005, I would like to propose a compromise solution combining aspects from various options, giving the EU the right to vote in the CM when the latter adopts protocols, and setting up a consultation procedure within the Committee of Ministers for the adoption of all other instruments. The proposed solution recognises the role of the EU as a High Contracting Party while preserving the institutional role of the Committee of Ministers under the Statute of the Council of Europe.

12. I would therefore propose:

- To add a new provision to the Convention stating that the CM shall adopt protocols.
- To amend Article 7, paragraph 1, letter a) by adding a reference to this new provision in the Convention, this giving EU the right to vote in the CM on the adoption of protocols and, as a consequence, to delete Article 7, paragraph 1, letter b).
- To amend article 7, paragraph 1, letter c) so to indicate that before adopting the instruments or texts mentioned in that paragraph the CM shall consult the EU and take into account its position.

Participation of the EU in the Committee of Ministers when the latter takes decisions under Article 26, paragraph 2, Article 39, paragraph 4, Article 46, paragraphs 2 to 5, or Article 47 of the Convention (Article 7, paragraph 2 of the draft Accession Agreement)

a) Article 7, paragraph 2, letter a – Participation in the CM on execution of cases where the EU is respondent or co-respondent

13. In the light of Secretariat document 47+1(2013)005, I would like to propose a compromise solution which aims at striking an appropriate balance between the different interests, preserve the efficiency of the supervision process, and does not delay proceedings in the CM, without needing the creation of a panel (see Appendix, point 2).

- As regards final resolutions, I would propose that a double majority of 4/5 of CM members casting a vote and 2/3 of CM members entitled to sit would be required for their adoption. This means that at least 32 votes would be required, but that according to the number of members actually casting a vote the number of votes required for the adoption could vary between 32 and 39.
- As regards decisions to refer a case to the Court for interpretation (Article 46.3 ECHR) or second referral (Article 46.4 ECHR), I would propose to require a “hyperminority” of one quarter of the members entitled to sit in the CM, which means that 12 votes would be required.
- As regards procedural decisions and decisions requesting information, I would propose to require a lower “hyperminority” of one fifth of the members entitled to sit in the CM, i.e. 10 votes. The explanatory report shall in addition specify what is exactly meant by “procedural decisions” (including for instance decisions on whether a case should undergo “enhanced” or normal supervision) and by “decisions requesting information”.
- Finally, I would propose not to set specific rules for all other decisions, including notably interim resolutions and other decisions expressing a position on compliance with Article 46 (1) ECHR. This means that the ordinary Committee of Ministers’ voting rules (2/3 majority casting a vote plus simple majority of members) would apply to such decisions.

14. While this compromise solution may give the possibility to the EU, by using its block of votes, to impede the adoption of interim resolutions and other decisions expressing a position on compliance by the EU with Article 46 (1) ECHR, it gives the states which are not members of the EU the possibility of adopting decisions requesting a second referral for infringement to the Court more easily. I would also like to underline the political difficulties that the EU would meet in using the “block votes” to impede unfavourable decisions.

15. The voting rules indicated above should be added to the existing Committee of Ministers’ rules for the supervision of the execution of judgments and of the terms of friendly settlements, and consensus of all High Contracting Parties shall be required for amending them.

b) Article 7, paragraph 2, letters b and c – Participation in the CM on execution of cases of other High Contracting Parties

16. The respective difficulties in accepting the various alternatives proposed led to a proposal which modifies the perspective under which the voting rights of the EU and of its member States in the execution of the cases concerning other High Contracting Parties have been discussed at length in previous negotiation meetings. I would like to propose a different drafting which does not distinguish any longer between cases concerning states which are members of the EU and states which are not, and emphasises the freedom of EU member States to act individually in all circumstances.

17. More specifically, I would propose to merge letters b) and c) into a single paragraph indicating that where the Committee of Ministers otherwise supervises the fulfilment of obligations by a High Contracting Party other than the EU, the EU member states are free to express their own position and exercise their right to vote. A slight amendment of paragraph 2, letter a) may also be necessary for reasons of consistency.

APPENDIX

1) **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 any person, non-governmental organisation or group of individuals** 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 Agreement on the Accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms constitutes an integral part of this Convention.”**

3. 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.

4. **For the purposes of the Convention, of the Protocols thereto and of this Agreement, an act, measure or omission of organs of a member State of the European Union or of persons acting on its behalf shall be [attributable only] [attributed] to that State, even if such act, measure or omission occurs when the State implements the law of the European Union, including decisions taken under the Treaty on the European Union (hereinafter: the “TEU”) and under the Treaty on the Functioning of the European Union (hereinafter: the “TFEU”). This shall not preclude the European Union from being responsible as a co-respondent for a violation resulting from such an act, measure or omission, in accordance with Article 36, paragraph 4, of the Convention and Article 3, paragraphs 2 and 4 to 7 of this Agreement.²**

5. 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. 6³, 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;

² The explanatory report shall include the following paragraphs:

“Under EU law the acts of Member States or of persons acting on their behalf implementing EU law and Council decisions under the TEU are attributed to Member States. Conversely, acts, measures and omissions of the EU institutions, bodies, offices or agencies, or of persons acting on their behalf are attributed to the EU in whichever context they occur, including with regard to matters related to the EU common foreign and security policy. For the sake of consistency, parallel rules should apply for the purposes of the Convention system.

