



47+1(2020)Rinf  
22 June 2020

**VIRTUAL INFORMAL MEETING OF THE CDDH AD HOC  
NEGOTIATION GROUP (“47+1”) ON THE ACCESSION OF THE  
EUROPEAN UNION TO THE EUROPEAN CONVENTION ON  
HUMAN RIGHTS**

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**Meeting Report**

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Monday 22 June 2020 (9:30 a.m. – noon)

Virtual meeting (KUDO) with remote simultaneous interpretation  
Council of Europe

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1. The CDDH ad hoc negotiation group (“47+1 Group”) on the accession of the European Union (EU) to the European Convention on Human Rights (ECHR) held a virtual informal meeting with remote simultaneous interpretation (using the KUDO platform) on Monday 22 June (9:30 a.m. – noon CET).

### **1. Opening of the meeting and adoption of the agenda**

2. The Chair of the “47+1 Group”, Ms Tonje Meinich (Norway), opened the virtual informal meeting. The Group adopted the agenda (Appendix I). The list of participants is attached as Appendix II. In addition to the participants, the virtual meeting was followed by around 70 “viewers” from delegations (i.e. persons following, but not being able to make interventions). The opening addresses as figured under agenda items 2-5 are attached to the present report as Appendices III-VI.

### **2. Opening address by Mr Christos GIAKOUMOPOULOS, Director General Human Rights and Rule of Law**

3. Mr Giakoumopoulos, Director General Human Rights and Rule of Law, welcomed all participants to the meeting. On behalf of the Council of Europe, he welcomed the decision by the EU to resume the negotiations. He recalled that the Secretary General, Ms Marija PEJCINOVIC BURIC, had clearly identified the accession negotiations as a top priority for the organisation in her recent addresses to both the Committee of Ministers and the Parliamentary Assembly of the Council of Europe. In addition to this, the High Contracting Parties to the ECHR had repeatedly underlined the importance of the EU’s accession, notably in the Copenhagen Declaration of 2018.

4. Mr Giakoumopoulos congratulated Ms Tonje Meinich to her election by the Steering Committee for Human Rights (CDDH) as the Chair of the “47+1 Group”, which he considered as a wise decision given her previous involvement as Chair of the various negotiation groups during the period 2010-2013. He briefly recalled the history of the negotiation process and the reasons for the legal obligations under the Lisbon Treaty for the EU to accede to the ECHR.

5. Emphasising that the political and legal context had also evolved since the Court of Justice of the European Union (CJEU) had issued Opinion 2/13 on 18 December 2014, he stated that the risks of a delayed or failed accession are not only real, but they may even multiply in the future. Any fragmentation of the European legal and political space must be avoided. The reasons for making accession a legal obligation under the Lisbon Treaty remained more valid and urgent than ever, which in turn would render the mandate and work of the “47+1 Group” all the more important.

6. While the Council of Europe Secretariat was aware that the negotiations would be complex and that the objections raised in Opinion 2/13 are challenging, they were not insurmountable. A revised Accession Agreement would naturally have to be regarded as a compromise package which eventually must be acceptable to all 48 negotiation partners and receive strong political support. It was now for the members of the “47+1 Group” to make a common effort and explore all possibilities in order to identify avenues which can form the basis of mutually agreeable compromises. This should be done with a sincere effort by all stakeholders to reach the necessary compromises, in order to fulfil the Group’s mandate with a revised draft Accession Agreement as the basis for the EU’s accession to the ECHR which is a constitutional instrument of the European “*ordre public*”.

### **3. Opening address of Ms Meglena KUNEVA, Head of the European Union Delegation to the Council of Europe**

7. The Head of the European Union delegation to the Council of Europe, Ambassador Meglena Kuneva, expressed her appreciation that the “47+1 Group” was able to hold this meeting despite the difficult circumstances of the sanitary crisis. She stated that the EU is fully committed to accession to the ECHR, which is not only a treaty obligation, but it would achieve the common goal of strengthening the pan-European system of fundamental rights protection. On behalf of the EU, she expressed the strong belief that all participating delegations had a common interest in accomplishing the EU's accession to the ECHR as soon as possible.

8. While resuming and successfully concluding the negotiations, she underlined that the EU - which is not a state - could only become a party to the ECHR alongside with its Member States if arrangements were in place which reserve the EU's specific characteristic and those of its legal order. In that respect, the CJEU had raised a number of objections in Opinion 2/13 against the draft Accession Agreement of 2013. For this reason, the renegotiation of a limited number of provisions of the Accession Agreement was required. The EU would limit its request for amendments to what is strictly necessary to address these objections. At the same time, the full remedy of the objections raised by the CJEU was required in the interest of the rule of law and legal certainty.

9. Ambassador Kuneva recalled that the Vice-President of the European Commission, Ms Vera Jourová, had declared that EU accession to the ECHR as a priority for the Commission. As the EU's negotiator, the European Commission was strongly committed to taking the accession process forward and bringing it to a swift conclusion. Ambassador Kuneva expressed her strong belief that, with the necessary political will, delegations would be able to take this important step together to strengthen the protection of human rights for all Europeans.

### **4. Opening statement of Ms Tonje MEINICH, Chair of the CDDH ad hoc negotiation group**

10. Ms Tonje Meinich (Norway), Chair of the “47+1 Group”, welcomed all participants and briefly recalled the history of the Group's functioning during the period 2010-2013. She reminded participants that neither the CDDH nor the Committee of Ministers had yet formally adopted the draft instruments in 2013, pending the completion of internal procedures by the negotiating parties, in particular - at EU level - the opinion of the CJEU. It was because of the Opinion 2/13 of the CJEU that it was necessary to continue the negotiations in order to amend the draft Accession Agreement (and its appendices) to address the concerns expressed therein.

