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**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**

**Draft revised Explanatory report to the draft Agreement on the Accession
of the European Union to the European Convention on Human Rights**

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

Agora-Building, Room G04
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Draft Explanatory Report to the Agreement on the Accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms

Introduction

1. The accession of the European Union (hereinafter referred to as “the EU”) 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”) constitutes a major step in the development of the protection of fundamental rights in Europe.

2. Discussed and evoked since the late 1970s, the accession became a legal obligation enshrined in the Treaty on European Union with the entry into force of the Lisbon Treaty on 1 December 2009. Pursuant to Article 6, paragraph 2 of the Treaty on European Union, “[t]he Union shall accede to the [Convention]. Such accession shall not affect the Union’s competences as defined in the Treaties”. Furthermore Protocol No. 8 to the Lisbon Treaty sets out a number of requirements for the conclusion of the accession agreement. Protocol No. 14 to the Convention, adopted in 2004 and entered into force on 1 June 2010, amends Article 59 of the Convention to the effect that the EU may accede to it.

I. Need for an accession agreement

3. The above provisions, although necessary, are not sufficient to allow for an immediate accession of the EU. The Convention, as amended by Protocols Nos. 11 and 14, was drafted having in mind as possible Contracting Parties only State entities which are also members of the Council of Europe. The accession of the EU, as a non-state entity with a specific legal system, requires certain adaptations to the Convention system. This includes: amendments to provisions in the Convention to ensure its implementation notably with the participation of the EU; supplementary interpretative provisions; adaptations of the procedure before the European Court of Human Rights (hereinafter referred to as: “the ECtHR”) taking into account the characteristics of the legal order of the EU and, in particular, the specific relationship between an EU member State’s legal order and that of the EU itself; and other technical and administrative issues not directly pertaining to the text of the Convention, but for which a legal basis is required.

4. It is therefore necessary to establish, by common agreement between the current High Contracting Parties to the Convention and the EU, the conditions of accession and the adjustments to be made to the Convention system.

5. As a result of the accession, each individual will have the right of submitting the acts and omissions of the EU institutions, like those of the organs of any other High Contracting Party, to the external review exercised by the ECtHR in the light of the rights guaranteed under the Convention. This is all the more important since the EU member States have transferred substantial powers to the EU. At the same time, the competence of the ECtHR to assess the conformity of EU law with the provisions of the Convention will not prejudice the principle of the autonomous interpretation of the EU law.

6. While the EU is founded on the respect for fundamental rights the observance of which is ensured by the Court of Justice of the European Union (hereinafter referred to as: “the CJEU”), as well as by the courts of the EU member States, accession of the EU to the Convention will enhance the coherence of the judicial protection of fundamental rights in Europe.

7. The general principles underlying the Accession Agreement aim at preserving the equal rights of all individuals under the Convention, the rights of the applicant in the procedure, and the equality of all High Contracting Parties. The current control mechanism of the Convention should be preserved as much as possible also with regard to the EU, by limiting amendments and adaptations to what is strictly necessary. The EU should, as a matter of principle, accede to the Convention on an “equal footing” with the other Contracting Parties, *i.e.* with the same rights and obligations. It was however acknowledged that due to the nature of the EU as non-state entity, some adaptations would be necessary. It is also understood that the existing obligations of the States Parties to the Convention should not be affected by the accession, and that the distribution of competencies between the EU and its member States as well as between the EU institutions shall be respected.

II. Principal stages in the preparation of the Accession Agreement

8. Before the elaboration of this Agreement, the accession of the EU to the Convention had been debated on several occasions.

9. The Steering Committee for Human Rights (CDDH) adopted at its 53rd meeting in June 2002 a study¹ of the legal and technical issues that would have to be addressed by the Council of Europe in the event of possible accession by the EU to the Convention and transmitted it to the EU Convention convened following the Laeken Declaration of the European Council (December 2001) in order to consider the key issues arising for the EU's future development with a view to assisting future political decision-making about such accession.

10. When drafting Protocol No.14 in 2004, the High Contracting Parties decided to add a new paragraph to Article 59 of the Convention providing for the possible accession of the EU. Already at that time it was noted that further modifications to the Convention were necessary to make such accession possible from a legal and technical point of view². Such modifications could be brought about either through an amending protocol to the Convention or by means of an accession treaty to be concluded between the EU, on the one hand, and the States Parties to the Convention, on the other.

11. The entry into force of the Lisbon Treaty in December 2009 and of Protocol No. 14 to the Convention in June 2010 created the necessary legal pre-conditions for the accession.

12. The Committee of Ministers' deputies adopted at their 1085th meeting (26 May 2010) ad hoc terms of reference for the CDDH to elaborate, in co-operation with representatives of the EU, legal instrument(s) setting out the modalities of accession of the European Union to the European Convention on Human Rights, including its participation in the Convention system.³ On the EU side, the Council adopted on 4 June 2010 a Decision authorising the European Commission to negotiate an accession agreement of the EU to the Convention.

13. The CDDH entrusted with this task an informal group of 14 members (7 coming from member States of the EU and 7 coming from non-member States of the EU), chosen on the basis of their expertise. This informal working group (CDDH-UE) held in total ... working meetings with the Commission, reporting regularly to the CDDH on the progress and on the outstanding issues. In the context of these meetings, the informal group also held two

¹ Document CDDH(2002)010 Addendum 2

² See the Explanatory Report to Protocol No. 14, paragraph 101.

³ CM/Del/Dec(2010)1085E / 28 May 2010

exchanges of views with representatives of the civil society, which regularly submitted comments on the working documents.

14. In the context of the regular meetings which take place between the two courts, delegations from the ECtHR and the CJEU discussed on 17 January 2011 the accession of the EU to the Convention, and in particular the question of the possible prior involvement of the CJEU in cases in which the EU is a co-respondent. The Joint Declaration by the Presidents of the two European courts resuming the results of the discussion provided, in this respect, valuable reference and guidance for the negotiation.

15. The CDDH approved the draft Accession Agreement and sent it to the Committee of Ministers on The Parliamentary Assembly adopted an opinion on the draft accession agreement (Opinion No. ... of ...). The Accession Agreement was adopted by the Committee of Ministers on ... and opened for signature on ...

III. Comments on relevant provisions of the Agreement

A – General provisions and scope of the accession

Article 1 – Scope of the accession

16. With regard to the operative provision providing for the accession of the EU to the Convention, it was decided that the entry into force of the Accession Agreement, will have the simultaneous effect of amending the Convention and including the EU among its Parties, without the need for a further deposit of an instrument of accession to the Convention by the EU. The same applies concerning the EU's accession to Protocols Nos. 1 and 6. Subsequent accession by the EU to other protocols would require the deposit of separate accession instruments. The amendments to the Convention concern paragraphs 2 and 5 of Article 59 of the Convention.

