



**COUNCIL OF
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**Working Party on Fundamental Rights, Citizens Rights
and Free Movement of Persons**

(Brussels, 25 October 2011)

WORKING DOCUMENT BY THE UNITED KINGDOM

**Draft Agreement on the Accession of the European Union to the Convention for the
Protection of Human Rights and Fundamental Freedoms**

United Kingdom proposed text amendments

The United Kingdom proposes the following text amendments to meet a number of the concerns set out in its non-paper on the draft accession agreement. The United Kingdom also proposes that further consideration be given to alternatives to the current proposal for voting arrangements in the Council of Europe in respect of the supervision of judgments.

Preamble and Article 59(2)(c) (in Article 1)

The United Kingdom proposes the following amendments to the **Preamble** and **Article 1**, clarifying the scope and jurisdiction of EU accession and defining the application of particular terms in the Convention to the European Union.

In paragraph 6 of the Preamble, insert after ‘specific legal order of the European Union as a regional economic integration organisation, its...’. The paragraph would then read as:

Considering that, having regard to the specific legal order of the European Union as a regional economic integration organisation, its accession requires certain adjustments to the Convention system to be made by common agreement,

In new paragraph 2(c) to be added to Article 59 of the Convention, delete ‘or of persons acting on their behalf’ and insert after the first sentence **Nothing in the Convention, the Protocols thereto, or the Agreement on the Accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms, shall impose obligations on the European Union in respect of a provision of the Treaty on European Union, the Treaty on the Functioning of the European Union, the Treaty establishing the European Atomic Energy Community, or any other provision having the same legal value pursuant to those instruments, or in respect of an act, measure or omission which is required rather than permitted by those instruments.** Nothing in the Convention-~~or~~, the Protocols thereto, **or the Agreement on the Accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms,...**

The paragraph would then read as:

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. Nothing in the Convention, the Protocols thereto, or the Agreement on the Accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms, shall impose obligations on the European Union in respect of a provision of the Treaty on European Union, the Treaty on the Functioning of the European Union, the Treaty establishing the European Atomic Energy Community, or any other provision having the same legal value pursuant to those instruments, or in respect of an act, measure or omission which is required rather than permitted by those instruments. Nothing in the Convention, the Protocols thereto, or the Agreement on the Accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms, shall require the European Union to perform an act or adopt a measure for which it has no competence under European Union law.

These amendments clarify the scope of EU accession, making clear that the EU does not have responsibility for the compatibility of the EU Treaties with the ECHR, which is, and will remain, the responsibility of member States. The references to the accession agreement itself are necessary due to the provisions in Article 9 of the agreement.

New Article 59(2)(c)(bis) (in Article 1)

The United Kingdom considers that a new provision should be added, clarifying EU jurisdiction in relation to the ECHR. This is to ensure that the jurisdiction for the EU mirrors that for its member States, and does not extend more widely. For this, the UK proposes the following text.

c.(bis) For the purposes of Article 1 of the Convention, a person shall be regarded as being within the jurisdiction of the European Union only to the extent that, if the alleged violation in question had been attributable to a High Contracting Party which is a member State of the European Union they would have been within the jurisdiction of that High Contracting Party.

Articles 59(2)(d) and (e) (in Article 1)

The United Kingdom considers that the application of the terms in Articles 59(2)(d) and (e) varies greatly, and the use of a general ‘mutatis mutandis’ provision does not allow for the precise application of such terms to be defined. The UK has considered the terms in context and proposes the following alternatives for dealing with these provisions.

Article 59(2)(d)

The United Kingdom proposes two alternative approaches to this provision.

The first is to delete (d) and set out the terms and necessary amendments to the Convention in an Annex, either to the Accession Agreement or to the Convention. A draft for such a table is included at the end of this document.

Alternatively, (d) could be retained, but with the **deletion of references to Article 2 of Protocol No.4, Article 2 of Protocol No. 6 and Articles 3 and 4 of Protocol No. 7**, and the **addition of references to “government signatories”** and similar terms which will need to be amended to “signatories” in the **Preamble and Preambles to Protocols 1, 4, 6 and 7**. If (d) is retained, the UK considers that an amendment is also necessary to make clear that the differentiation is necessary as the European Union is a non-State party to the Convention. This would be an addition to the end of the paragraph... referring also to the European Union, **as a non-State party to the Convention**.