11. Ms Meinich recalled the basic principles which the “47+1 Group” had agreed in 2011 as a basis for the negotiation of the original draft Accession Agreement (which are listed in paragraph 7 of the explanatory report to the draft Accession Agreement<sup>1</sup>). She considered it important to

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<sup>1</sup> According to these general principles, the Accession Agreement aims to preserve the equal rights of all individuals under the Convention, the rights of applicants in the Convention procedures, and the equality of all High Contracting Parties. The current control mechanism of the Convention should, as far as possible, be preserved and applied to the EU in the same way as to other High Contracting Parties, by making only those adaptations that are strictly necessary. The EU should, as a matter of principle, accede to the Convention on an equal footing with the other Contracting Parties, that is, with the same rights and obligations. It was, however, acknowledged that, because the EU is not a State, some adaptations would be necessary. It was also understood that the existing rights and obligations of the States Parties to the Convention, whether or not members of the EU, should be unaffected by the accession, and that

recall them at the very outset of the resumption of the accession negotiations. Moreover, she stated her conviction that these principles are still the fundamental basis for continuing the negotiations and that the issues identified by the CJEU can be overcome by solutions which are within the parameters of these principles.

12. Ms Meinich explained to participants the purpose of the virtual informal meeting, which was primarily to make the utmost of the situation that the two negotiation meetings scheduled for March and May 2020 respectively had to be postponed until the second half of the year because of the sanitary crisis. She noted that the meeting's agenda included a presentation by the European Commission of its position paper and that all delegations were invited to take the floor for comments, questions or general remarks. Delegations were also invited to take the floor to state their own positions.

13. Finally, Ms Meinich concurred with the previous speakers that the issues identified by the CJEU were challenging, but not insurmountable. She was confident that the Group's common effort would result in a revised Accession Agreement that meets the concerns and obtains the approval of all delegations involved in the process.

#### **5. Presentation by the European Commission of its position paper on the accession of the EU to the ECHR**

14. The European Commission presented its position paper which had already been circulated in advance to all delegations (document 47+1(2020)1). At the outset, it briefly recalled the special characteristics of the EU and its legal order which constitutes a setting which is unprecedented in the area of the international protection of fundamental rights.

15. Together with the EU Member States, the European Commission had very carefully assessed Opinion 2/13 and had drawn its conclusions from that opinion. In the negotiations that lie ahead of the "47+1 Group", the EU would demand only such amendments to the draft Accession Agreement which are strictly necessary to address the objections raised by Opinion 2/13. At the same time, the European Commission underlined the importance that these objections would have to be fully remedied with the required degree of legal certainty.

16. The European Commission stated that it is by no means seeking to jeopardise the balance underlying the draft Accession Agreement. Nor would the EU be seeking exceptions from the ECHR or its control system. What the European Commission would seek to achieve were rather some specific arrangements or "modulations" which preserve the EU's specific characteristics and those of its legal order, in a manner which complies with the constitutional requirements defined by the CJEU.

17. The European Commission underlined that the amendments sought by the EU mainly concern four areas: firstly, the EU-specific mechanisms of the procedure before the European Court of Human Rights (ECtHR); secondly, the operation of inter-party applications (Art. 33 ECHR) and of references for an advisory opinion (Protocol No. 16) in relation to EU Member States; thirdly, the principle of mutual trust between the EU Member States; and, fourthly, EU acts in the area of the common foreign and security policy that are excluded from the jurisdiction of the CJEU.

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the distribution of competences between the EU and its member States and between the EU institutions shall be respected.

18. On behalf of the EU, the European Commission recalled its determination to accede to the ECHR. It recalled that accession did not require to negotiate a new Accession Agreement, but rather to make some specific amendments to the already existing agreement whilst preserving its underlying balance. The European Commission expressed its conviction that, with good will and creativity, this would be possible for the “47+1 Group”.

## 6. General rounds of statements, comments or questions by delegations

19. **Switzerland** welcomed the resumption of the negotiations and recalled that the EU's accession to the ECHR would constitute a major step towards the development, consolidation and coherence of the human rights protection in Europe. Not being a member of the EU, Switzerland underlined the importance of the principle of the EU acceding to the ECHR on “equal footing” with its hitherto 47 High Contracting Parties. Any deviation from this principle on the basis of the particular characteristics of the EU would have to be justified by convincing and pertinent reasons. For Switzerland, it was important that the overall result duly respects the judicial functioning and independence of the ECtHR. It welcomed that the European Commission would limit its requests for amendment to what was strictly necessary in light of Opinion 2/13. For its part, Switzerland would not have any demands to reopen other provisions not affected by that opinion. Finally, it suggested that the Committee of Ministers should provide the ECtHR with the possibility to pronounce itself on a revised Accession Agreement in order to ensure that the latter would not have any difficulties with its content.

20. **France** underlined the importance of the accession of the EU to the ECHR and expressed its full commitment for the negotiations and its underlying process.

21. **Norway** highly welcomed the resumption of the negotiation process and underlined the improvement of the EU's accession to the ECHR for the coherence of the European human rights protection system. The various opening statements were greatly encouraging. Norway highlighted the underlying principle of equality, both with regard to the rights of applicants under the ECHR and the situations of all High Contracting Parties to the ECHR, while the special characteristics of the EU should be taken into account and the authoritative interpretation of the ECHR by the ECtHR would have to be maintained. A fair balance would have to be found between these parameters. However, none of the outstanding questions posed obstacles that could not be overcome. The “47+1 Group” would have to look for creative solutions while adopting a pragmatic approach. Norway expressed its full commitment to achieve this task.