17. Paragraph 2 of Article 59, as amended, defines the scope of the accession of the EU to the Convention. It is subdivided into five subparagraphs.

Possible accession to other protocols

18. Under letter a), the original wording of Article 59 paragraph 2 is amended by adding an explicit reference to the possibility for the EU to accede to the protocols to the Convention. In order to ensure that this provision may serve as a legal basis for the accession to those protocols, Article 59 paragraph 2, letter a) states that the provisions of the protocols concerning the signature and ratification, the entry into force and the depositary functions⁴ shall apply, *mutatis mutandis*, in the event of accession of the EU to such protocols.

Reference in the Convention to further provisions in the Accession Agreement

19. Although it was agreed that the fundamental provisions governing the EU accession should appear in the Convention, some provisions appear only in the Accession Agreement. Article 59 paragraph 2, letter b) provides that the status of the EU as a High Contracting Party to the Convention shall be further defined in the Accession Agreement. Such explicit

⁴ Namely: Article 6 of the Protocol, Article 7 of Protocol No. 4, Article 7 to 9 of Protocol No. 6, Article 8 to 10 of Protocol No. 7, Articles 4 to 6 of Protocol No. 12 and Article 6 to 8 of Protocol No. 13

reference to the Accession Agreement in the Convention makes it possible to limit the amount of amendments to the Convention. For instance, the question of privileges and immunities and of the participation of the European Union in the Parliamentary Assembly and in the Committee of Ministers of the Council of Europe are thus dealt with in the Accession Agreement. Insofar as the Accession Agreement will deploy legal effects even after the accession has taken effect, its provisions are subject to interpretation by the ECtHR. The implementation of the Accession Agreement may require that the EU adopt internal legal rules regulating various aspects arising from the accession of the EU to the Convention, including the functioning of the co-respondent mechanism. Similarly, the Rules of Court may also need to be adapted.

Effects of the accession

20. The provision under letter c) reflects the conditions set out in Article 2 of Protocol No. 8 relating to Article 6, paragraph 2 of the Treaty on European Union, pursuant to which the accession of the EU shall not affect its competences or the powers of its institutions. That provision also clarifies that accession to the Convention imposes on the EU obligations with regard to acts, measures or omissions of its institutions, bodies, offices or agencies, or of persons acting on their behalf. Likewise, since the ECtHR under the Convention has jurisdiction to settle disputes between individuals and the High Contracting Parties (as well as between the High Contracting Parties) and, hence, to interpret the provisions of the Convention, the decisions of the ECtHR in cases to which the EU is a party will be binding on the EU's institutions, including the CJEU⁵. Those decisions will also be binding in the event that the CJEU is called upon to rule, by way of preliminary ruling or in a direct action, on the interpretation of the Convention, in so far as the latter is an integral part of the EU's internal legal order.

Technical amendments to the Convention

21. The inclusion in Article 59 of the Convention of an interpretation clause with regard to terms such as "State", "State Party" and to other terms referring to State entities (letters d) and e)) avoids amending the substantive provisions, thereby maintaining the readability of the Convention and its protocols. It is underlined that all protocols contain a provision to the effect that as between the High Contracting Parties their substantive provisions shall be regarded as additional articles to the Convention, and that all the provisions of the latter shall apply accordingly. These provisions clarify the accessory nature of the protocols in relation to the Convention. It follows that the general interpretation clause to be embodied in the Convention would also apply to the additional protocols without requiring their amendment in that respect.

22. Under letter d) appear the terms explicitly referring to "States" as High Contracting Parties to the Convention (i.e. "State", "State Party", "States" or "States Parties"⁶), which, after the accession, shall be understood as referring also to the EU as a High Contracting Party.

23. Under letter e) are regrouped all the terms referring to State entities in the Convention or in the protocols which do not refer to "States" as High Contracting Parties to the

⁵ See also, in this respect, opinion 1/91 of the European Court of Justice of 14 December 1991 and opinion 1/92 of the European Court of Justice of 10 April 1992.

⁶ Appearing in: Article 10, paragraph 1 and Article 17 of the Convention as well as Articles 1 and 2 of Protocol No. 1; Article 2 of Protocol No. 4; Article 2 and 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.

Convention but to the concept of “State”, or to certain elements thereof (“national security”⁷, “national law”⁸, “national laws”⁹, “national authority”¹⁰, “life of the nation”¹¹, “country”¹², “administration of the State”¹³, “territorial integrity”¹⁴, “domestic”¹⁵, “territory of a State”¹⁶), which, after the accession, shall be understood as relating also, *mutatis mutandis*, to the EU. As regards the expression “life of the nation”, in particular, it was noted that with respect to the EU it may be interpreted as allowing the EU to take measures derogating from its obligations under the Convention in order to support measures taken by one of its member States in time of emergency in accordance with Article 15 of the Convention. With particular regard to the term “domestic”, this term should be understood as “internal” to the legal order of a High Contracting Party. This is confirmed by the French wording of Article 35 of the Convention.

24. As regards the expression “internal law” appearing in Articles 41 and 52 of the Convention, an interpretative clause was not considered necessary since this expression would equally be applicable to the EU as a High Contracting Party. Other expressions in the Convention similar or identical to the expressions addressed in Article 59, paragraph 2, letters d) and e) of the Convention have not been included in that interpretative clause. In particular, for reasons pertaining to the special legal order of the EU, EU citizenship cannot be assimilated to the concept of nationality within the meaning of Articles 14 and 36 of the Convention, of Article 3 of Protocol No. 4 and of Article 1 of Protocol No. 12. Likewise, the terms “countries” appearing in Article 4, paragraph 3, letter (b) of the Convention, “civilised nations” appearing in Article 7 of the Convention, as well as “State”, “territorial” and “territory/territories” appearing in Articles 56 and 58 of the Convention and in the corresponding provisions of the Protocols¹⁷ did not require any adaptation as a consequence of the EU accession. A complete table of all state-related expressions and of their interpretation in a post-accession scenario appears in Appendix to this explanatory report.

25. A technical amendment to Article 59, paragraph 5 of the Convention takes into account the accession of the EU for notification purposes.

Article [3] – Reservations to the Convention and to its protocols

26. The EU should accede to the Convention, as far as possible, on an “equal footing” with the other High Contracting Parties. Therefore, the conditions applicable to the other High Contracting Parties with regard to reservations, declarations and derogations under the Convention should also apply to the EU. For reasons of legal certainty, it was however agreed to include in the Accession Agreement a provision (Article [3], paragraph 1) allowing the EU to make reservations under Article 57 of the Convention under the same conditions as any other High Contracting Party. This would also include the right to make reservations

⁷ Appearing in: Article 6 paragraph 1; Article 8, paragraph 2; Article 10, paragraph 2 and Article 11, paragraph 2 of the Convention as well as Article 2, paragraph 3 of Protocol No. 4 and in Article 1, paragraph 2 of Protocol No. 7 to the Convention.