The revised (d) would, if retained, look as follows:

d. Where any of the terms ‘State’, ‘State Party’, ‘States’ or ‘States Parties’ appear in paragraph 1 of Article 10, and in Article 17 of this Convention, as well as in Articles 1 and 2 of the Protocol, Article 6 of Protocol No. 6, Articles 5 and 7 of Protocol No. 7, Article 3 of Protocol No. 12, and Article 5 of Protocol No. 13, they shall be understood as referring also to the European Union, as a non-State party to the Convention. Where any of the terms ‘governments signatory hereto, being members of the Council of Europe.’, ‘governments signatory’, ‘governments of European countries’, and ‘member States of the Council of Europe, signatory’ appears in the Preamble to this Convention, as well as the Preamble to the Protocol, and the Preambles to Protocols No. 4, 6, and 7, they should be understood as referring to ‘signatory’ in relation to the European Union.

Article 59(2)(e)

In relation to (e), the United Kingdom proposes to delete the paragraph, and set out the precise modifications needed for the European Union in an Annex, either to the Accession Agreement or to the Convention.

The proposed table is included at the end of this document.

New Article 1(4) of the Accession Agreement or new Article 59(2)(f) of the Convention

Given the United Kingdom's proposals for annexes above, a new provision would need to be inserted to give them effect. If the annexes go in the Convention, this would need to be added to Article 59(2) of the Convention as 59(2)(f); or if the annexes go in the Accession Agreement, this would need to be a new Article 1(4) of the Accession Agreement. The latter approach would be drafted as follows, but either would need to make provision in these terms:

4. The modifications and amendments to the Convention and its Protocols set out in the Annex to this Agreement shall have effect.

Article 3 – Co-respondent mechanism

The United Kingdom proposes the following amendments to the text to clarify the requirements that need to be met for the co-respondent mechanism to apply. The UK considers this should be made clear in the Accession Agreement, rather than the Internal Rules. However, the UK is content for further details on the process for determining and limiting when the co-respondent will be used to be included in the Internal Rules, and will continue to work with other member States on the detail of these.

The United Kingdom proposes to revert to the draft of Article 3(2) and 3(3) as agreed at the 6th meeting of CDDH-UE:

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 an act or omission underlying that alleged violation could only have been avoided by a respondent State disregarding an obligation upon it under European Union law.

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 an act or omission underlying that alleged violation could only have been avoided by the European Union disregarding an obligation upon it under European Union Law which cannot be modified by its institutions alone.

New Article 3(3)(a)

As required by negotiating directive 10(c), the United Kingdom proposes a new provision allowing a member State to become co-respondent where their national law is called into question. This new provision should also include omissions by member States, where they could have addressed a matter under national law.

The UK suggests the following text for the new provision, consistent with the proposed revisions to 3(2) and (3):

3a. Where an application is directed against the European Union, any European Union member State may become a co-respondent to the proceedings in respect of an alleged violation notified by the Court if it appears that the alleged violation relates to an action taken or law adopted by that member State, or to a matter that the member State could have addressed under its national law.

Consequential amendments to Article 3(4) and 3(5)

Article 3(4) and 3(5) will require slight amendments to reflect the proposed new Article 3(3)(a), to add in references to paragraph 3a alongside references to paragraphs 2 and 3.

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

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 determining a request of this nature 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~~ or paragraph 3a of this Article are met.

Article 3(6)

The United Kingdom has no text proposals for this paragraph, but reiterates that any prior involvement mechanism must not require Treaty change and must be limited in scope in order to minimise delay for all, including applicants, and additional workload in both Courts.

Article 3(7)

The United Kingdom, while previously arguing otherwise, has been persuaded that there is merit in making more explicit that the Strasbourg Court should normally give undifferentiated judgments. Scope should remain, however, for the Court to make a differentiated judgment where the co-respondents indicate that a violation, if found, should be attributed only to one of them. The UK therefore proposes the following text:

7. The respondent and the co-respondent shall appear jointly in the proceedings before the Court. The respondent and the co-respondent may jointly inform the Court that responsibility for any given alleged violation should be attributed only to one of them. Otherwise, should the Court find a violation, it should do so jointly against the respondent and the co-respondent.

Article 7 – Participation of the European Union in the Committee of Ministers of the Council of Europe

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

The United Kingdom considers that the current text is not acceptable, as it goes too far in curtailing the voting rights and associated negotiation influence of the EU and its member States in the Council of Europe in respect of the supervision of judgments in cases against the EU (and also against member States where they are co-respondents). The potential repercussions of agreeing to curtail the influence of the EU needs to be considered more carefully, as it could lead to demands for similar reduction of EU and member State influence in other international bodies as well as elsewhere within the Council of Europe system.