22. **Turkey** noted that more than five years had passed since the CJEU had delivered its opinion 2/13 and many changes had occurred since then. It invited the European Commission to submit concrete proposals to remedy the issues identified by the CJEU in Opinion 2/13. Turkey underlined the importance of the EU's accession to the ECHR. At the same time, accession should not undermine the role of the ECHR system in all 47 Member States of the Council of Europe. The negotiations should continue on the basis of the main principles on which the previous draft Accession Agreement had been elaborated, including the principle that the EU should accede to the ECHR on “equal footing” with the other 47 High Contracting Parties. It noted that the ECtHR was already under the current situation in a position to decide cases which involve EU law. Turkey expressed its hope that solutions to the outstanding issues could be found to the benefit of all participating delegations.

23. **Croatia** stated that, under its current Presidency of the Council of the European Union, it considered the accession to the ECHR as one of the EU's core priorities. The draft Accession

Agreement as elaborated in 2013 was a milestone. Subsequent to Opinion 2/13 of the CJEU, the whole “European community” (including the EU and its Member States, civil society and legal scholars) made contributions to the subject which could form a good basis for finding solutions to all outstanding issues. Croatia underlined the great opportunity which EU accession to the ECHR provides in order to close the remaining gaps and ensure greater coherence for the European human rights protection system.

24. **Spain** underlined the importance of EU accession for the enhancement of the protection of human rights in Europe and welcomed the resumption of the negotiation process.

25. The **Netherlands** underlined the importance to find solid solutions to the outstanding issues in the negotiation process, with the aim to avoid a second “negative opinion” by the CJEU on a revised draft Accession Agreement. The amendments made to the draft Accession Agreement should be limited to what is strictly necessary, while at the same time being politically acceptable for all delegations involved in the negotiation process. The EU’s accession should take place as much as possible on “equal footing” with the other High Contracting Parties. Finally, the Netherlands underlined that it is looking forward to constructive negotiations.

26. **Andorra** welcomed the organisation of the present meeting and underlined the importance of the EU’s accession as much as possible on “equal footing” with the other High Contracting Parties. It encouraged all delegations to actively participate in the negotiation process. Solutions to the outstanding issues would have to be regarded as a “package”, but challenges could be overcome by negotiations conducted in a good spirit. The final result of EU accession to the ECHR should be regarded as a “win-win”-situation for all stakeholders.

27. The **European Commission** took the floor to briefly react to some of the interventions, thanking delegations for their constructive and positive replies. The Commission underlined that any solutions need to be politically acceptable for all High Contracting Parties to the ECHR. At the same time, Opinion 2/13 would define for the EU the parameters in which it would operate.

28. The **Chair** summarised the discussion, in particular by noting that all delegations which had taken the floor had been positive to the EU’s accession to the ECHR and had expressed a will to participate constructively in the negotiations. Most delegations had underlined the need for a balance between implementing the requirements of Opinion 2/13 of the CJEU on the one hand and ensuring equal treatment (both with regard to applicants and other High Contracting Parties) on the other. While there would be some hard work ahead of the Group, the present informal meeting had been an encouraging sign of the commitment and willingness of participants to achieve this common goal.

## 7. Any other business

29. The Secretariat recalled that the two meetings which were postponed due to the sanitary crisis are re-scheduled for the second half of the year. As the negotiations had merely been resumed (and would not start from the beginning), these meetings would be considered as the 6<sup>th</sup> and the 7<sup>th</sup> negotiation meetings. While the 6<sup>th</sup> negotiation meeting is planned to be held from 29 September to 2 October, the 7<sup>th</sup> negotiation meeting is envisaged for 24-27 November. There would be more meetings to follow next year, with the exact dates to be determined. The Secretariat would keep delegations informed over the summer about any changes for either the dates or the format of these meetings in line with the overall policy of the Council of Europe for all intergovernmental meetings. Finally, the Secretariat drew participants’ attention to a selection of

relevant academic articles and other materials made available on the website of the CDDH devoted to EU accession.

30. The Chair informed the “47+1 Group” that the Secretariat would prepare a meeting report which would be circulated to all delegations for possible comments. Given the informal nature of the meeting, the report would not be officially adopted by the “47+1 Group”.

## APPENDIX I

### Agenda

#### Monday, 22 June 2020 (9:30 a.m. – noon)

1. Opening of the meeting and adoption of the agenda
2. Opening address by Mr Christos GIAKOUMOPOULOS, Director General Human Rights and Rule of Law
3. Opening address by Ms Meglena KUNEVA, Ambassador, Head of the European Union Delegation to the Council of Europe
4. Opening statement by Ms Tonje MEINICH, Chair of the CDDH ad hoc negotiation group
5. Presentation by the European Commission of its position paper on the accession of the European Union (EU) to the European Convention on Human Rights (ECHR)
6. General round of statements, comments or questions by delegations
7. Any other business

#### Reference documents

Draft revised agreement on the accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms	<a href="#">CM(2013)93 add1, Appendix 1, pp. 3-9</a>
Draft declaration by the European Union to be made at the time of signature of the Accession Agreement	<a href="#">CM(2013)93 add1, Appendix 2, p. 10</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 European Union is a party	<a href="#">CM(2013)93 add1, Appendix 3, p. 11</a>
Draft model of memorandum of understanding between the European Union and X [State which is not a member of the European Union]	<a href="#">CM(2013)93 add1, Appendix 4, p. 12</a>
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	<a href="#">CM(2013)93 add1, Appendix 5, pp. 13-28</a>
Position paper for the negotiation on the European Union's accession to the European Convention for the protection of Human Rights and Fundamental Freedoms	47+1(2020)1



