Strasbourg, 16 May 2011

CDDH-UE(2011)10

7th WORKING MEETING OF THE CDDH INFORMAL WORKING GROUP ON THE ACCESSION OF THE EUROPEAN UNION TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS (CDDH-UE) WITH THE EUROPEAN COMMISSION

Meeting report

Strasbourg, Tuesday 10 May (9.30 am) – Friday 13 May 2011 (4.00 pm)

Palais, Room 14
Council of Europe

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

1. The seventh working meeting of the CDDH informal working group on the accession of the European Union to the European Convention on Human Rights (CDDH-UE) with the European Commission was held in Strasbourg on 10-13 May 2011 with Ms Tonje MEINICH (Norway) in the Chair. The list of participants can be found in Appendix I. The agenda as adopted and the references to the working documents appear in Appendix II.

Item 2: Elaboration of the accession instrument(s): examination of a draft agreement on the accession of the EU to the Convention and of its explanatory report

2. The participants examined the revised version draft agreement on the accession of the EU to the Convention (document CDDH-UE(2011)06). In doing so, they also took account of written submissions by one delegation of the Steering Committee for Human Rights (CDDH) and by civil society (joint submission by the AIRE Centre and Amnesty International).

3. The participants agreed on an amendment to the Preamble referring to the respect of human rights by the EU, but not on the insertion of a reference to the relevant EU legal texts.

4. Concerning Article 1, the participants agreed to delete the reference to Article 3 of Protocol No. 4 to the ECHR ("territory of a state") from the interpretative clause in Article 1.2.(d) of the Accession Agreement. It was also decided to provide additional clarification on the possibility for the EU to avail itself of derogations pursuant to Article 15 ECHR in the explanatory report. One participant reserved his position on various aspects of Articles 1 and 3.

5. Concerning Article [3] of the Accession Agreement, the participants agreed to provide additional clarification in the explanatory report as regards the modalities of making reservations to the Convention.

6. With regard to the co-respondent mechanism (Article [4]), the participants agreed on the need to avoid duplication of the description of the mechanism in the Convention and in the Accession Agreement. It was therefore agreed to provide for the creation of the mechanism in Article 36 ECHR, and to describe its functioning in the Accession Agreement.

7. As for the provisions laying down the conditions for the application of the co-respondent mechanism (i.e. Article [4] (2) and (3)), the participants considered a revised proposal focusing on the compatibility with the Convention of a provision of European Union law, rather than on the compatibility of the obligations of High Contracting Parties under European Union law with their obligations under the Convention. Although participants reserved their position on the proposal, it was agreed to consider it as the basis for future work on the co-respondent mechanism. It was decided to specify in the explanatory report that the wording proposed would also cover applications raising issues of binding interpretations of EU law and positive obligations arising from the Convention.

The explanatory report should also further clarify the difference between the terms "respondent" and "co-respondent".

8. The participants also agreed upon slight amendments of Article [4] (4), and a revised proposal on the procedure of the co-respondent mechanism as laid out in Article [4] (5), in particular with regard to the criteria for the assessment of a request by a High Contracting Party to become a co-respondent. Concerning the prior involvement of the Court of Justice of the European Union (Article [4] (6)), the participants agreed on a revised proposal as a basis for further work. Two participants maintained a reservation of principle on this issue.

9. As regards the participation of the respondent and the co-respondent in the proceedings, there was an agreement on the need for a provision referring to this issue in the Accession Agreement. The participants remained however divided over two wording alternatives, one focusing generally on the joint appearance of the parties in the proceedings and the other focusing specifically on their joint responsibility in case the Court finds a violation.

10. The participants agreed to include in Article [5] of the Accession Agreement an amendment to Article 29 ECHR to the same effect as the amendment to the heading of Article 33 ECHR ("inter-Party applications"). They also decided to insert a provision in Article [6] of the Accession Agreement confirming that the procedure before the Court of Justice of the EU does not constitute a procedure of international investigation or settlement as defined in Article 35.2(b) ECHR. Participants also agreed that the explanatory report should further clarify the definition of "Court of Justice of the EU", including in the light of the recent judgment of the European Court of Human Rights in the case of *Karoussiotis v. Portugal* (no. 23205/08; judgment of 1 February 2011).

