



Strasbourg, 5 April 2013



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**FIFTH NEGOTIATION MEETING BETWEEN THE CDDH AD HOC
NEGOTIATION GROUP AND THE EUROPEAN COMMISSION ON
THE ACCESSION OF THE EUROPEAN UNION TO THE EUROPEAN
CONVENTION ON HUMAN RIGHTS**

Meeting report

Strasbourg, Wednesday 3 April (10.00 am) – Friday 5 April 2013 (4.30 pm)
Agora Building, Room G02
Council of Europe

1. Opening of the meeting and adoption of the agenda

1. The fifth negotiation meeting between the CDDH ad hoc negotiation group and the European Commission on the accession of the European Union to the European Convention on Human Rights was held on 3-5 April 2013, in Strasbourg, under the chairmanship of Ms Tonje Meinich (Norway). The list of participants appears in Appendix I. The agenda, as adopted, appears in Appendix II.

2. Draft legal instruments on the accession of the European Union to the European Convention on Human Rights: examination of proposals for amendments and finalisation of the draft Accession Agreement

2. After opening the meeting, the Chair presented her new proposal on outstanding issues (document 47+1(2013)006), based on the conclusions of the last meeting and on informal consultations carried out thereafter. In presenting the proposal, she underlined that it should be considered in its entirety, as a package, and that it required all negotiating parties to show flexibility and to depart from their respective original positions. Several delegations thanked the Chair for her proposal, underlining that it provided interesting solutions to all the pending issues and that it facilitated greatly the identification of an acceptable compromise.

3. The participants then examined the draft accession instruments, revised on the basis of the Chair's proposals, as they appear in the Appendix to document 47+1(2013)006.

4. As regards the Preamble of the Accession Agreement and the revised "bridging clause" to be inserted in Article 59, paragraph 2, letter b of the Convention pursuant to Article 1, paragraph 2 of the Accession Agreement, the participants confirmed the agreement on the amendments already proposed at the previous meeting.

5. The participants discussed then the attribution clause contained in Article 1, paragraph 4, together with the corresponding passages of the explanatory report, in the light of the Chair's proposal and of the amendments to this proposal presented by the EU, and agreed on a few amendments to these texts.

6. The participants then discussed the question of a possible extension of the co-respondent mechanism to situations in which an application directed against a State, which is not a member of the EU, puts into question the compatibility with the Convention of an international agreement between that State and the EU. The compromise proposed by the Chair was accepted, with slight amendments to the corresponding passages of the explanatory report and to the draft model of Memorandum of Understanding to clarify that agreements would only be concluded upon request of the concerned State.

7. The participants also agreed to deal with the question of the non-binding character of the co-respondent mechanism according to the compromise proposal presented by the Chair. According to that proposal, the EU will make a declaration at the moment of the signature of the Accession Agreement stating that it will ensure to join the proceedings as co-respondent when the conditions set out in Article 3, paragraph 2 of the Accession Agreement are met.

8. Concerning the prior involvement procedure, it was agreed to transfer part of the text of Article 3, paragraph 6 to the explanatory report, as suggested in the Chair's proposal.
9. The participants agreed to slightly amend the proposed text of Article 3, paragraph 7 and of the corresponding passage of the explanatory report.
10. As regards the participation of the EU in the Committee of Ministers in matters other than the supervision of the execution of judgments and of the terms of friendly settlements, the participants discussed and agreed, with some drafting changes, to amend the draft Accession Agreement as suggested in the Chair's proposal. As a consequence, the EU shall be entitled to participate in the Committee of Ministers, with the right to vote, when the latter takes decisions on the adoption of protocols to the Convention, and shall be consulted on the adoption of other relevant instruments. The participants also agreed to insert additional clarifications in this respect in the explanatory report.
11. As regards the voting rights in cases involving the EU, the participants agreed on the proposal presented by the Chair, and on the corresponding provisions of the explanatory report. In this respect, it was agreed to insert additional clarifications in the explanatory report on the implications of the absence of specific voting rules for the adoption of interim resolutions and other decisions expressing a position on compliance by the EU with the obligations under Article 46, paragraph 1 of the Convention.
12. Finally, the participants agreed on the Chair's proposal to redraft the part of Article 7 dealing with the participation of the EU in the Committee of Ministers when it supervises obligations in cases against High Contracting Parties other than the EU.
13. As regards the other provisions of the explanatory report, the participants examined the draft revised text presented by the Secretariat (document 47+1(2013)007) and agreed on a number of amendments, including notably the addition of a sentence on the objectives of the accession and of a sentence on the importance of the explanatory report itself.
14. The participants agreed at negotiators' level on the draft revised instruments. The draft revised instruments on the accession of the EU to the European Convention on Human Rights consist of a draft Agreement on the Accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms, a draft declaration by the EU, a draft Rule to be added to the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements in cases to which the EU is a party, a draft model of Memorandum of Understanding, and a draft explanatory report to the Accession Agreement. The participants agree that they all form a package and are equally necessary for the accession of the EU to the Convention.
15. The participants agreed to recommend to the Committee of Ministers that, when taking note of the "package" of instruments, it also stresses the importance of all the instruments elaborated, including the explanatory report, which all form part of the context underlying the accession of the EU to the Convention.