More specifically, as regards the attributability of a certain action to either a Contracting Party or an international organisation under the umbrella of which that action was taken, in none of the cases in which the Court has decided on the attribution of extra-territorial acts or measures by Contracting Parties operating in the framework of an international organisation (see *inter alia* Behrami and Saramati, para. 122; Al-Jedda, para. 76) there was a specific rule on attribution, for the purposes of the Convention, of such acts or measures to either the international organisation concerned or its members.

The attribution of such an act to a member State of the European Union shall not preclude the possibility that the European Union becomes a co-respondent in the same case if the conditions set out in Article 3 paragraph 2 are met, that it takes part in the procedure in accordance with paragraphs 4 to 6 of the same Article and with Article 36, paragraph 4, of the Convention and that it may be held jointly responsible for a violation resulting from such an act, measure or omission, in accordance with Article 3, paragraph 7.”

³ The explanatory report shall indicate that the absence of a reference to Article 2 of Protocol No. 6 in this paragraph (concerning death penalty in time of war) is due to the fact that the EU would not be able, and in any case does not intend, to avail itself of the option set out in this provision.

- ‘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 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 with regard to situations relating to the Member States of the European Union, as the case may be, individually or collectively.

6. 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 TEU and 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.

7. 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 **each of** the territories of the member States of the European Union to which the TEU and the TFEU apply.

8. 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, **including decisions taken under the TEU and under the TFEU**, notably where that violation could have been avoided only by disregarding an obligation under European Union law.⁴

⁴ Paragraphs 39 and 40 of the explanatory report shall be amended as follows:

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. **The issue of the EU requesting leave to intervene will be dealt with in separate Memoranda of Understanding between the EU and the concerned States.**

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 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 Party⁵. 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.⁶ 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/is a co-respondent to the proceedings is established, the respondent and the co-respondent shall be jointly responsible for that violation, **unless the Court, in the light of the reasons given by the respondent and the co-respondent, and having sought the views of the applicant, decides 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:

⁵ **The EU will make a declaration at the moment of the signature of the Accession Agreement indicating that it will ensure to join the proceedings as co-respondent when the conditions set out in Article 3, paragraph 2 are met.**

⁶ **The following text shall appear in the corresponding passages of the explanatory report: “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.”**

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

“**Article 54 – Powers of the Committee of Ministers**

1. **The Committee of Ministers shall adopt Protocols to this Convention⁷.**

2. **Nothing in this Convention shall prejudice the powers conferred on the Committee of Ministers by the Statute of the Council of Europe⁸”**

2. The European Union shall be entitled to participate in the Committee of Ministers, with the right to vote, when the latter takes decisions under Article 26, paragraph 2, Article 39, paragraph 4, Article 46, paragraphs 2 to 5, Article 47 **and Article 54, paragraph 1** of the Convention;

⁷ New text.

⁸ Text unchanged of current Article 54.

3. **Before** 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 paragraph 2**,
- or
- relating to the functions exercised by the Parliamentary Assembly of the Council of Europe under Article 22 of the Convention.

the European Union shall be consulted within the Committee of Ministers. The latter shall take due account of the position expressed by the European Union.

4. 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. **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, 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.
- b. **Where the Committee of Ministers otherwise supervises the fulfilment of obligations by a High Contracting Party other than the European Union, the member states of the European Union are free under the European Union treaties to express their own position and 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;

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.

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.

2) 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 in cases to which the European Union is a party

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

1. Decisions by the Committee of Ministers under Rule 17 (Final Resolution) of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements shall be considered as adopted if a majority of four fifths of the representatives casting a vote and a majority of two thirds of the representatives entitled to sit on the Committee of Ministers are in favour.

2. Decisions by the Committee of Ministers under Rule 10 (Referral to the Court for interpretation of a judgment) and under Rule 11 (Infringement proceedings) of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements shall be considered as adopted if one fourth of the representatives entitled to sit on the Committee of Ministers is in favour.

3. Decisions on procedural issues or merely requesting information shall be considered as adopted if one fifth of the representatives entitled to sit on the Committee of Ministers is in favour.

4. Amendments to the provisions of this Rule shall require consensus by all High Contracting Parties to the Convention.”

**3) Draft model of Memorandum of Understanding
between the European Union and X⁹**

“1. Upon a request by X, the European Union will seek leave to intervene pursuant to Article 36, paragraph 2 of the Convention in a case brought against X in which an alleged violation calls into question a provision of European Union law, including decisions taken under the Treaty on the European Union and under the Treaty on the Functioning of the European Union, which, pursuant to an international agreement concluded with the European Union, X is under an obligation to apply.

2. Where the Court in a judgment against X has established a violation calling into question a provision of the nature referred to in point 1, the European Union will examine with X which measures are required by the European Union to abide by such judgment. To this end, use will be made of the procedures provided for under the relevant international agreement.”

⁹ Iceland, Liechtenstein, Monaco, Norway, San Marino, Switzerland and Turkey, individually

4) Draft declaration by the European Union, to be made at the time of signature of the Accession Agreement

“Upon its accession to the Convention, the European Union will ensure that:

a) it will request to become a co-respondent to the proceedings before the European Court of Human Rights or accept an invitation by that Court to that effect, where the conditions set out in Article 3 (2) of the Accession Agreement are met;

b) the High Contracting Parties to the Convention other than the Member States of the European Union, which in a procedure under Article 267 of the Treaty on the Functioning of the European Union are entitled to submit statements of case or written observations to the Court of Justice of the European Union be entitled, under the same conditions, to do so also in a procedure in which the Court of Justice of the European Union assesses the compatibility with the Convention of a provision of European Union law, in accordance with Article 3 (6) of the Accession Agreement.”