11. The participants considered the provision on the election of judges (Article [7] of the Accession Agreement) and agreed on the text, with minor changes. As to whether this provision should appear only in the Accession Agreement or as an amendment to the Convention itself, it was agreed to take a final decision once the wording and placement of the provision on the participation of the EU in the Committee of Ministers had been agreed upon.

12. The participants then discussed the provision on the participation of the EU in the Committee of Ministers (Article [8] of the Accession Agreement), focusing at first their attention on the question of the supervision of the execution of judgments. There was understanding on the principle that the EU should participate in the supervision of the execution of judgments. On the other hand, it was recognised that the proposed draft did not yet address the question of granting voting rights in the Committee of Ministers to an entity which is not a member of the Council of Europe. It was acknowledged that voting in the Committee of Ministers in the supervision of the execution of judgments was rather the exception than the rule, as decisions are regularly adopted by consensus. Nevertheless, the participants raised the issue that the EU and its member States (in total amounting to 28 out of 48 Parties after accession) could potentially take coordinated positions in the event of a vote ("block voting"), and recognised the need to find appropriate guarantees to safeguard the effective functioning of the system of supervision of the execution of judgments in all cases.

13. The European Commission provided the following information on the relevant EU law: the EU and its member States have no obligations under EU law 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 precluded, for reasons pertaining to its internal legal order, from expressing a position or exercising its right to vote regarding 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; in the case of judgments in which the EU would be 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.

14. 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, it was proposed to add a declaration in an annex to the accession agreement, which would form an integral part thereof, presenting the current status of EU law in this respect. The participants asked the Legal Advice Department of the Council of Europe to provide an opinion on the legal value of such an annex, and on the possible impact on it of future modifications of the EU law having an effect on the repartition of competences between the EU and its member States.

15. As regards judgments in which the EU would be respondent or co-respondent, it was proposed to add to the Accession Agreement an operative provision aiming at ensuring 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. To that effect, it was proposed to amend the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements. Such amendments should deal, in particular, with the voting procedures in the context of infringement procedures (Article 46 (4) ECHR), interim and final resolutions (Article 46 (2) ECHR), as regards cases in which the EU is respondent or co-respondent. The need to ensure that the proposed amendments are not in contradiction with but merely supplement the provisions of the Convention was stressed. One participant also raised the question whether such amendments should also cover cases against States which are not members of the EU.

16. While recognising the potential risk of introducing complex voting rights into a mechanism which has so far functioned smoothly resorting only exceptionally to formal votes, the participants considered that this seemed to be the only politically and technically practicable solution. It was however agreed that this should by no means 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, which should at least be reflected in the explanatory report to the Accession Agreement.

17. The Secretariat presented a draft proposal for the annex, the operative provision and the amendments to the rules of the Committee of Ministers, revised on the basis of the discussion. While the participants reserved their position as to this proposal, it was considered a valuable basis for further discussion at the next meeting.

18. With regard to the proposed provision for Article [8] of the Accession Agreement, the participants agreed to amend the proposed text, pending a final definition of all the questions indicated above. Participants did not, however, yet take a decision as to whether this provision should appear only in the accession agreement (in the light of the proposed revision of Article 59 (2) ECHR) or as an amendment to the Convention itself. While a

majority of the participants preferred the former, it was decided to ask the Legal Advice Department of the Council of Europe to clarify whether that option would be legally feasible. The Legal Advice Department of the Council of Europe was also asked to provide clarification on a number of other questions related to the proposed revised drafting and to the powers of the Committee of Ministers when performing functions related to the Convention with the participation of all High Contracting Parties, and to their compatibility with the Statute of the Council of Europe.