⁸ Appearing in Article 7 of the Convention.

⁹ Appearing in Article 12 of the Convention.

¹⁰ Appearing in Article 13 of the Convention.

¹¹ Appearing in Article 15 of the Convention.

¹² Appearing in: Article 5, paragraph 1, letter f and Article 8, paragraph 2 of the Convention and Article 2, paragraph 2 of Protocol No. 4 to the Convention.

¹³ Appearing in Article 11, paragraph 2 of the Convention.

¹⁴ Appearing in Article 10, paragraph 2 of the Convention.

¹⁵ Appearing in Article 35 of the Convention.

¹⁶ Appearing in Article 1, paragraph 1, of Protocol No. 7 to the Convention.

¹⁷ Namely: Article 4 of the Protocol, Article 5 of Protocol No. 4, Article 5 of Protocol No. 6, Article 6 of Protocol No. 7, Article 2 of Protocol No. 12 and Article 4 of Protocol No. 13.

when acceding to existing or future additional protocols. Any reservation should be consistent with relevant international law rules.

27. Since the current wording of Article 57 of the Convention only refers to "States", technical adaptations to the text of paragraph 1 of that provision are necessary in order to make reference to the possibility for the EU to make reservations within the meaning of that provision (see Article [3], paragraph 2 of the Accession Agreement). The expression "law of the European Union" is meant to cover 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 (the EU "primary law") as well as legal provisions contained in acts of the EU institutions (the EU "secondary" law).

28. Pursuant to Article [3], paragraph 1 of the Accession Agreement, the EU is given the possibility to make reservations to the Convention either when signing or when expressing its consent to be bound by the provisions of the Accession Agreement. Reservations to the Convention made at the moment of the signature of the Accession Agreement shall be confirmed, in order to be valid, at the moment of expression of consent to be bound by the provisions of the Accession Agreement.

B – Procedure before the European Court of Human Rights

Article [4] – Introduction of a co-respondent mechanism

29. A new mechanism is being introduced in order to allow the EU to become a co-respondent in proceedings instituted against one or more of its member States and, conversely, to allow one or more EU member State(s) to become co-respondent(s) in proceedings instituted against the EU.

Reasons for the introduction of the mechanism

30. The introduction of this mechanism was considered necessary to accommodate the specific situation of the EU - as a non-state entity with an autonomous legal system - becoming a Party to the Convention alongside the EU member States. It is a special feature of the EU legal system that acts adopted by its institutions may be implemented by organs of its member States and, reversely, that provisions of the EU founding treaties agreed upon by its member States may be implemented by organs of the EU. With the accession of the EU, there arises thus the unique situation in the Convention system in which the High Contracting Party enacting a legal act and the High Contracting Party implementing that act may differ from each other.

31. The newly introduced Article 36, paragraph 4 of the Convention provides that the co-respondent has a status of a party to the case. If the ECtHR establishes a violation of the Convention, the co-respondent will be equally bound by the obligations under Article 46 of the Convention. The co-respondent mechanism is thus no procedural privilege for the EU or its member States, but a means to avoid gaps in participation, accountability and enforceability under the Convention system. This corresponds to the very purpose of EU accession and serves the proper administration of justice.

32. As regards the position of the applicant, the newly introduced Article 36, paragraph 4 of the Convention states that the admissibility of an application shall be assessed without regard to the participation of the co-respondent in the proceedings. This provision thus ensures that an application will not be considered as being inadmissible as a result of the participation of the co-respondent, notably with regard to the exhaustion of domestic remedies within the meaning of Article 35, paragraph 1 of the Convention. Moreover,

applicants will be able to make submissions to the ECtHR in each case before a decision on joining a co-respondent is taken (see below, paragraphs 40 to 44).

33. The introduction of the co-respondent mechanism is also fully in line with Article 1 (b) of Protocol No. 8 to the Lisbon Treaty, which requires the Accession Agreement to provide for “the mechanisms necessary to ensure that (...) individual applications are correctly addressed to Member States and / or the Union, as appropriate”. Using the language of this protocol, the co-respondent mechanism offers the opportunity to “correct” applications in the following two ways.

Situations in which the co-respondent mechanism may be applied

34. Firstly, the mechanism would allow the EU to become co-respondent in cases in which the applicant has directed the application only against an EU member State, but not against the EU itself, or *vice versa*. Secondly, the mechanism may be applied in cases directed against both the EU and an EU member State. In the latter scenario, the mechanism ensures that insofar as the application is directed against the High Contracting Party the organs of which are not responsible for the act or omission which allegedly caused the violation, but only for the legal basis of such act or omission, the application is not *per se* declared incompatible *ratione personae* with the provisions of the Convention and, consequently, rejected as inadmissible in accordance with Article 35, paragraph 4 of the Convention. In cases in which the applicant has directed the application against the EU and one of its member States alleging separate violations, the co-respondent mechanism will not apply.

Third party intervention and the co-respondent mechanism

35. The co-respondent mechanism differs from the possibility of third party interventions already provided for by Article 36 paragraph 2 of the Convention. The latter only gives a third party (be it a High Contracting Parties to the Convention or, e. g. another subject of international law or a non-governmental organisation) the opportunity to submit written comments in a case before the ECtHR, but without becoming a party to the case, with the consequence that the binding force of the judgment would not extend to such third party. A co-respondent becomes, on the contrary, a full party to the case and will therefore be bound by the ECtHR’s judgment.

36. It is understood that a third party intervention may often be the most appropriate way to involve the EU in a case. 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.

The tests for triggering the co-respondent mechanism

37. In order to identify cases involving EU law suitable for applying the co-respondent mechanism, two tests are foreseen in paragraphs 2 and 3 of Article 4 of the Accession Agreement. In the case of applications notified to one or more member States of the EU, but not to the EU itself, mentioned in paragraph 2, this test is fulfilled if it appears that the alleged violation notified by the ECtHR calls into question the compatibility of a provision of (primary or secondary) EU law with the Convention rights at issue. This would be the case, for instance, if a violation could only be avoided by disregarding an obligation under EU law (e.g. when an EU law provision leaves no discretion to a member State as to its implementation at the national level). In the case of applications notified to the EU, but not to one or more of its member States (mentioned in paragraph 3), the EU member States may become co-respondents if it appears that the alleged violation as notified by the ECtHR calls into question the compatibility of a provision of the “primary law” of the European Union with the

Convention rights at issue. These tests would apply taking account of provisions of EU law as interpreted by the competent courts. The fact that the alleged violation may arise from a positive obligation deriving from the Convention would not affect their application. They would also cover cases in which the applications were directed from the outset against both the EU and one or more of its member States (Article [4], paragraph 4 of the Accession Agreement).

