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**14TH MEETING OF THE CDDH AD HOC NEGOTIATION GROUP
("46+1") ON THE ACCESSION OF THE EUROPEAN UNION TO
THE EUROPEAN CONVENTION ON HUMAN RIGHTS**

**Numerical analysis by the Secretariat of the effects of the different majorities resulting
from the proposal to amend Rule 18**

Strasbourg, Tuesday 5 July 2022 (10:00 am) – Thursday 7 July 2022 (4:30 pm)

(The meeting will be held as a hybrid meeting through the KUDO videoconferencing system
and in Room 9, Palais de l'Europe)

Council of Europe

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Introduction

At the 13th meeting of the “46+1 Group” meeting (10-13 May 2022), the Secretariat was asked to prepare a numerical analysis of the effects of the different majorities required for the adoption of different types of decision by the Committee of Ministers when supervising the execution of Court judgments, as they would result from the proposal to amend Rule 18 presented by the Turkish delegation.

The present paper provides an assessment of the numerical impact of the proposals submitted by the Turkish delegation, taking into account the cessation of the Russian Federation’s membership of the Council of Europe and assuming the participation with full voting rights of the EU in Committee of Ministers’ meetings dealing with supervision of the execution of the Court’s judgments. The background descriptions and explanations provided in parts II and III are taken from the earlier document 47+1(2021)15.

Judgments in cases to which the EU is a party (i.e. as either respondent or co-respondent)

For judgments in cases to which the EU is a party, either as respondent or co-respondent, the accession instruments provided for a draft Rule 18 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 settlements¹.

On the basis of this rule, the following decisions by the Committee of Ministers would be conceivable.

A. Final resolutions

Current treatment under the draft Accession Instruments:

According to Rule 18(1), a majority of four fifths of the representatives casting a vote and a majority of two thirds of the representatives entitled to sit on the Committee of Ministers is required. Paragraph 85 of the explanatory report provides the following example:

“In a system with 48 High Contracting Parties, this means that at least 32 votes would be required, but according to the number of members actually casting a vote the number of votes required for the adoption of a final resolution may vary between 32 and 39.”

¹ The draft rule currently reads as follows:

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

1. Decisions by the Committee of Ministers under Rule 17 (Final Resolution) of the present rules shall be considered as adopted if a majority of four fifths of the representatives casting a vote and a majority of two thirds of the representatives entitled to sit on the Committee of Ministers are in favour.
2. Decisions by the Committee of Ministers under Rule 10 (Referral to the Court for interpretation of a judgment) and under Rule 11 (Infringement proceedings) of the present rules shall be considered as adopted if one fourth of the representatives entitled to sit on the Committee of Ministers is in favour.
3. Decisions on procedural issues or merely requesting information shall be considered as adopted if one fifth of the representatives entitled to sit on the Committee of Ministers is in favour.
4. Amendments to the provisions of this rule shall require consensus by all High Contracting Parties to the Convention.

A.1 Impact of the reduction of High Contracting Parties from 48 to 47

In a system with 47 High Contracting Parties (i.e. without the Russian Federation but with the EU), and assuming that the EU and all EU member states are present and voting as a bloc, in order to satisfy the second requirement (“a majority of two thirds of the representatives entitled to sit on the Committee of Ministers is required”), at least 32 High Contracting Parties need to vote in favour. If all **47** High Contracting Parties are casting a vote, a majority of four fifths is reached if **38** Parties vote in favour. Hence the number of votes required may vary **between 32 and 38 votes** (instead of 39, which would have been the case with the Russian Federation included), depending on the number of delegates which are casting a vote.