19. The participants considered a revised proposal for Article [9] of the Accession Agreement concerning the participation of the EU in the expenditure related to the Convention. While there was consensus on the substance of the issue, several participants noted the complexity of the wording, asked the Secretariat to attempt to simplify the text for the next meeting, and noted that internal consultations would have to be carried out in this respect.

20. No comments were raised about the other articles of the Accession Agreement, on which consensus had been reached at the previous meeting.

21. The participants instructed the Secretariat to revise the draft explanatory report to the Accession Agreement on the basis of the discussion. It was agreed that the Secretariat should submit as soon as possible the revised version of the explanatory report to the participants for comments, and that participants should submit their comments in writing.

22. The draft Accession Agreement, revised on the basis of the discussion of this meeting, appears in Appendix III

Item 3.: Any other business

23. Participants agreed to hold a further consultation with civil society at the next meeting, on Monday 20 June at 14h30.

24. The next and final meeting will be held from Monday 20 June at 9h30 until Friday 24 June 2011 at 16h00.

APPENDIX I

LIST OF PARTICIPANTS

ARMENIA / ARMENIE
M. Levon AMIRJANYAN, Chef du département des affaires juridiques, Ministère des affaires étrangères, Place de la République, Yerevan 0010

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

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

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

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

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

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

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

THE NETHERLANDS / PAYS-BAS
Mr Roeland BÖCKER, Government Agent, Ministry of Foreign Affairs, The Hague

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

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

ROMANIA / ROUMANIE

RUSSIAN FEDERATION / FEDERATION DE RUSSIE
Mr Oleg MALGINOV, Director, Department for Humanitarian Cooperation and Human Rights, Ministry of Foreign Affairs, Moscow

Mr Ivan VOLODIN, Acting Head of Division, legal Department, Ministry of Foreign Affairs, Moscow

SWITZERLAND / SUISSE
M. Frank SCHÜRMANN, Agent du Gouvernement, Chef de la Section des droits de l'homme et du Conseil de l'Europe, Office fédéral de la justice, Bundesrain 20, CH-3003 Berne

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

UNITED KINGDOM / ROYAUME-UNI
Mr Rob LINHAM, Joint Head of Litigation, Legislation and European Institutions; Human Rights Division, Ministry of Justice; London

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

EUROPEAN COMMISSION / COMMISSION EUROPÉENNE
Mr Hannes KRAEMER, Member of the Legal Service, Brussel

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

M. Jerome LEGRAND, Administrateur, EEAS, Bruxelles

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

Ms Julie VONDUNG, Member of the Legal Service, Brussels,

PRIVATE OFFICE OF THE SECRETARY GENERAL AND DEPUTY SECRETARY GENERAL / CABINET DU SECRÉTAIRE GÉNÉRAL ET DE LA SECRÉTAIRE GÉNÉRALE ADJOINTE
M. Alexandre GUESSEL, Conseiller / Adviser

COMMITTEE OF MINISTERS / COMITE DES MINISTRES

THE COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI) / LE COMITÉ DES CONSEILLERS JURIDIQUES SUR LE DROIT INTERNATIONAL PUBLIC (CAHDI)
Mr Erik WENNERSTROEM, Principal Legal Adviser on International Law, Ministry for Foreign Affairs, International Law and Human Rights Department, Stockholm

THE REGISTRY OF THE EUROPEAN COURT OF HUMAN RIGHTS / LE GREFFE DE LA COUR EUROPÉENNE DES DROITS DE L'HOMME
Mr Michael O'BOYLE, Greffier adjoint de la Cour /Deputy Registrar of the Court

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

SERVICE DE L'EXECUTION DES ARRETS DE LA COUR / DEPARTMENT FOR THE EXECUTION OF THE JUGMENTS OF THE COURT
Mme Irène KITSOU-MILONAS