Ad hoc terms of reference concerning accession of the EU to the Convention given to the CDDH by the Ministers' Deputies during their 1085 <sup>th</sup> meeting (26 May 2010)	CDDH(2010)008
Decision by the Minister's Deputies Committee of Ministers at its 1364 <sup>th</sup> meeting (15 January 2020) on the continuation of the ad hoc terms of reference for the CDDH to finalise the legal instruments setting out the modalities of accession of the European union to the European Convention on Human Rights	<a href="#">CM/Del/JAN(2020)1364/4.3</a>
Letter of 31 October 2019 by the President and the First Vice-President of the European Commission to the Secretary General of the Council of Europe	<a href="#">DD(2019)1301</a>
Opinion 2/13 of 18 December 2014 of the Court of Justice of the European Union	<a href="#">A-2/13 ; EC LI: EU: C : 2014: 2454</a>

## **APPENDIX II**

### **List of Participants**

<b>MEMBERS / MEMBRES</b>
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#### **ALBANIA / ALBANIE**

Mr Luis VORFI, Deputy Permanent Representative, Permanent Mission of Albania to the Council of Europe

#### **ANDORRA / ANDORRE**

Mr Joan FORNER ROVIRA, Permanent Representative of Andorra to the Council of Europe

#### **ARMENIA / ARMENIE**

Mr Tigran H. GALSTYAN, Head of Department of Treaties and International Law, Ministry of Foreign Affairs

#### **AUSTRIA / AUTRICHE**

Ms Brigitte OHMS, Deputy Government Agent of Austria, Deputy Head of Department, European and International Law, Human Rights

#### **AZERBAIJAN / AZERBAIDJAN**

Mr Habib ABDULLAYEV, Senior Adviser, Human Rights Protection Unit, Law Enforcement Bodies Department, Administration of the President of the Republic of Azerbaijan

#### **BELGIUM / BELGIQUE**

Ms Isabelle NIEDLISPACHER, Co-Agent du Gouvernement de la Belgique auprès de la Cour européenne des droits de l'homme

#### **BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE**

Ms Belma SKALONJIĆ, Agent of the Council of Ministers, Government Agent before the ECtHR

#### **BULGARIA / BULGARIE**

Ms Maria SPASSOVA, Director of Human Rights Department, Ministry of Foreign Affairs of the Republic of Bulgaria

#### **CROATIA / CROATIE**

Ms Romana KUZMANIĆ OLUIĆ, Counsellor, Ministry of Foreign and European Affairs, Directorate General for Multilateral Affairs and Global Issues, Division for Human Rights and Regional International Organisations and Initiatives

#### **CYPRUS / CHYPRE**

Mr Dimitres LYSANDROU, Senior Counsel, Law Office of the Republic of Cyprus

#### **CZECH REPUBLIC / REPUBLIQUE TCHEQUE**

Ms Dominika CZECHOVA, Department of EU Law, Ministry of Foreign Affairs

#### **DENMARK / DANEMARK**

Ms Maria CARLSSON, Danish Ministry of Justice, EU Law Division,

#### **ESTONIA / ESTONIE**

Ms Triin TIISLER, Lawyer, Legal Department of Ministry of Foreign Affairs,

#### **FINLAND / FINLANDE**

Ms Krista OINONEN, Government Agent before the ECtHR, Director, Unit for Human Rights Courts and Conventions, Ministry for Foreign Affairs

**FRANCE**

Mme Eglantine LEBLOND, rédactrice, Ministère de l'Europe et des affaires étrangères, Direction des affaires juridiques, sous-direction des droits de l'Homme,

**GERMANY / ALLEMAGNE**

Mr Hans-Jörg BEHRENS, Head of Unit IVC1, Human Rights Protection; Government Agent before the ECtHR

**GREECE / GRECE**

Ms Athina CHANAKI, Legal Counsellor, Legal Department/Public International Law Section, Ministry of Foreign Affairs of the Hellenic Republic

**HUNGARY / HONGRIE**

Mr Zoltan TALLODI, Government Agent before the ECtHR, Ministry of Justice, Department of International Criminal Law and Office of the Agent before ECHR

**ICELAND/ISLANDE**

Ms Hjördis Olga GUDBRANDSDOTTIR, Deputy to the Permanent Representative of Iceland Permanent Representation of Iceland to the Council of Europe

**IRELAND / IRLANDE**

Mr Peter WHITE, Government Agent before the ECtHR, Assistant Legal Adviser, Legal Division, Department of Foreign Affairs and Trade

**ITALY / ITALIE**

Mr Maurizio CANFORA, EU Affairs Coordinator

**LATVIA / LETTONIE**

Ms Kristine LICE, Government Agent, Representative of the Government of Latvia before International Human Rights Organizations

**LIECHTENSTEIN**

Dr. iur. Nuscha WIECZOREK, LL.M. Unit for Human Rights and International Humanitarian Law

**LITHUANIA / LITUANIE**

Ms Karolina BUBNYTE-SIRMENE, Agent of the Government of the Republic of Lithuania to the European Court of Human Rights