38. On the basis of the relevant case-law of the ECtHR, it can be expected that such mechanism may be applied only in a limited number of cases¹⁸.

Outline of the procedure under the co-respondent mechanism

39. The co-respondent mechanism will not alter the current practice under which the ECtHR makes a preliminary assessment of an application, with the result that many manifestly ill-founded or otherwise inadmissible applications are not communicated. Therefore, the co-respondent mechanism should only be applied to cases which have been notified to a High Contracting Party. Article [4], paragraph 5 of the Accession Agreement outlines the procedure for applying the co-respondent mechanism, whereby a High Contracting Party shall become a co-respondent by decision of the Court, if it has made a request to that effect. The following paragraphs are understood as merely illustrating this provision. For those cases selected by the ECtHR for notification, the procedure initially follows the information indicated by the applicant in the application form.

A. Applications directed against one or more member State(s) of the European Union, but not against the European Union itself (or vice versa)

40. In cases in which the application is directed against one (or more) member State(s) of the EU, but not against the EU itself, the latter may, if it considers that the criteria set out in Article 4, paragraph 2 of the Accession Agreement are fulfilled, request to join the proceedings as co-respondent. Where the application is directed against the EU, but not against one (or more) of its member States, the EU member States may, if they consider that the criteria set out in Article 4, paragraph 3 of the Accession Agreement are fulfilled, request to join the proceedings as co-respondents. Any such request should be reasoned. In order to enable the potential co-respondent to make such requests, it is important that the relevant information on applications, including the date of their notification to the respondent are rapidly made public. The ECtHR's system of publication of communicated cases should ensure the dissemination of such information.

41. If appropriate, the ECtHR may, when notifying an alleged violation or at a later stage of the proceedings, indicate that a High Contracting Party might participate in the proceedings as a co-respondent, but a request by that High Contracting Party would be a necessary precondition for the latter to become co-respondent. No High Contracting party may be compelled against its will to become a co-respondent. This reflects the fact that the initial application was not addressed against the potential co-respondent, and that no High Contracting Party could be obliged to become a party in cases which the applicant has not directed against it.

42. The ECtHR informs both the applicant and the respondent about the request, and sets a short time-limit for comments. After having considered the reasons stated by the potential co-respondent in its request as well as possible submissions by the applicant and

¹⁸ During the negotiations, the view was expressed that in recent years, the only cases which might have certainly required the application of the co-respondent mechanism would have been *Matthews v. United Kingdom*, *Bosphorus Hava Yollari Turizm Ve Ticaret Anonim Sirketi v. Ireland* and *Coöperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij U.A. v. the Netherlands*.

the respondent, the ECtHR decides on the admission of the co-respondent to the proceedings and informs the Parties to the case as well as the co-respondent of its decision. When taking such decision at this stage of the Procedure, the ECtHR limits itself to assessing whether the reasons stated by the High Contracting Party (or Parties) make it plausible that the conditions in Article [4], paragraph 2 (or 3, as appropriate) of the Accession Agreement are met, without prejudice to its assessment on the merits of the case. The decision of the ECtHR to join a High Contracting Party to a case as a co-respondent may place specific conditions on such admission (e.g. the providing of legal aid in order to protect the interest of the applicant) if this were to be considered necessary in the interest of the proper administration of justice.

B. Applications directed against both the EU and one or more of its member State(s)

43. In a case which has been directed against and notified to both the EU and one (or more) of its member States in respect of at least one alleged violation, either of these respondents may, if it considers that the conditions relating to the nature of the alleged violation set out in paragraphs 2 or 3 are met, ask the ECtHR to change its status into that of a co-respondent. As in the case described under A. above, the Court may indicate the possibility of a change of status, but a request by the concerned respondent would be a necessary precondition for such change. The High Contracting Party (or Parties) becoming co-respondent(s) would be the Party (or Parties) which is (or are) not responsible for the act or omission which allegedly caused the violation, but only for the legal basis of such act or omission.

44. The ECtHR informs both the applicant and the other respondent about the request, and sets a short time-limit for comments. After having considered the reasons stated by the potential co-respondent in its request as well as possible submissions by the applicant and the other respondent, the ECtHR decides on the change of status and informs the other parties to the case as well as the co-respondent of its decision. When taking such decision at this stage of the Procedure, the ECtHR limits itself to assessing whether the reasons stated by the High Contracting Party (or Parties) concerned are plausible in the light of the criteria set out in Article 4, Paragraph 2 (or 3, as appropriate) of the Accession Agreement, without prejudice to its assessment on the merits of the case.

Termination of the co-respondent mechanism

45. The ECtHR may at any stage of the proceedings decide to terminate the participation of the co-respondent, attaching due attention to any joint representation by the respondent and the co-respondent to the effect that the conditions for becoming a co-respondent are not (or no more) met. In the absence of such a decision, both the respondent and the co-respondent continue to jointly participate in the proceedings until the latter are terminated.

Friendly settlements

46. In cases of friendly settlements within the meaning of Article 39 ECHR, the agreement of both the respondent and the co-respondent should be necessary.

Unilateral declarations

47. In respect of unilateral declarations it is understood that, for a violation in which both the respondent and the co-respondent are allegedly involved, such declarations would require the agreement of both these parties.

Effects of the co-respondent mechanism

48. As already stated, it is specific to the EU legal order that acts adopted by EU institutions may be implemented by organs of its member States and, reversely, provisions of EU primary law may be implemented by organs of the EU. Hence, the respondent and the co-respondent are not autonomous vis-à-vis each other with regard to the violation of the Convention on which the participation of the co-respondent in the proceedings is based. It is therefore expected that in cases involving a co-respondent the ECtHR would hold the respondent and the co-respondent jointly responsible, and that this would become the general practice in such cases, since there would otherwise be a risk of assessing the distribution of competences between the EU and its member States. This is without prejudice of the possibility, for the respondent and the co-respondent, to make joint submissions to the ECtHR in a given case to the contrary. In that respect, it should also be recalled that the ECtHR in its judgments rules on whether there has been a violation of the Convention and not on the validity of an act of a High Contracting Party or of the legal provisions underlying the act or omission complained of.