* * *

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

M. Philippe BOILLAT, Director General / Directeur Général

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

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

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

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

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

Interpreters / Interprètes:
Chloé CHENETIER
Robert SZYMANSKI
Julia TANNER

APPENDIX II

AGENDA

1. Opening of the meeting and adoption of the agenda

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

Working documents

Draft revised agreement on the accession of the EU to the Convention accession	CDDH-UE(2011)06 Appendix III
Draft revised explanatory report to the draft revised agreement on the accession of the EU to the Convention	CDDH-UE(2011)08
Comments of the Italian Delegation on the draft revised agreement on the accession of the EU to the Convention accession	CDDH-UE(2011)09

Reference documents

Relevant excerpts from 72th CDDH meeting report (Strasbourg, 29 March – 1st April 2011)	CDDH-UE(2011)07
6th working meeting report (15-18 March 2011)	CDDH-UE(2011)06
5th working meeting report (25-28 January 2011)	CDDH-UE(2011)03
4th working meeting report (6-8 December 2010)	CDDH-UE(2010)17
3rd working meeting report (19-22 October 2010)	CDDH-UE(2010)14
2nd working meeting report (20-22 September 2010)	CDDH-UE(2010)10
1st working meeting report (6-7 July 2010)	CDDH-UE(2010)05
Observations by the Italian Delegation on the draft agreement on the accession of the EU to the European Convention on Human Rights	CDDH(2011)06
Comments and Proposals on the draft agreement on the accession of the EU to the Convention (CDDH-UE (2011)04) and on the Explanatory report to the draft agreement on the accession of the EU to the Convention (CDDH-UE(2011)05) submitted by the European Trade Union Confederation (ETUC) to the CDDH-UE Working Group (10/03/2011)	Proposals ETUC/CES
Response of the European Group of National Human Rights Institutions: EU Accession to the ECHR for CDDH-UE meeting on March 15-18 2011	NHRI Submission

AIRE Centre and Amnesty International submission(14/03/2011)	AIRE & AI Submission
Draft elements for an accession agreement on General Issues and on Technical adaptations to provisions of the ECHR and other instruments with respect to the EU as a contracting party (Chapters A and B of the draft list of issues)	CDDH-UE(2010)11
Memorandum by the Secretariat on legal issues raised during the 2nd working meeting	CDDH-UE(2010)13 Restricted
Draft elements prepared by the Secretariat on the Procedure before the European Court of Human Rights (Chapter C of the draft list of issues)	CDDH-UE(2010)12
Draft revised elements prepared by the Secretariat on the Introduction of a co-respondent mechanism	CDDH-UE(2010)16
Draft additional elements prepared by the Secretariat on Procedural means guaranteeing the prior involvement of the Court of Justice of the EU in cases in which it has not been able to pronounce on compatibility of an EU act with fundamental rights (Item C.5 of the provisional list of issues)	CDDH-UE(2011)02
Draft elements prepared by the Secretariat on Institutional and Financial issues (Chapter D of the draft list of issues)	CDDH-UE(2010)15
Draft elements prepared by the Secretariat on Final Clauses (Chapter E of the draft list of issues)	CDDH-UE(2011)01

3. Any other business

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APPENDIX III

DRAFT REVISED ACCESSION AGREEMENT

Preamble[1]

The High Contracting Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"), 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[, the observance of which is internally ensured by the Court of Justice of the European Union],

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

Considering, in particular, that the individual should have the right of submitting the action of the European Union to the external control of the European Court of Human Rights,

Considering that, having regard to its specific legal order, the European Union's accession requires certain adjustments to the Convention system to be established by common agreement,

Have agreed as follows:

A – General Provisions and Scope of the Accession

Article 1 – Scope of the accession[2]

1. The European Union hereby accedes to the Convention and to Protocols Nos. 1 and 6 to the Convention.

2. Paragraph 2 of Article 59 of the Convention shall be amended to read as follows:

> "2. a. The European Union may accede to this Convention and the Protocols thereto. In that event, 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, 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.
>
> b. The status of the European Union as a High Contracting Party to the Convention and the Protocols thereto shall be further defined in the Agreement

[1] Text tentatively agreed except for the part in brackets.
[2] Text tentatively agreed. One participant reserved its position on some aspects of it

on the Accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms.