**LUXEMBOURG**

Mme Brigitte KONZ, Juge de Paix directrice, Cité judiciaire

**MALTA / MALTE**

Ms Andria BUHAGIAR, Deputy State Advocate, Office of the State Advocate

**REPUBLIC OF MOLDOVA / REPUBLIQUE DE MOLDOVA**

Mr Oleg ROTARI, Government Agent before the ECtHR, Ministry of Justice

**MONACO**

Mr Gabriel REVEL, Chef de division, Service du Droit International, des droits de l'Homme et des libertés fondamentales, Direction des Affaires Juridiques

**MONTENEGRO**

Mr Ivo ŠOČ, Advisor at the Office of the Representative of Montenegro before the European Court of Human Rights

**NETHERLANDS / PAYS-BAS**

Ms Babette KOOPMAN, Government Agent before the ECtHR, Ministry of Foreign Affairs

**NORTH MACEDONIA / MACÉDOINE DU NORD**

Mr Toni PAVLOSKI, Director of the Directorate for Multilateral Relations and Security Cooperation at the Ministry of Foreign Affairs of the RNM, member of the CDDH

**NORWAY / NORVEGE**

Ms Tonje MEINICH, Deputy Director General, Legislation Department, Ministry of Justice and Public Security, **Chair of the “47+1 Group”**

Mr Ketil MOEN, Director General, Norwegian Ministry of Justice and Public Security

**POLAND / POLOGNE**

Ms Katarzyna PADLO- PEKALA, Senior Specialist, Legal and Treaty Department, Ministry of Foreign Affairs

**PORTUGAL**

Ms Filipa ARAGAO HOME, Legal Consultant, Department of European Affairs,

**ROMANIA / ROUMANIE**

Ms Mirela PASCARU, Deputy director, Directorate for International and EU Law, Ministry of Foreign Affairs

**RUSSIAN FEDERATION / FEDERATION DE RUSSIE**

Mr Grigory LUKIYANTSEV, Deputy Director, Department for Humanitarian Cooperation and Human Rights, Ministry of Foreign Affairs

**SAN MARINO / SAINT-MARIN**

Ms Michela BOVI, Co-Agent of the Government to the ECHR

**SERBIA / SERBIE**

Mr Darko NINKOV, Deputy to the Permanent Representative, Permanent Representation of the Republic of Serbia to the Council of Europe

**SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE**

Ms Marián FILCIK, Head of Human Rights Division, Secretary of the Governmental Council for Human Rights, National Minorities and Equal Treatment, Ministry of Justice of the Slovak Republic

**SLOVENIA / SLOVENIE**

Mr Helmut HARTMAN, Legal adviser from Slovenian mission, Permanent Representation of the Republic of Slovenia to the Council of Europe

**SPAIN / ESPAGNE**

Mr José Antonio JURADO RIPOLL, State Attorney General,

**SWEDEN / SUEDE**

Mr Victor HAGSTEDT, Legal advisor

**SWITZERLAND / SUISSE**

M. Alain CHABLAIS, Dr. iur., Département fédéral de justice et police DFJP, Office fédéral de la justice OFJ, Représentation de la Suisse devant la Cour européenne des droits de l’Homme

**TURKEY / TURQUIE**

Mme Aysen EMÜLER, Experte Juridique, Ministère des Affaires Etrangères, Représentation Permanente de la Turquie auprès du Conseil de l’Europe

**UNITED KINGDOM / ROYAUME-UNI**

Ms Debra GERSTEIN, Assistant Legal Adviser, FCO Legal Directorate,

**EUROPEAN UNION / UNION EUROPEENNE**

Mr Hannes KRAEMER, Legal Adviser, Legal Service, European Commission,

Mr Felix RONKES AGERBEEK, Legal Advisor and Policy Coordinator, European Commission

Ms Meglena KUNEVA, Ambassador, Head of the European Union Delegation to the Council of Europe

**OBSERVERS / OBSERVATEURS**

**REGISTRY OF THE EUROPEAN COURT OF HUMAN RIGHTS / GREFFE DE LA COUR  
EUROPEENNE DES DROITS DE L'HOMME**

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

**COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI) / COMITÉ DES  
CONSEILLERS JURIDIQUES SUR LE DROIT INTERNATIONAL PUBLIC (CAHDI)**

Mr Jorg POLAKIEWICZ, Director, Directorate of Legal Advice and Public International Law, Council of Europe

**SECRETARIAT**

**DG I – Human Rights and Rule of Law / Droits de l'Homme et État de droit  
Council of Europe / Conseil de l'Europe, F-67075 Strasbourg Cedex**

Mr Christos GIAKOUMOPOULOS, Director General / Directeur général

Mr Christophe POIREL, Director / Directeur, Human Rights Directorate / Direction des droits de l'Homme

Mr Mikhail LOBOV, Head of Human Rights Policy and Development Department / Chef du Service des politiques et du développement des droits de l'Homme

Mr Matthias KLOTH, Secretary of the CDDH *ad hoc* negotiation group on the accession of the European Union to the European Convention on Human Rights / Secrétaire du Groupe de négociation *ad hoc* du CDDH sur l'adhésion de l'Union européenne à la Convention européenne des droits de l'homme

Mr Alfonso DE SALAS, Head of the Human Rights Intergovernmental Cooperation Division / Chef de la Division de la coopération intergouvernementale en matière de droits de l'Homme, Secretary of the CDDH / Secrétaire du CDDH

Ms Evangelia.VRATSIDA, Assistant, Human Rights Policy and Development Department / Service des politiques et du développement des droits de l'Homme

**INTERPRETERS / INTERPRÈTES**

Chloé CHENETIER-KIPPING

Luke TILDEN

Grégoire DEVICTOR

### APPENDIX III

#### **Opening address by Mr Christos Giakoumopoulos Director General Human Rights and Rule of Law**

*Check against delivery*

Dear President of the Group,  
Excellencies,  
Distinguished members,  
Ladies and gentlemen,  
Dear colleagues,

I have great pleasure in welcoming all of you to this virtual informal meeting of the *ad hoc* negotiation group on the accession of the European Union to the European Convention on Human Rights.