Referral to the Grand Chamber

49. Requests for a referral to the Grand Chamber within the meaning of Article 43 of the Convention may be made by any of the Parties involved including the co-respondent, who will be able to make such a request without prior consent of the respondent. If the request for such a referral is accepted, the Grand Chamber will examine the case as a whole, in respect of all alleged violations considered by the Chamber and with regard to all Parties involved.

Exclusion of retroactivity

50. Article [4], paragraph 8, of the Accession Agreement provides that the co-respondent mechanism has no retroactive effect, *i.e.* it may not be applied to cases brought before the ECtHR prior to the date of the accession of the EU. The co-respondent mechanism however applies with regard to any application introduced to the ECtHR after the EU has acceded, even where that case concerns acts by EU member States based on EU law which had entered into force prior to the accession.

Ensuring the prior involvement of the CJEU in cases in which the EU is a co-respondent

51. Cases in which the EU may be a co-respondent arise from individual applications against acts or omissions of EU Member States which are mandatory under EU law. Pursuant to the requirement to exhaust domestic remedies, the applicant will first have to refer the matter to the national courts of the respondent Member State. Where the latter's obligation to act or refrain from acting results from an act of the EU institutions, those courts may or, in certain cases, must refer a question to the CJEU for a preliminary ruling on the interpretation and/or validity of the EU act at issue (Article 267 TFEU). Since the parties to the proceedings before the national courts may merely suggest such reference, the latter cannot be considered as a legal remedy to be exhausted by the applicant before bringing the case to the ECtHR. However, if such a reference for a preliminary ruling were not made, the ECtHR would be required to adjudicate on the conformity of an EU act with human rights, without the CJEU having had the opportunity to do so.

52. Even though this situation is expected not to arise often, it was considered desirable that an internal EU procedure be put in place with a view to ensure that the CJEU has the opportunity to review the compatibility with the Convention rights at issue of the provision of EU law which has triggered the participation of the EU as a co-respondent. Such review should take place before the ECtHR decides on the merits of the application. This procedure, which ultimately ensures the respect for the principle of subsidiarity, only applies in cases in which the EU has the status of a co-respondent. It is understood that the parties involved -

including the applicant, who will be given the possibility to obtain legal aid - will have the opportunity to make observations in the procedure before the CJEU.

53. It should be noted that the provision of EU law of which the CJEU assesses the compatibility with the Convention rights at issue in the context of such procedure, is not the individual act aggrieving the applicant. Rather, it constitutes the legal basis of the latter, which itself emanates from the respondent member State. In this respect, the procedure would not constitute a remedy within the meaning of Article 13 of the Convention.

54. The decision of the CJEU would have no direct effect on the proceedings before the ECtHR and would leave entirely unaffected the latter's independent jurisdiction under the Convention. It would be for the ECtHR alone to assess in each case, on the basis of its own criteria, the consequences to be drawn from the CJEU's decision.

55. The examination of the merits of the application should not resume before the parties and possible third party interveners have had the opportunity to properly assess the possible consequences of the ruling of the CJEU. In order not to unduly delay the proceedings before the ECtHR, the EU shall ensure that the ruling is delivered quickly. In that regard, it is noted that an accelerated procedure before the CJEU already exists and that the CJEU has been able to give rulings under that procedure within 6 to 8 months.

Article [5] – Inter-Party cases

56. The term "*High Contracting Party*" is already used in the text of Article 33 of the Convention. Changing the heading to "*Inter-Party cases*" makes that heading correspond more precisely to the substance of Article 33 after the accession. Pursuant to the accession, and in accordance with the current wording of Article 33, all States Parties to the Convention could bring a case against the EU and *vice versa*. For the sake of consistency, the reference to "inter-State applications" in Article 29, paragraph 2 of the Convention is likewise adjusted.

57. The question whether inter-party applications between EU member States involving issues of EU law, and between the EU and one of its member States may be brought before the ECtHR is dealt with by EU law. In particular, Article 344 of the Treaty on the Functioning of the European Union (referred to by Article 3 of Protocol No. 8 to the Lisbon treaty) provides that EU member States are prevented from submitting disputes "*concerning the interpretation or application of the Treaties to any method of settlement other than those provided for therein*". It is recalled that the Convention does not oblige the High Contracting Parties to bring a case against another Party, but merely entitles them to do so.

Article [6] – Interpretation of Articles 35 and 55 of the Convention

58. The first paragraph of this provision clarifies that, as a necessary consequence of the EU accession to the Convention, proceedings before the CJEU (currently consisting of the Court of Justice, the General Court and the Civil Service Tribunal) shall not be understood as constituting procedures of international investigation or settlement, the submission to which would make an application inadmissible pursuant to Article 35, paragraph 2, letter b of the Convention. In this respect, it should also be noted that in the recent judgment in the case of *Karoussiotis v. Portugal* (no. 23205/08; judgment of 1 February 2011) the ECtHR specified that proceedings before the European Commission pursuant to Article 258 of the Treaty on the Functioning of the European Union shall not be understood as constituting procedures of international investigation or settlement pursuant to Article 35, paragraph 2, letter b of the Convention.

59. As regards Article 55 of the Convention, which excludes other means of dispute settlement concerning the interpretation or application of the Convention, it is agreed that proceedings before the CJEU shall not be understood as constituting a “means of settlement” within the meaning of Article 55 of the Convention, thereby preventing the operation of the rule set out in Article 344 of the Treaty on the Functioning of the European Union.

C – Institutional and Financial Issues

Article [7] - Election of judges

60. In accordance with the principle of ensuring the accession of the EU on an “equal footing” with the other High Contracting Parties, the judge elected in respect of the EU shall participate equally with the other judges in the work of the ECtHR and have the same status and duties. It is also recalled that, as laid down in Article 21, paragraphs 2 and 3 of the Convention, the judges of the ECtHR are independent and act in their individual capacity. The internal practice and the Rules of the Court shall deal with the effects that the presence of a judge elected in respect of the EU may have on the on the various formations in which the ECtHR may sit.

61. It is agreed that a delegation of the European Parliament should be entitled to participate, with the right to vote, in the sittings of the Parliamentary Assembly of the Council of Europe (and its relevant bodies) whenever it exercises its functions related to the election of judges under Article 22 of the Convention. The European Parliament should be entitled to the same number of representatives in the Parliamentary Assembly as the State(s) entitled to the highest number of representatives pursuant to Article 26 of the Statute of the Council of Europe.

62. Detailed modalities for the participation of the European Parliament in the work of the Parliamentary Assembly and its relevant bodies are to be defined by the Parliamentary Assembly in its internal rules, after consultation with the European Parliament. It is also understood that the modalities for the selection of candidates in respect of the EU, to be submitted to the Parliamentary Assembly, will be defined by internal EU rules.