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

d. Where any of the terms "State", "State Party", "States" or "States Parties" appear in Article 10, paragraph 1 and in Article 17 of the Convention, Articles 1 and 2 of the Protocol, Article 2 of Protocol No. 4, Article 2 and Article 6 of Protocol No. 6, Articles 3, 4, 5 and 7 of Protocol No. 7, Article 3 of Protocol No. 12, and Article 5 of Protocol No. 13 to the Convention, they shall be understood as referring also to the European Union.

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

3. Paragraph 5 of Article 59 of the Convention shall be amended to read as follows:

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

(Article 2 – deleted)

Article [3] – Reservations to the Convention[3]

1. The European Union may, when signing or expressing its consent to be bound by the provisions of this Agreement in accordance with Article [11], make reservations to the Convention and to the Protocol in accordance with Article 57 of the Convention.

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

"1. Any State may, when signing this Convention or when depositing its instrument of ratification make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. The European Union may, when acceding to this Convention, make a reservation in respect of any particular provision of the Convention to the extent that any 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."

[3] Text tentatively agreed. One participant reserved his position on some aspects of it

B – Procedure before the European Court of Human Rights

Article [4] – Co-respondent mechanism

1. Article 36 of the Convention shall be amended as follows[4]:

a. The heading of Article 36 shall be amended to read as follows: "Third party interventions and co-respondents".

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 European 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.][5]

[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.][6]

4. Where an application is directed against and notified to both the European Union and one or more of its member States, if the conditions in paragraph 2 or paragraph 3 are met, the status of any respondent may be changed to that of a co-respondent.[7]

5. A High Contracting Party shall become a co-respondent only at its own request, and by decision of the Court. The Court shall seek the views of all parties to the proceedings. When deciding on such requests 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 are met.[8]

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, then

[4] Text of paragraph 1 tentatively agreed.
[5] Text of paragraph 2 discussed at the meeting. The participants reserved their position for further discussion.
[6] Text of paragraph 3 discussed at the meeting. The participants reserved their position for further discussion.
[7] Text of paragraph 4 tentatively agreed.
[8] Text of paragraph 5 tentatively agreed.

sufficient time shall be afforded for the Court of Justice of the European Union to make such an assessment and subsequently for the parties to make observations. The European Union shall ensure that such assessment is made quickly so that the proceedings before the European Court of Human Rights are not unduly delayed.[9]

7. The respondent and the co-respondent shall [appear][present themselves] [jointly][as jointly responsible] in the proceedings before the Court.[10]

8. The present article shall apply to applications submitted from the date of entry into force of this Agreement.[11]

Article [5] – Inter-Party cases[12]

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

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

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

"Article 33 - Inter-Party cases".

Article [6] – Interpretation of Articles 35 and 55 of the Convention[13]

1. Proceedings before the Court of Justice of the European Union shall not be understood as constituting procedures of international investigation or settlement within the meaning of Article 35, paragraph 2, letter b of the Convention.

2. Article 55 of the Convention shall not be understood as preventing the operation of Article 344 of the Treaty on the Functioning of the European Union.

C – Institutional and Financial Issues

Article [7] - Election of judges[14]

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 a State is entitled pursuant to Article 26 of the Statute of the Council of Europe.

[9] Text of paragraph 6 tentatively agreed. Two participants reserved their position on it
[10] Text of paragraph 7 tentatively agreed except for the parts in brackets.
[11] Text of paragraph 8 tentatively agreed.
[12] Text tentatively agreed.
[13] Text tentatively agreed.
[14] Text tentatively agreed. Placement of paragraph 1 in the Accession Agreement or also in the Convention to be confirmed.

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

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

1. The Committee of Ministers shall take decisions with the participation, with the right to vote, of the European Union[15]:

a. under Article 26, paragraph 2, Article 39, paragraph 4, Article 46, paragraphs 2 to 5 or Article 47 of the Convention; or

b. regarding the adoption of amending and additional protocols to the Convention; or

c. 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.