As you are all aware, this special formation has been set by the Steering Committee for Human Rights (CDDH) pursuant to the mandate received earlier this year from the Committee of Ministers of the Council of Europe. I will henceforth refer to it as the “47+1 Group”. This is the common abbreviation with which most of you are all familiar from the previous negotiation cycle, which lasted from 2010 to 2013.

Given the very special times we are going through, I would like at the outset to express my sincere hope that - from wherever you follow this virtual meeting - you are safe and that your connection to our KUDO platform works well, thus allowing our meeting to be held in the best possible conditions.

I would like to start my introductory speech by informing you about the process we have set in motion for the negotiation to succeed. I will then briefly recall the historical background and say few words about the evolution of the legal and political context. I will conclude by some ideas on the way ahead towards – as we all hope – a successful result that is eagerly expected in Europe, that is to bring more coherence to the unique European human rights protection system.

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Needless to say that **the decision by the European Commission to resume the negotiations was welcomed** by the Council of Europe, which had reiterated ever since 2014 its readiness to come back to this important file.

By a letter of 31 October 2019, co-signed by the then President and the First Vice-President of the European Commission, the Secretary General of the Council of Europe was informed that the EU stood ready to resume the negotiations on its accession to the Convention.

Two months later, the Committee of Ministers renewed the negotiation mandate of the CDDH to finalise as a matter of priority, and in co-operation with the representatives of the EU, the accession instruments in an “*ad hoc* group 47+1” and on the basis of the work already conducted.

Our Secretary General, Marija Pejčinović Burić, clearly identified the matter as a top priority in her addresses to both the Committee of Ministers and the Parliamentary Assembly of the Council of Europe. She welcomed *“an important demonstration of will on both the Council of Europe and European Union sides: Paving the way to greater coherence in the protection of European human rights, and marking closer co-operation between this and other international organisations (...).”*

The CDDH also speedily elected Ms Tonje Meinich (Norway) as the Chairperson of the “47+1 Group”.

On behalf of the Secretary General and all participants, I would like to warmly congratulate Ms Meinich on her election and wish her much success for the upcoming work of the Group. It is an excellent choice by the CDDH: Ms Meinich is a real institutional memory, as you had already served as Chair of the 47+1 Group for the negotiation of the original draft Accession Agreement up until 2013.

I would also like to thank Ms Meinich for the timely initiative to hold today’s virtual informal meeting as a kick-off to the negotiation process. Indeed, the sanitary crisis has slowed down our initial plans to already hold two meetings of the Group before the summer break. While being an informal one, this meeting is an important step to resume the negotiation at the technical level.

You may have noted that the Council of Europe has remained quite active during the lockdown and did its best to respond to our Member States’ genuine concerns. Our meeting today is yet another evidence of the Organisation’s relevance and adaptability. It is quite symbolic that we are running this meeting from the Committee of Ministers’ hall with the great majority of our staff being back to the office.

The Chair of the “47+1 Group” will inform you in a few minutes about this meeting and the organisation of the following negotiation process.

\* \* \* \* \*

I would like to only briefly **recall the history of the negotiation process and the reasons behind it**. Many of you remember well the previous cycle. That said, some fundamental elements are worth being recalled in view of the seven-years’ break after the conclusion of the draft Accession Agreement in 2013.

As you all know, the EU’s accession to the European Convention on Human Rights has been around for quite some time. It will not be an overstatement to say that the EU’s accession is fundamental for Europe’s unity. We firmly believe that the peace and cooperation in Europe owe a lot to the Convention. The greater challenges Europe is facing, the stronger is the need for the EU to be part of the Convention system.

This eventually became a real negotiation matter after the introduction of a legal obligation for the EU to accede to the Convention in the Lisbon Treaty of 2009.

As a result of acceding, the EU will be integrated into the Convention’s human rights protection system.

In addition to the internal protection of fundamental rights by the EU Charter of Fundamental Rights and the Court of Justice of the European Union, the EU will be bound to respect the Convention. Accession will therefore ensure compliance of *all* with the minimum standard, thus enhancing the coherence of human rights protection in Europe.

Accession will also afford European citizens with the possibility to have the compatibility of actions by the EU with the Convention scrutinised by the external control of the European Court of Human Rights, similar to the possibility which they already enjoy in respect of any action by the Council of Europe Member States.

Only its Member States - not the EU itself - can currently be held accountable for the implications of EU law under the Convention. This situation is at odds with the actual legal structure of the EU and its increasing competence.

Currently the EU is not adequately represented in the proceedings before the European Court of Human Rights whenever EU law is involved. The EU's accession is meant to ensure that EU law is properly and comprehensively understood through a meaningful involvement of the EU in the proceedings. It is in the interest of all State parties and indeed the EU itself. At the same time, the number of applications before the European Court of Human Rights in which EU law plays a role has been steadily on the rise.

Finally, the accession of the EU to the Convention would send a strong political message across greater Europe and beyond and reaffirm our continent's leading role in the collective and comprehensive enforcement of human rights without exceptions.

The accession project was steadily driven forward between 2010 and 2013 by the work of this Group which elaborated a draft Accession Agreement, with the European Commission representing the EU in the negotiations with all 47 Member States of the Council of Europe.