Article [8] - Participation of the EU in the Committee of Ministers of the Council of Europe

63. The question of the scope of the participation of the EU to the Committee of Ministers arises with respect to two main aspects.

64. On the one hand, the Convention explicitly gives to the Committee of Ministers of the Council of Europe a number of functions, the main one being the supervision of the execution of the ECtHR’s judgments under Articles 46 and of the terms of friendly settlements under Article 39. The Committee of Ministers is also entitled to request advisory opinions from the ECtHR on certain legal questions concerning the interpretation of the Convention and of the Protocols (Article 47) and to reduce, at the request of the plenary Court, the number of judges of the Chambers (Article 26, paragraph 2).

65. On the other hand, a number of questions directly linked with the functioning of the Convention system and its implementation are not explicitly dealt with in the Convention itself. The latter does not contain, for instance, specific provisions regarding its amendment and the adoption of additional protocols, or regarding the more detailed exercise of some of

the Convention-based functions indicated above¹⁹. Nor does it deal with the adoption or the implementation of a number of other legal instruments and texts, such as recommendations, resolutions and declarations, which are directly related to the functioning or the implementation of the Convention. Such legal instruments and texts may be addressed, for example, to the member States of the Council of Europe in their capacity of High Contracting Parties to the Convention, to the Committee of Ministers itself²⁰, to the ECtHR²¹ or, where appropriate, to other competent bodies²².

66. The adoption, in particular, of amending and additional protocols to the Convention is operated on the basis of Article 15.a of the Statute of the Council of Europe²³. Therefore, the issue is not to modify the competences of the Committee of Ministers concerning the adoption of conventions, but to allow the EU, in its role as a High Contracting Party to the Convention, to participate with the right to vote in meetings of the Committee of Ministers on the occasion of which the latter adopts protocols to the Convention. The issue concerns therefore the composition of the Committee of Ministers, for which Article 14 of the Statute of the Council of Europe states that: "Each member shall be entitled to one representative on the Committee of Ministers, and each representative shall be entitled to one vote." However, it appears to be clearly justified that the EU, as a High Contracting Party, participates in the meetings of the Committee of Ministers, with the right to vote, when the latter adopts protocols amending the European Convention on Human Rights. The adoption of an additional protocol by the Committee of Ministers without the participation of all parties to the convention which is being amended, including those parties which are not members of the organisation, would pose problems under the 1969 Vienna Convention on the Law of Treaties, which provides that a treaty may be amended by agreement between the parties (Article 39). The participation of the EU is thus in full conformity with the rules on the law of treaties as codified by the Vienna Convention. Finally, it should be underlined that the accession agreement will be ratified by all the Parties to the Convention, i.e. the 47 member States of the Council of Europe and, hence, Parties to the Statute of the Council of Europe. The accession agreement thus will operate as a *lex specialis* in relation to the latter, with regard to the composition of the Committee of Ministers when adopting protocols to the European Convention on Human Rights.

67. Article [8], paragraph 1 of the Accession Agreement therefore provides that the Committee of Ministers shall take three types of decisions with the participation, with the right to vote, of the European Union: decisions pursuant to specific provisions of the Convention (Article 26, paragraph 2, Article 39, paragraph 4, Article 46, paragraphs 2 to 5 and Article 47); decisions regarding the adoption of amending and additional protocols to the Convention; and decisions regarding the adoption or implementation of any other instrument or text addressed to all High Contracting Parties to the Convention or to the Court, or relating to the functions exercised by virtue of the Convention by the Committee of Ministers or the Parliamentary Assembly of the Council of Europe.

¹⁹ For instance, the Committee of Ministers has adopted specific rules for the exercise of its supervision activity. On questions not specifically dealt with in these rules, the Committee of Ministers' ordinary rules apply.

²⁰ See, for instance, Resolution CM/Res(2010)26 establishing an Advisory Panel of Experts on Candidates for the Election as Judge to the European Court of Human Rights, which entrusts the Committee of Ministers with the task of appointing the members of the Advisory Panel.

²¹ See, for instance, Resolution CM/Res(2004)3 on judgments revealing systemic problems.

²² See, for instance, the replies by the Committee of Ministers to the recommendations made by the Parliamentary Assembly following its own survey of the implementation of the Court's judgments.

²³ Which reads as follows: "On the recommendation of the Consultative Assembly or on its own initiative, the Committee of Ministers shall consider the action required to further the aim of the Council of Europe, including the conclusion of conventions or agreements and the adoption by governments of a common policy with regard to particular matters. Its conclusions shall be communicated to members by the Secretary General."

68. In addition, specific provisions were considered necessary as regards the participation of the EU in the supervision of the execution of judgments of the ECtHR. In this context, the EU and its member States (in total amounting to 28 out of 48 Parties after accession) could potentially take coordinated positions, particularly in the event of a vote (“block voting”), and appropriate guarantees are therefore required to ensure that the exercise of combined votes by the EU and its member States will not prejudice the effective exercise by the Committee of Ministers of its supervisory functions regarding the execution of judgments.

69. Under the EU treaties, the EU and its member States have no obligation to act in a coordinated manner concerning judgments against High Contracting Parties which are not members of the EU, even where the EU expresses a position or exercises its right to vote. The EU is also precluded, for reasons pertaining to its internal legal order, from expressing a position or exercising its right to vote regarding judgments against an EU member state in cases where the EU is not a co-respondent to the proceedings. Concerning those judgments, the EU member States have no obligation under the EU treaties to act in a coordinated manner. Conversely, regarding judgments in cases in which the EU is respondent or co-respondent, the EU and its member States would have an obligation to act in a coordinated manner, including in terms of voting.

70. As regards judgments against High Contracting Parties which are not members of the EU and judgments against a High Contracting Party which is a member state of the European Union in cases where the European Union is not a co-respondent to the proceedings, a declaration is annexed to the Accession agreement presenting the current status of EU law in this respect.²⁴

71. As regards judgments in which the EU would be respondent or co-respondent, Article [8], paragraph 2 requires the amendment of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements. Such amendments shall ensure that the exercise of combined votes by the EU and its member States does not affect the effective exercise by the Committee of Ministers of its supervisory functions under Articles 39 and 46 of the Convention.

72. With respect to judgments in cases to which the EU would be respondent or co-respondent, the rules of procedure of the Committee of Ministers shall in particular deal with the voting procedures in the following circumstances:

- a) when adopting final resolutions concluding that its functions under Article 46, paragraph 2, or Article 39 paragraph 4, of the Convention have been exercised, after having established that the High Contracting Party concerned has taken all the necessary measures to abide by the judgment or that the terms of the friendly settlement have been executed²⁵;
- b) when adopting interim resolutions in order to provide information on the state of progress of the execution or to express concern and/or make suggestions with respect to the execution²⁶;
- c) in the context of Article 46, paragraph 4 of the Convention, when the Committee of Ministers decides, if it considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, to refer to the ECtHR the question

²⁴ NOTE FROM THE SECRETARIAT: Once clarified the legal nature and effects of the annex, this paragraph would also contain some explanation in this respect.