[2. Regarding judgments against the European Union as a respondent or co-respondent the rules of procedure of the Committee of Ministers regarding voting rights shall be adapted to provide adequate safeguards to ensure that [the exercise of combined votes by the European Union and its member States shall not cause prejudice to the effective exercise by the Committee of Ministers of its supervisory functions under Articles 39 and 46 of the Convention.]][16]

Article [9] - Participation of the European Union in the expenditure related to the Convention[17]

1. The European Union shall pay an annual contribution to the expenditure related to the functioning of the Convention. Such contribution shall be in addition to the contributions made by the other High Contracting Parties. For any year (A), the amount of that contribution shall be equal to the result of the application of the highest rate of contribution to the Ordinary Budget of the Council of Europe borne by any State in that year to an amount corresponding to 34 % of the amount of the Ordinary Budget of the Council of Europe (including employer's contributions to pensions) in the previous year (A-1).

2. The percentage referred to in the third sentence of paragraph 1 shall be adapted, by agreement between the Council of Europe and the European Union, to the proportion of the expenditure related to the functioning of the Convention in relation to the expenditure

[15] Text of paragraph 1 tentatively agreed pending a final definition of all the questions related to the voting rights in the context of the supervision of the execution of judgments. Placement of paragraph 1 in the Accession Agreement or also in the Convention to be confirmed.
[16] Text of paragraph 2 discussed at the meeting. The participants reserved their position for further discussion.
[17] Article tentatively agreed on the principle. Text to be revised by the Secretariat.

provided for in the Ordinary Budget of the Council of Europe, if that proportion for two consecutive years deviates by more than 2,5 percentage points from the percentage referred to in the third sentence of paragraph 1. For the purpose of such adaptation, no account shall be taken of any deviation resulting from a decrease in absolute figures of the expenditure related to the functioning of the Convention as compared to the situation existing in the year preceding that in which the European Union becomes a party to the Convention. Any new percentage resulting from such adaptation shall be subject to further adaptations, in accordance with this paragraph.

3. For the purpose of paragraphs 1 and 2, shall be considered as expenditure related to the functioning of the Convention the expenditure on

a. the functioning of the Court;

b. the supervision of the execution of the judgments of the Court; and

c. the functioning of the Committee of Ministers, the Parliamentary Assembly and the Secretary General of the Council of Europe when performing their functions under the Convention,

increased by 15 % for the 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.

D – Miscellaneous and Final Provisions

Article [10] – Relations with other Agreements[18]

1. As regards the European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights of 5 March 1996 (ETS No. 161):

a. The European Union shall respect the provisions of Articles 1 to 6 of the European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights. The Contracting Parties to that Agreement shall, for the purpose of its application, treat the European Union as if it were a Contracting Party to that Agreement.

b. The European Union shall be consulted before amending the European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights.

c. The Secretary General of the Council of Europe shall notify the European Union of:
   - any signature;
   - the deposit of any instrument of ratification, acceptance or approval;
   - any date of entry into force of that Agreement in accordance with Articles 8 and 9 thereof;
   - any other act, notification or communication relating to that Agreement.

[18] Text tentatively agreed.

2. As regards the General Agreement on Privileges and Immunities of the Council of Europe of 2 September 1949 and its Protocol of 6 November 1952 (ETS No. 002 and 010):

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

b. The European Union shall be consulted before amending the General Agreement on Privileges and Immunities of the Council of Europe or its Protocol.

c. The Secretary General of the Council of Europe shall notify the European Union of:

- any signature of the Protocol to the General Agreement;
- the deposit of any instrument of ratification of the General Agreement or of its Protocol;
- any date of entry into force of that General Agreement in accordance with Article 22 thereof, or of its Protocol, in accordance with article 7 of the latter;
- any other act, notification or communication relating to that General Agreement or to its Protocol.