In respect of paragraph 7(1)(c) the UK would like clarification of which of the functions of the Committee of Ministers and Parliamentary Assembly of the Council of Europe the EU would be entitled to participate in. The UK does not consider a ‘catch-all’ provision to be appropriate and suggests that an exhaustive list be prepared instead by Council of Europe experts. As such, **the UK proposes that the EU negotiator ask that CDDH-UE be tasked to provide an exhaustive list, which could then be inserted in this paragraph rather than the current text.**

In respect of paragraph 7(2)(a) and Rule 18, the United Kingdom would like further consideration of the possible options for ensuring the effective supervision of judgments without necessarily curtailing the EU and member States votes, and consequent influence in the Committee of Ministers. **The UK proposes that the EU negotiator ask that CDDH-UE be tasked to consider this further and provide alternatives to the current proposal.**

Notwithstanding the need for further thought on the Article generally, the United Kingdom concedes that, in respect of paragraph 7(2), clarification of the circumstances in which the EU member States are required to take a co-ordinated position with the EU and act collectively might best be dealt with in the Internal Rules rather than in the Accession Agreement.

Article 8 – Participation of the European Union in the expenditure related to the Convention

The United Kingdom reiterates its call for more details on the budgetary implications of accession. Only once we have these can the UK properly consider and agree to the proposals concerning the EU's financial contribution.

Article 9 – Relations with other Agreements

The United Kingdom requires an addition to the text of paragraph 9(1), making clear that the EU will only act within the limits of its competence when acting in relation to the Agreements listed. The UK proposes that **'within the limits of its competence,'** should be inserted after 'shall'

The text of paragraph 9(1) would read as:

1. The European Union shall, within the limits of its competence, respect the provisions of:

Finally, the United Kingdom notes that the revised Accession Agreement will need to be considered and agreed in conjunction with the proposed Internal Rules, to ensure that UK concerns are met. We consider the Accession Agreement and Internal Rules to be a package that can only be agreed once we are content with all parts.

Annex

Modifications to the Convention and its Protocols (this table replaces Article 59(2)(e))

<i>Provision in the Convention</i>	<i>Expression</i>	<i>Modification</i>
Article 5(1)(f)	“entry into the country”	As regards the European Union, the reference to ‘entry into the country’ shall be taken to be a reference to entry into any of its member States.
Article 6(1); Article 8(2); Article 10(2); Article 11(2); Article 2(3) of Protocol No. 4	“national security”	As regards the European Union, the reference to ‘national security’ shall be taken to be a reference to the national security of any of its member States.
Article 7(1)	“national... law”	As regards the European Union, the reference to “national...law” shall be taken to be a reference to the law of any of its member States.
Article 8(2)	“the economic well-being of the country”	As regards the European Union, the reference to ‘the economic well-being of the country’ shall be taken to be a reference to the economic well-being of its member States individually or collectively.
Article 10(2)	“territorial integrity”	As regards the European Union, the reference to ‘territorial integrity’ shall be taken to be a reference to the territorial integrity of any of its member States.
Article 11(2)	“administration of the State”	As regards the European Union, the reference to “administration of the State” shall be taken to be a reference to the institutions, bodies, offices and agencies of the European Union.

Article 12	“national laws”	As regards the European Union, the reference to “national laws” shall be taken to be a reference to the laws of any of its member States.
Article 13	“national authority”	As regards the European Union, the reference to ‘national authority’ shall be taken to be a reference to any institution, body, office or agency of the European Union.
Article 15	“life of the nation”	As regards the European Union, the reference to ‘the life of the nation’ shall be taken to be a reference to the life of any of its member States.
Article 35	“domestic remedies”	As regards the European Union, the reference to ‘domestic remedies’ shall be taken to be a reference to remedies available from the national courts and the Court of Justice of the European Union, in accordance with the law of the European Union.

Amendments to the Convention and its Protocols

This table would be required if Article 1(2)(d) is deleted from the Accession Agreement

<i>Provision in the Convention</i>	<i>Expression</i>	<i>Amendment</i>
Preamble	“governments signatory hereto, being members of the Council of Europe,”	“signatories”
	“governments of European countries”	“signatories”
Article 10(1)	“States”	“High Contracting Parties”

Article 17	“State”	“High Contracting Party”
<i>Protocol</i>		
Preamble	“governments signatory”	“signatories”
Article 1	“State”	“High Contracting Party”
Article 2	“State”	“High Contracting Parties”
<i>Protocol No. 4</i>		
Preamble	“governments signatory”	“signatories”
<i>Protocol No. 6</i>		
Preamble	“member States of the Council of Europe, signatory”	“signatories”
Article 6	“States Parties”	“High Contracting Parties”
<i>Protocol No. 7</i>		
<u>Preamble</u>	“member States of the Council of Europe signatory”	“signatories”
Article 5	“States”	“High Contracting Parties”
Article 7	“States Parties”	“High Contracting Parties”
<i>Protocol No. 12</i>		
Article 3	“States Parties”	“High Contracting Parties”
<i>Protocol No. 13</i>		
Article 5	“States Parties”	“High Contracting Parties”