The detailed breakdown of different possibilities is as follows:

Votes Cast	4/5 Majority of the votes cast and a 2/3 majority of the parties entitled to sit on the CM
47	38
46	37
45	36
44	36
43	35
42	34
41	33
40	32
39	32
38	32
37	32
36	32
35	32
34	32
33	32
32	32
31 or less	majority not reached

Paragraph 85 of the explanatory report should therefore be amended as follows:

*“In a system with **47** High Contracting Parties, this means that at least 32 votes would be required, but according to the number of members actually casting a vote the number of votes required for the adoption of a final resolution may vary between 32 and **38**.”*

A.2 Impact of the proposal by Türkiye

In its proposal, the Turkish delegation suggests modifying paragraph 1 of draft Rule 18 as follows:

*“1. Decisions by the Committee of Ministers under Rule 17 (Final Resolution) of the present rules shall be considered as adopted if a majority of four fifths of the representatives casting a vote, **including a simple majority of non-EU members of the Council of Europe**, and a majority of two thirds of the representatives entitled to sit on the Committee of Ministers are in favour.”*

Assuming, as indicated above, that the EU and all EU member states are present and vote as a bloc, the impact of the Turkish proposed amendment will depend on the number of non-EU members of the Council of Europe casting a vote. As there are currently 19 non-EU members, the simple majority required, according to the number of non-EU members casting a vote, would be as follows:

Non-EU member states casting a vote	Simple Majority
19	10
18	10
17	9
16	9
15	8
14	8
13	7
12	7
11	6
10	6
9	5
8	5
7	4
6	4
5	3
4	3
3	2
2	2
1	1

The combination of these majorities would give the following result:

Votes Cast	4/5 Majority of the votes cast including a 2/3 majority of the parties entitled to sit on the CM (current proposal)	Simple majority of non-EU member states casting a vote (Turkish proposal)	Total number of votes required according to the Turkish proposal	Difference between the two proposals
47	38 (28 EU + at least 10 non-EU)	10	38	0
46	37 (28 EU + at least 9 non-EU)	10	38	+1
45	36 (28 EU + at least 8 non-EU)	9	37	+1
44	36 (28 EU + at least 8 non-EU)	9	37	+1
43	35 (28 EU + at least 7 non-EU)	8	36	+1
42	34 (28 EU + at least 6 non-EU)	8	36	+2
41	33 (28 EU + at least 5 non-EU)	7	35	+2
40	32 (28 EU + at least 4 non-EU)	7	35	+3
39	32 (28 EU + at least 4 non-EU)	6	34	+2
38	32 (28 EU + at least 4 non-EU)	6	34	+2
37	32 (28 EU + at least 4 non-EU)	5	33	+1
36	32 (28 EU + at least 4 non-EU)	5	33	+1
35	32 (28 EU + at least 4 non-EU)	4	32	0

34	32 (28 EU + at least 4 non-EU)	4	32	0
33	32 (28 EU + at least 4 non-EU)	3	32	0
32	32 (28 EU + at least 4 non-EU)	3	32	0
31 or less	majority not reached			

In other words, compared to the current situation (in a 47 High Contracting Parties scenario), the Turkish proposal would have **no impact if the number of votes cast is between 32 and 35 and if all 47 High Contracting Parties cast a vote. In the other cases, it would require an increase of the required favourable votes cast by non-EU member states**, with a maximum difference of 3 (when 40 votes are cast).

B. Interim resolutions and “other decisions”, and decisions on procedural issues and those merely requesting information

Current treatment under the draft Accession Instruments:

As regards decisions on procedural issues or merely requesting information, specific rules are currently provided for decisions on procedural issues or merely requesting information in Rule 18(3), whereby such decisions shall be considered as adopted if one fifth of the representatives entitled to sit on the Committee of Ministers is in favour. Paragraph 87 of the explanatory report states: “In a system with 48 High Contracting Parties, it means that 10 votes would be required to consider such decisions as adopted.”