The project was significantly delayed by the Opinion 2/13 of 18 December 2014 in which the Court of Justice of the European Union found that the draft Accession Agreement was liable to adversely affect the specific characteristics and the autonomy of EU law.

You will no doubt consider in depth all legal obstacles identified by the Court of Justice and do your utmost to overcome them in order to make the long-awaited accession possible. We are looking forward to the Commission's proposals resulting from the EU internal efforts that have been made in the past five years.

\* \* \* \* \*

I would like to emphasize at this stage that the **political and legal context has also evolved since 2014.**

On the legal side, the two European Courts in Strasbourg and Luxembourg have developed their jurisprudence in certain areas of great relevance for the EU accession. Some issues that have been perceived as obstacles to accession in 2014 are perhaps not any longer obstacles in view of the current positions of the two courts.

On the political side, our continent - and the EU in particular - has also faced serious developments which make the EU's accession even more relevant. That was in essence the unanimous and repeated call by all 47 Council of Europe Member States:

*"[t]he States Parties [to the Convention] reaffirm the importance of the accession of the European Union to the Convention as a way to improve the coherence of human rights protection in Europe, and call upon the European Union institutions to take the necessary steps to allow the process ... to be completed as soon as possible."*



I will limit myself to this quote from the Copenhagen Declaration of 2018, but anyone may find more evidence of this consistent position.

The reasons underpinning this consistent political position are clear: the risks of a delayed or failed accession are not only real, but they may even multiply in the future. We must prevent any fragmentation of the European legal and political space.

While the informal cooperation between the two European courts is very good (with both courts doing their utmost to maintain a consistent approach), it has its limits. Divergences in the case-law of the two courts still lead to a great deal of legal uncertainty. The ensuing lack of coherence of the European human rights protection system is detrimental to everyone, first and foremost to European citizens who would eventually not understand and accept this.

Therefore, the reasons for making accession a legal obligation under the Lisbon Treaty remain more valid and urgent than ever. In turn, this renders the mandate and work of your Group all the more important.

\* \* \* \* \*

**How do we see the way ahead?** Madame President of the Group will enlighten you on the proposed procedures and meeting schedule. I can only assure you on behalf of the Secretariat that we are fully aware that the negotiations will be complex. The objections raised by the Court of Justice of the European Union in Opinion 2/13 are certainly challenging. However, they are not insurmountable.

It is now for you as members of the “47+1 Group” to make a common effort and explore all possibilities in order to identify avenues which can form the basis of mutually agreeable compromises between all 48 negotiation partners.

Wherever the technical discussions will lead us to, a revised Accession Agreement will naturally have to be regarded as a compromise package which eventually must be acceptable to all negotiation partners. Indeed, this is a matter of great political importance for today’s Europe. A strong political support in all European capitals will be, therefore, the key to deliver.

Excellencies, Ladies and Gentlemen,

This year, we will be celebrating the 70<sup>th</sup> anniversary of the European Convention on Human Rights, a constitutional instrument of the European “*ordre public*”. You will agree that the best anniversary present we all could make are constructive and cooperative discussions on the outstanding issues on the EU’s accession to this Convention.

This should be done with a sincere effort by all stakeholders to reach the necessary compromises, in order to fulfill your Group’s mandate, that is to submit a revised draft Accession Agreement as a basis for the EU’s accession to the Convention, which is long overdue in accordance with the Lisbon Treaty. The question is quite ripe, and the momentum also seems to be there.

The European Convention on Human Rights is the hard core of the unique pan-European legal space made of 200 other conventions of the Council of Europe which safeguard peace and shape

cooperation on our large continent. For the sake of coherence and effectiveness of this legal space, let us all work together to bring this long story to a successful end.

In this spirit, I would like to wish all participants a fruitful meeting and conclusive negotiations in the next months.

## **APPENDIX IV**

### **Opening address by Ms Meglena Kuneva, Ambassador, Head of the European Union Delegation to the Council of Europe**

#### *Check against delivery*

I am happy that we are able to hold this first information meeting during the first half of the year despite the difficult circumstances we are facing. The EU is fully committed to accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). This is not only a treaty obligation for us; it is the expression of respect for our fundamental values and it will support the effectiveness of EU law strengthen the coherence of fundamental rights protection in Europe. The EU's accession to the ECHR is about the creation of a single European legal space, achieving a coherent framework of human rights protection throughout Europe. This will enable us to achieve our common goal of strengthening the pan-European system of fundamental rights protection.

Once the EU has become the 48th Contracting Party to the Convention, individuals will be able to bring a complaint about infringement of ECHR rights by the EU before the European Court of Human Rights. All EU institutions and bodies, agencies, offices and entities acting on behalf of the EU will be bound by the Convention's human rights provisions. EU accession to the ECHR will therefore be a landmark in European legal history. We strongly believe that we have all a common interest in accomplishing the EU'S accession to the ECHR as soon as possible.

Resuming and successfully concluding negotiations is indispensable to allow the European Union to accede to the ECHR. The process leading to this accession has taken longer than we originally expected. Yet, the European Union, which is not a State, can only become a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms alongside with its Member States if arrangements are in place which reserve the European Union 's specific characteristic and those of its legal order.

In that respect, the Court of Justice of the European Union in its opinion of December 2014 raised a number of objections against the draft Accession Agreement of 2013. For this reason, the renegotiation of a limited number of provisions of the accession agreement is required. The European Union will limit its request for amendments to the draft Accession Agreement to what is strictly necessary to address those objections. At the same time, the full remedy of the objections raised by the Court is required in the interest of the Rule of Law and legal certainty.