16. Many participants underlined that the completion of internal procedures would be required before the final adoption of the instruments. In particular, the representative of the EU indicated that the signature of the Accession Agreement by the EU was subject to a series of internal political and procedural steps. The representative of the EU indicated in particular that firstly, an opinion of the Court of Justice of the EU would be sought on the compatibility of the draft agreement with the EU treaties, and that secondly, the Council of the European Union would have to adopt unanimously the decision authorising the signature of the Accession Agreement. That Council Decision is, in turn, conditional on a political agreement on the EU internal rules.

17. The participants also adopted a final report to the CDDH on the negotiation (document 47+1(2013)008). The draft revised instruments, as agreed, are appended to that final report.

3. Any other business

18. The participants discussed the letter from the AIRE centre to the Chair and the comments appended thereto. Taking into account that no more negotiation meetings are scheduled, it was agreed to recommend to the CDDH to invite the AIRE centre to its next meeting.

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APPENDIX II**Agenda**

- 1. Opening of the meeting and adoption of the agenda**
- 2. Draft legal instruments on the accession of the European Union to the European Convention on Human Rights: examination of proposals for amendments and finalisation of the draft Accession Agreement**

Working documents

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	47+1(2013)007
Revised chairperson's proposal on outstanding issues	47+1(2013)006
Participation of the EU in the Committee of Ministers when the latter takes decisions other than those expressly provided in the Convention: implications of the various options under discussion	47+1(2013)005
Secretariat proposal for a Draft additional Rule for the supervision of the execution of judgments and of the terms of friendly settlements in cases to which the European Union is a party	47+1(2013)004
Common paper of Andorra, Armenia, Azerbaijan, Bosnia-Herzegovina, Iceland, Liechtenstein, Monaco, Montenegro, Norway, Serbia, Switzerland, Russian Federation, Turkey and Ukraine on major concerns regarding the Draft revised Agreement on the Accession of the European Union to the European Convention on Human Rights	47+1(2013)003
Chairperson's proposal on outstanding issues	47+1(2013)001
<u>Appendix III</u> to the Report of the 3rd negotiation meeting (7-9 November 2012): Draft Revised Agreement on the Accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms	47+1(2012)R03
CDDH report to the Committee of Ministers on the elaboration of legal instruments for the accession of the European Union to the European Convention on Human Rights	CDDH(2011)009
Negotiation document submitted by the European Union on 30 October 2012	(Restricted)
Negotiation document submitted by the European Union on 14 June 2012	(Restricted)
Comments from Armenia	47+1(2012)003 bil (Restricted)
Comments from Norway	47+1(2012)004 bil (Restricted)

Comments from Switzerland	47+1(2012)005 bil (Restricted)
Letter from the Russian Federation	47+1(2012)006 bil (Restricted)
Andorra paper : “EU accession to the European Convention on Human Rights - Reflections dealing with problems arising from the second 47 +1 meeting”	47+1(2012)007

Reference documents

Report of the 4 th negotiation meeting (21-23 January 2013)	47+1(2013)R04
Report of the 3 rd negotiation meeting (7-9 November 2012)	47+1(2012)R03
Report of the 2 nd negotiation meeting (17-19 September 2012)	47+1(2012)R02
Report of the 1 st negotiation meeting (21 June 2012)	47+1(2012)R01
Decisions of the 1145 th meeting of the Ministers' Deputies (13 June 2012)	47+1(2012)001 bil
Report of the Extraordinary meeting of the CDDH (12-14 October 2011)	CDDH(2011)R Ex

3. Any other business