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**15TH MEETING OF THE CDDH AD HOC NEGOTIATION GROUP
("46+1") ON THE ACCESSION OF THE EUROPEAN UNION TO
THE EUROPEAN CONVENTION ON HUMAN RIGHTS**

Background paper by DLAPIL on "EU accession to the ECHR & election of judges"

Council of Europe

EU accession to the ECHR & election of judges

At the last negotiation meeting 47+1, the question was raised whether the EU would be bound by instruments adopted by the Committee of Ministers on the election of ECtHR judges, in particular Resolution CM/Res(2010)26, which establishes an *Advisory Panel of Experts on Candidates for Election as Judge to the ECtHR* and the *Guidelines on the selection of candidates for the post of judge at the ECtHR* (CM(2012)40).

While the Draft Accession Agreement explicitly addresses the election of judges in its Art. 6, the two instruments adopted by the Committee of Ministers ('CM-instruments') are not mentioned in this article. Instead, the article focuses on how and to what extent a delegation of the European Parliament is entitled to participate in the sittings of the Parliamentary Assembly. Furthermore, the article stipulates that the modalities for the participation will be defined by the Parliamentary Assembly in cooperation with the European Parliament. With regard to the selection of EU-candidates the Draft Explanatory Report to the Draft Accession Agreement merely states in para. 76:

'It is also understood that internal EU rules will define the modalities for the selection of the list of candidates in respect of the EU to be submitted to the Parliamentary Assembly.'

Leaving aside the fact that the wording ('State', 'national legal system', etc.) should be understood to refer also to the EU as a non-state party, the CM instruments in question do not seem to raise issues with regard to the EU's specific characteristics. This is especially true for the Guidelines, whose criteria are primarily informed by practical considerations and the criteria already stipulated in Art. 21 ECHR. Moreover, the procedures for eliciting applications and drawing up the recommended list of candidates seem to be sufficiently wide and flexible to accommodate any special requirements the EU might have. Similarly, consulting the Advisory Panel should in principle be acceptable to the EU.

A possible solution could consist in amending the Draft Explanatory Report by adding a new sentence in para. 76 (addition in bold):

*'It is also understood that internal EU rules will define the modalities for the selection of the list of candidates in respect of the EU to be submitted to the Parliamentary Assembly. **These internal EU rules will be consistent with the modalities defined by the relevant instruments adopted within the Council of Europe, in particular CM/Res(2010)26 and CM(2012)40.***

This solution would clarify that while the EU like any other Party is free to adopt its own internal rules on the modalities for selecting candidates, these modalities have to respect the framework already agreed upon by the other Parties. The wording is drafted in a broad way in order to not exclude any relevant instruments. In addition, it could be expressly stated that this 'commitment' will include future instruments adopted by the Committee of Ministers. After all, this would be desirable and could be acceptable to the EU as under Art. 7(3) Draft Accession Agreement the EU will be consulted before the adoption of such instruments.

Another possibility would be to add a paragraph to the existing Art. 6 of the Draft Accession Agreement:

“The modalities for the selection and election of candidates for the post of judge at the European Court of Human Rights defined by the relevant instruments adopted within the Council of Europe shall apply to the European Union.”