No specific rule is currently provided for interim resolutions and for “other decisions” in the draft Accession Instruments. In this respect, Paragraph 89 of the explanatory report states:

*“In the absence of specific provisions in the new rule, the majority rule set out in Article 20.d of the Statute of the Council of Europe applies to all other types of decisions, **including the adoption of interim resolutions** and of any other decisions expressing a position on compliance by the EU with the obligation under Article 46, paragraph 1, of the Convention. The EU could, by using its bloc of votes, impede the adoption of such interim resolutions and decisions. However, it was considered by the negotiating parties that it was politically highly unlikely that the EU would use the bloc of votes to this effect. In the current practice such interim resolutions and decisions are normally adopted by consensus. Moreover, the effective exercise by the Committee of Ministers of its supervisory functions will nevertheless be ensured. In fact, pursuant to paragraph 2 of the new rule, the adoption of decisions requesting second referral for infringement to the Court has been considerably facilitated by reducing the threshold required from two thirds to one fourth of the representatives entitled to sit on the Committee of Ministers.”*

Hence the adoption of interim resolutions and “other decisions” would require the default majority stated in Article 20.d of the Statute of the Council of Europe (two-thirds majority of the representatives casting a vote and of a majority of the representatives entitled to sit on the Committee).

B.1 Impact of the reduction of High Contracting Parties from 48 to 47

B.1.a Decisions on procedural issues or merely requesting information

In a system with 47 High Contracting Parties, 10 votes would still be required to consider adopted a decision according to Rule 18(3). The reduction of the number of High Contracting Parties from 48 to 47 has no impact. It would nonetheless be necessary to amend Paragraph 87 of the explanatory report to refer to 47 High Contracting Parties instead of 48.

B.1.b Interim resolutions and “other decisions”

In a system with 47 High Contracting Parties, the default majority stated in Article 20.d of the Statute of the Council of Europe (two-thirds majority of the representatives casting a vote and of a majority of the representatives entitled to sit on the Committee) would require **between 24 (instead of 25) and 32 votes**, depending on the number of representatives casting a vote, to consider interim resolutions as adopted.

B.2 Impact of the proposal by Türkiye

In its proposal, the Turkish delegation suggests modifying paragraph 3 of draft Rule 18 as follows:

“3. Decisions under Rule 16 (Interim Resolutions) and other decisions² shall be considered as adopted if one fifth of the representatives entitled to sit on the Committee of Ministers is in favour.”

In the proposal for the explanatory memorandum, it is indicated that “[t]he expression “other decisions” shall be interpreted as encompassing all decisions that cannot be qualified under any other Rule.”

In a system with 47 High Contracting Parties, it means that **10** votes would now be required to consider as adopted not only decisions on procedural issues or merely requesting information but also Interim Resolutions and “other decisions”.

C. Referral to the Court for interpretation of a judgment (art. 46(3) of the Convention) and infringement proceedings (article 46(4) of the Convention)

Current treatment under the draft Accession Instruments:

According to Rule 18(2), decisions by the Committee of Ministers under Rule 10 (Referral to the Court for interpretation of a judgment) and under Rule 11 (Infringement proceedings) shall be considered as adopted if one fourth of the representatives entitled to sit on the Committee of Ministers is in favour.

Paragraph 86 of the explanatory report indicates that *“In a system with 48 High Contracting Parties, this means that 12 votes would be required to consider such decisions as adopted.”*

C.1 Impact of the reduction of High Contracting Parties from 48 to 47

In a system with 47 High Contracting Parties, 12 votes would still be required to consider adopted decisions according to Rule 18(2). The reduction of the number of High Contracting Parties from 48 to 47 has no impact. It would nonetheless be necessary to amend Paragraph 86 of the explanatory report to refer to 47 High Contracting Parties instead of 48.

² In the context of the Turkish proposal, “Other decisions” would include all decisions whose substance is not covered by the other categories described in this paper. It would thus include both decisions on procedural issues or merely requesting information (as is the case in current draft Rule 18(3)), and the category of “other decisions” mentioned in current paragraph 89 of the explanatory report: for example, when the Committee of Ministers “urges the authorities of [a High Contracting Party] to intensify their efforts to resolve, definitively and as quickly as possible, the structural problem found by the Court”; or when the Committee of Ministers “invites the authorities to elaborate concrete proposals to comply with the Court’s judgment and to explore all possible avenues within their wide margin of appreciation, such as a flexible interpretation of the relevant provision of its domestic law which formed part of the case” (see doc. 47+1(2021)15, para. 14).

C. 2 Impact of the proposal by Türkiye

In its proposal, the Turkish delegation does not suggest changing Rule 18(2).