3. As regards the Sixth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe of 5 March 1996 (ETS No. 162):

a. The European Union shall respect the provisions of Articles 1 to 6 of the Sixth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe. The Contracting Parties to that Protocol shall, for the purpose of its application, treat the European Union as if it were a Contracting Party to that Protocol.

b. The European Union shall be consulted before amending the Sixth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe.

c. The Secretary General of the Council of Europe shall notify the European Union of:

- any signature;
- the deposit of any instrument of ratification, acceptance or approval;
- any date of entry into force of that Protocol in accordance with Articles 8 and 9 thereof;
- any other act, notification or communication relating to that Protocol.

Article [11] – Signature and Entry into Force[19]

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 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 and to Protocols Nos. 1 and 6 at the date of entry into force of this Agreement.

Article [12] – Reservations[20]

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

Article [13] – Notifications[21]

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

a. any signature without reservation in respect of ratification, acceptance or approval;

b. any signature with reservation in respect of ratification, acceptance or approval;

c. the deposit of any instrument of ratification, acceptance or approval;

d. the date of entry into force of this Agreement in accordance with Article [11];

e. any other act, notification or communication relating to this Agreement.

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

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

[19] Text tentatively agreed.
[20] Text tentatively agreed.
[21] Text tentatively agreed.

Annex to the Agreement (forming an integral part thereof) [22]

Option 1: [In the light of collective [guarantee][enforcement] of the rights set forth in the Convention by all High Contracting Parties thereto and in accordance with the established practice of the Committee of Ministers, the European Union and its member States recognise that the supervision of execution of judgments is exercised by all High Contracting Parties in accordance with legal criteria arising from each judgment and the rules of procedure which were provided for:][23]

or

Option 2: [Taking into account that the supervision of the execution of judgments is a collective exercise by all High Contracting Parties acting with a view to ensure that respondent Parties discharge their legal obligations under Article 46 of the Convention, the European Union and its member States recognise that:][24]

a) Regarding judgments against a High Contracting Party other than the European Union or a member state of the European Union, there is no legal obligation under the EU treaties incumbent on the member States of the European Union to express positions or to vote in a coordinated manner even where the EU expresses a position or exercises its right to vote.

b) Regarding 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, the European Union is precluded for reasons pertaining to its internal legal order from expressing a position or exercising its right to vote, and there is no legal obligation under the European Union treaties incumbent on the member States to express positions or to vote in a coordinated manner.]

[22] The participants reserved their position on the Annex for further discussion.
[23] Text of Option 1 of the opening paragraph of the Annex discussed at the meeting.
[24] Text of Option 2 of the opening paragraph of the Annex proposed by the Secretariat on the basis of discussion at the meeting.

APPENDIX IV

Draft Rules 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 (separated from the Accession Agreement, but to be adopted at the same time)[25]

A) Provision to be added under Rule 11 (Infringement Proceedings):

5. In cases regarding judgments against the European Union as a respondent or co-respondent,

Option 1: [the European Union and its member States shall not [block]/[oppose] the adoption of resolutions under this Rule if two thirds of the representatives of States which are not members of the European Union are in favour.]
or
Option 2: [resolutions under this Rule shall be [deemed to be] adopted if two thirds of the representatives of States which are not members of the European Union are in favour.]

B) Provision to be added under Rule 16 (Interim Resolutions):

2. In cases regarding judgments against the European Union as a respondent or co-respondent,

Option 1: [the European Union and its member States shall not[block][oppose to] the adoption of interim resolutions if two thirds of the representatives of States which are not members of the European Union are in favour.]
or
Option 2: [interim resolutions shall be [deemed to be] adopted if two thirds of the representatives of States which are not members of the European Union are in favour.]

C) Provision to be added under Rule 17 (Final Resolutions):

2. In cases regarding judgments against the European Union as a respondent or co-respondent, the Committee of Ministers shall not adopt such a resolution

Option 1: [unless a majority of the representatives of States which are not members of the European Union is in favour of it.]
or
Option 2: [unless a majority of three quarters of High Contracting Parties casting a vote has been attained.]

[25] Text of the draft Rules discussed at the meeting. The participants reserved their position for further discussion.