²⁵ 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.

²⁶ Rule 16 (Interim resolutions) of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

whether that High Contracting Party has failed to fulfil its obligation to abide by the judgment²⁷.

These rules are not formally part of the Accession Agreement, and they may therefore be amended at a later stage by the Committee of Ministers should the circumstances so require.

73. The introduction of these amendments should not be seen as a departure from the established practice to adopt decisions on the supervision of the execution of judgments in the Committee of Ministers by consensus and to resort only exceptionally to formal votes.

Article [9] - Participation of the EU in the expenditure related to the Convention

74. According to Article 50 of the Convention, the expenditure on the ECtHR shall be borne by the Council of Europe. After its accession to the Convention, the EU should contribute to the expenditure of the entire Convention system alongside and in addition to the other High Contracting Parties. It is noted that under the current system the amount of the contribution of each High Contracting Party is not linked to the ECtHR's workload in respect of that Party, but is based on the method of calculating the scales of member States' contributions to Council of Europe budgets established by the Committee of Ministers in 1994. It is also recalled that the budget of the ECtHR and of the other entities involved in the functioning of the Convention system are part of the Ordinary Budget of the Council of Europe, and that the contribution of the EU would be clearly and exclusively affected to the financing of the Convention system.

75. The participation of the EU in the expenditure related to the Convention system would not require any amendment to the Convention. However, the calculation method of the EU contribution needs to be defined in the Accession Agreement, which would provide the legal basis in this respect. The proposed method aims at being as simple and stable as possible and, as such, does not require the participation of the EU to the budgetary procedure of the Council of Europe.

76. The relevant expenditure taken into account are those which are directly related to the Convention, namely: the expenditure for the functioning of the ECtHR and of the process of supervision of the execution of its judgments and decisions, as well as of the Parliamentary Assembly, the Committee of Ministers and the Secretary General of the Council of Europe when exercising the functions entrusted to them under the Convention. In addition, administrative overhead costs related to the Convention system are considered (building, logistics, IT etc.) as requiring an increase of the above expenditure by 15 %. The total amount is then put in relation with the Ordinary Budget of the Council of Europe (including the employer's contributions to the pensions), in order to identify the relative weight, in percentage, of such expenditure. On the basis of the relevant figures for the last years and of those foreseen for 2012 and 2013, this percentage is fixed in paragraph 1 at 34 %.

77. As to the rate of contribution of the EU to the relevant expenditure, it is agreed that it shall be identical to that of the State(s) providing the highest contribution to the Ordinary Budget of the Council of Europe for the year, pursuant to the method of calculating the scales of member States' contributions to Council of Europe budgets established by the Committee of Ministers in 1994, in its Resolution Res(94)31. **Accordingly, for each year (A),** the amount of the contribution of the EU shall be equal to 34% of the highest amount contributed in the previous year **(A-1)** by any State to the Ordinary Budget of the Council of Europe (including employer's contribution to pensions).

²⁷ 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.

78. In order to ensure the stability of the calculation method proposed, a safeguard clause is added in paragraph 2 to the effect that, if the actual relative weight of the expenditure related to the Convention system on the Ordinary budget varied substantially, the percentage fixed in paragraph 1 (currently 34%) shall be adapted by agreement between the EU and the Council of Europe. Such adaptation is triggered by the fact that, in each of two consecutive years, the difference between the percentage calculated on the real figures and the percentage fixed in paragraph 1 is more than 2.5 percentage points (i.e. if the real figure is below 31.5%, or above 36.5%). However, it is agreed that, in order to avoid that less resources could be made available for the Convention system after accession than before accession, no account shall be taken of a change in this percentage that results from a decrease in absolute terms of the amount dedicated within the Ordinary budget to the functioning of the Convention as compared to the year preceding that in which the European Union becomes a party to the Convention. This mechanism shall obviously apply also to any new percentage resulting from subsequent agreements between the EU and the Council of Europe.

79. The technical and practical arrangements for the implementation of the provisions set out in the Accession Agreement can be determined in detail by the Council of Europe and the EU.

D – Miscellaneous and Final Provisions

Article [10] – Relations with other Conventions and Agreements

80. A number of other Council of Europe conventions and agreements are strictly linked to the Convention system, even though they are self-standing treaties. It is for this reason necessary to ensure that the EU, as a party to the Convention, respects the relevant provisions of such instruments and is, for the purpose of their application, treated as if it were a party to them. This is the case, in particular, for the European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights (ETS No. 161), and of the Sixth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe (ETS No. 162), which sets up the privileges and immunities granted to the Judges of the Court during the discharge of their duties. In addition, after the accession of the EU as a party to the Convention, the EU should also undertake to respect the privileges and immunities of other persons involved in the functioning of the Convention system, such as the staff of the Registry of the ECtHR, members of the Parliamentary Assembly and representatives in the Committee of Ministers, which are covered by the General Agreement on Privileges and Immunities of the Council of Europe (ETS No. 002) and its first Protocol (ETS No.010).

81. It is understood that the accession of the EU to such instruments and their amendment would require a cumbersome procedure. Moreover, the system of the General Agreement on Privileges and Immunities of the Council of Europe is only open to member States of the Organisation. Therefore, the Accession Agreement imposes an obligation on the EU on the one hand - as a Contracting Party to the Convention - to respect the provisions of these instruments, and on the other hand on other Contracting Parties to treat the EU as if it were a party to these instruments. These provisions are accompanied by other operative provisions regarding the duty to consult the EU about relevant events in the life of these instruments (accessions, amendments, etc.) and the duty of the Secretary General, as depositary of these instruments, to notify the EU about such events.

82. The inclusion of these provisions in the Accession Agreement would also indirectly ensure their respect by future member States of the Council of Europe, that would be parties to the Convention.

Article [11] – Signature and Entry into Force

83. This article is one of the usual final clauses included in treaties prepared within the Council of Europe, with the necessary adaptations to this specific Agreement such as, for instance, the fact that the Agreement should only be open to the High Contracting Parties to the Convention at the date of its opening for signature and to the EU.

84. As regards States becoming members of the Council of Europe and High Contracting Parties to the Convention after the opening for signature of this agreement, they will be bound also by those provisions of the agreement which have legal effects beyond the mere amendment of the Convention, by virtue of the new Article 59 paragraph 2, letter b) of the Convention, which contains a reference to the Accession Agreement.

Article [12] – Reservations

85. Given the particular nature of the Accession Agreement, it is agreed that no reservations to the Agreement itself shall be allowed. This is without prejudice to the possibility for the EU to make reservations to the Convention, as provided for by Article [3].

Article [13] – Notifications

86. This article contains one of the usual final clauses included in treaties prepared within the Council of Europe, with the necessary adaptations to this Agreement.

Appendix

**Summary of all State-related provisions in the European Convention on Human Rights
and possible effects of the accession of the European Union**

<i>Provision in the ECHR</i>	<i>Expression</i>	<i>Addressed in the Accession Agreement in...</i>	<i>Future ECHR corresponding provision</i>
Article 4 (3) (b)	"countries"	Para. 24 of the explanatory report. This expression does not need any adaptation or interpretation pursuant to the EU accession.	None
Article 5 (1) (f)	"country"	Article 1 (2)	Article 59 (2) (e)
Article 6 (1)	"national security"	Article 1 (2)	Article 59 (2) (e)
Article 7 (1)	"national law"	Article 1 (2)	Article 59 (2) (e)
Article 7 (2)	"civilised nations"	Para. 24 of the explanatory report. This expression does not need any adaptation or interpretation pursuant to the EU accession.	None
Article 8 (2)	"country" and "national security"	Article 1 (2)	Article 59 (2) (e)
Article 10 (1)	"States"	Article 1 (2)	Article 59 (2) (d)
Article 10 (2)	"national security" and "territorial integrity"	Article 1 (2)	Article 59 (2) (e)
Article 11 (2)	"national security" and "administration of the State"	Article 1 (2)	Article 59 (2) (e)
Article 12	"national laws"	Article 1 (2)	Article 59 (2) (e)
Article 13	"national authority"	Article 1 (2)	Article 59 (2) (e)
Article 14	"national origin" and "national minority"	Para. 24 of the explanatory report. These expressions do not need any adaptation or interpretation pursuant to the EU accession.	None
Article 15	"life of the nation"	Article 1 (2)	Article 59 (2) (e)
Article 17	"State"	Article 1 (2)	Article 59 (2) (d)
Article 29	"inter-State applications"	Article 5 (1)	Article 29
Article 33 (title)	"Inter-State cases"	Article 5 (2)	Article 33
Article 35	"domestic"	Article 1 (2)	Article 59 (2) (e)
Article 36	"nationals"	Para. 24 of the explanatory report. The use of such term in this context does not require any adaptation as a consequence of the EU accession, as the concept of EU citizenship is not comparable to the concept of "nationality" of a member State.	None
Articles 41 and 52	"internal law"	Para. 24 of the explanatory report. This expression does not need any adaptation as a consequence of the EU	None

		accession, as it would apply as it stands to the EU as to any other High Contracting Party.	
Article 56 and Article 58 (4)	“State”, “territorial”, “territory” and “territories” (Territorial application clause)	Para. 24 of the explanatory report. The territorial application clauses would not be applicable to the EU.	None
Article 57	“State”, “territory”	Article 3 (2)	Article 57 (1), 2 nd sentence
Art. 1 of Prot. No. 1	“State”	Article 1 (2)	Article 59 (2) (d)
Art. 2 of Prot. No. 1	“State”	Article 1 (2)	Article 59 (2) (d)
Art. 4 of Prot. No. 1	Territorial application clause (see also Article 56 of the Convention above)	Para. 24 of the explanatory report. The territorial application clauses would not be applicable to the EU.	None
Art. 6 of Prot. No. 1	Final Clause	Article 1 (2)	Article 59 (2) (a)
Art. 2 (1) of Prot. No. 4	“State” (“territory of a State”)	Article 1 (2)	Article 59 (2) (d)
Art. 2 of Prot. No. 4	“country”, “national security”	Article 1 (2)	Article 59 (2) (e)
Art. 3 of Prot. No. 4	“territory of a State of which he is a national”	Para. 24 of the explanatory report. The concept of “territory of a State of which he is a national” is not applicable to the EU, as the concept of EU citizenship is not comparable to the concept of “nationality” of a member State.	None
Art. 5 of Prot. No. 4	Territorial application clause (see also Article 56 of the Convention above)	Para. 24 of the explanatory report. The territorial application clauses would not be applicable to the EU.	None
Art. 7 of Prot. No. 4	Final Clause	Article 1 (2)	Article 59 (2) (a)
Art. 2 of Prot. No. 6	“State”	Article 1 (2)	Article 59 (2) (d)
Art. 5 of Prot. No. 6	Territorial application clause (see also Article 56 of the Convention above)	Para. 24 of the explanatory report. The territorial application clauses would not be applicable to the EU.	None
Art. 6 of Prot. No. 6	“States Parties”	Article 1 (2)	Article 59 (2) (d)
Art. 7-9 of Prot. No. 6	Final Clauses	Article 1 (2)	Article 59 (2) (a)
Art. 1(1) of Prot. No. 7	“Territory of a State”	Article 1(2)	Article 59 (2) (e)
Art. 1(2) of Prot. No. 7	“national security”	Article 1 (2)	Article 59 (2) (e)
Art. 3, 4 and 5 of Prot. No. 7	“State”, “States”	Article 1 (2)	Article 59 (2) (d)
Art. 6 of Prot. No. 7	Territorial application clause (see also Article 56 of the Convention above)	Para. 24 of the explanatory report. The territorial application clauses would not be applicable to the EU.	None
Art. 7 of Prot. No. 7	“States Parties”	Article 1 (2)	Article 59 (2) (d)
Art. 8-10 of Prot. No. 7	Final Clauses	Article 1 (2)	Article 59 (2) (a)

Art. 1 of Prot. No 12	“national minority” (see also Art. 14 of the Convention)	Para. 24 of the explanatory report. The use of the term “national” in this context does not need any adaptation as a consequence of the EU accession.	None
Art. 2 of Prot. No 12	Territorial application clause (see also Article 56 of the Convention above)	Para. 24 of the explanatory report. The territorial application clauses would not be applicable to the EU.	None
Art. 3 of Prot. No 12	“States Parties”	Article 1 (2)	Article 59 (2) (d)
Art. 4-6 of Prot. No 12	Final Clauses	Article 1 (2)	Article 59 (2) (a)
Art. 4 of Prot. No 13	Territorial application clause (see also Article 56 of the Convention above)	Para. 24 of the explanatory report. The territorial application clauses would not be applicable to the EU.	None
Art. 5 of Prot. No 13	“States Parties”	Article 1 (2)	Article 59 (2) (d)
Art. 6 of Prot. No 13	Final Clauses	Article 1 (2)	Article 59 (2) (a)