The Council of the European Union, when adopting supplementary negotiating directives on 30 September 2019, unanimously expressed its commitment to the prompt resumption of the negotiations on the Accession Agreement.

VP Vera JOUROVÁ has declared that EU accession to the ECHR is a priority for this Commission. As the Union 's negotiator, the European Commission, represented by its legal service, is strongly committed to taking the accession process forward and bringing it to a swift conclusion.

I strongly believe that if we have the necessary political will, we are able to take this important step together to strengthen the protection of human rights for Europeans. As the former President of the Court of Human Rights, Linos-Alexandre SICILIANOS, stated in November last year,

accession of the EU will represent a win-win-win ("a triple win") step in the sense that it would be beneficial for citizens, the European Court for Human Rights and the EU. I also believe that EU membership will be an important contribution to our shared goal of having a homogeneous and coherent system stretching "from Western Europe to Vladivostok".

## **APPENDIX V**

### **Opening address by Ms Tonje Meinich, Chair of the CDDH ad hoc negotiation group ("47+1")**

*Check against delivery*

Dear Director General,  
Dear Ambassador Kuneva,  
Dear colleagues from the delegations of the 47 member states of the Council of Europe and  
from the European Commission,  
Ladies and gentlemen,

First of all I would like to thank the members of the Steering Committee for Human Rights for the trust and confidence they have displayed when electing me as the Chair of the "47+1 Group". I would also like to thank the representative of the Commission for supporting my election.

I had hoped we could meet in different circumstances, but I am pleased that all the members of the 47+1 are able to meet virtually today. I think it is important that we now can kick off this new round of negotiations despite the special situation we find ourselves in.

As you may know, I also had the honour to act as Chair of the "47+1 Group" during the previous negotiations on EUs accession to the European Convention on Human Rights. I am pleased to see a number of familiar names today, but also welcome those who are new to these negotiations. I look forward to working with all of you.

The previous speakers have already recalled the importance of the accession of the EU to the Convention which I fully support but will not repeat, mindful of the limited time.

Let me instead add a few words about the history of the "47+1 Group" and the process which has led to the fact that we have all gathered today in this virtual format.

Following the inclusion of a legal obligation for the EU to accede to the Convention in the Lisbon Treaty, the Council of Europe set up an expert group to do the preparatory work. The Group consisted of seven experts from members of the EU and seven members of States that were not members of the EU, plus a representative from the European Commission. This Group started in 2010 and met eight times. In order to conduct more formal negotiations, the CDDH later set up the "47+1 Group" which held a total of five negotiation meetings during the period 2011-2013. In April 2013, the "47+1 Group" submitted its final report to the CDDH, containing the draft instruments on the accession of the EU to the Convention.

Apart from a draft agreement on the accession of the European Union to Convention, the "47+1 Group" also elaborated a draft declaration by the EU on the co-respondent mechanism. Furthermore, it elaborated a draft new rule to be added to the Rules of the Committee of Ministers for the supervision of the execution of judgements setting out special voting rules in the Committee of Ministers and thereby ensuring that the obligation of the EU Member States to vote in a coordinated manner does not prejudice the exercise of the supervisory functions of the execution of judgments in cases where the EU is a respondent or co-respondent, and finally a draft

memorandum of understanding between the EU and a state applying the content of Union law pursuant to an international agreement. It was clearly stated in the final report that all these instruments and the explanatory report constituted one package.

It should also be recalled that neither the CDDH nor the Committee of Ministers has yet formally adopted the draft instruments, pending the completion of internal procedures by the negotiating parties, in particular - at European Union level - the opinion of the Court of Justice of the European Union. Since the Court in its Opinion 2/13 ruled that the draft Accession Agreement was not compatible with Article 6(2) and Protocol 8 of the Treaty on European Union, it is now necessary to continue the negotiation in order to amend the draft instruments to address the concerns expressed therein.

Ladies and gentlemen,

As many of you will remember, the “47+1 Group” agreed on a number of general principles as a basis for the negotiations. These principles are listed at the beginning of the explanatory report to the draft Accession Agreement. I find it important to recall them at the very outset of the resumption of the accession negotiations.

According to these general principles, the Accession Agreement aims to preserve the equal rights of all individuals under the Convention, the rights of applicants in the Convention procedures, and the equality of all High Contracting Parties.

The current control mechanism of the Convention should, as far as possible, be preserved and applied to the EU in the same way as to other High Contracting Parties, by making only those adaptations that are strictly necessary.

The EU should, as a matter of principle, accede to the Convention on an equal footing with the other Contracting Parties, that is, with the same rights and obligations. It was however acknowledged that, because the EU is not a State, some adaptations would be necessary.

It was also understood that the existing rights and obligations of the States Parties to the Convention, whether or not members of the EU, should be unaffected by the accession. Finally, the distribution of competences between the EU and its Member States and between the EU institutions shall be respected.

I am convinced that these general principles are still the fundamental basis for continuing the negotiation of the draft Accession Agreement, and that the issues identified by the Court of Justice of the European Union can be overcome by solutions which are within the parameters of these principles.

In light of Opinion 2/13, I also consider it important to recall that it is for the EU institutions - first and foremost the Court of Justice of the European Union – to have the authority to apply and interpret EU law, while it should be for the European Court of Human Rights to have the final authority to decide whether acts or omissions of the EU or its Member States are in conformity with the Convention.

Ladies and gentlemen,

Let me now say a few words about the purpose of the present meeting. Together with the Secretariat, I decided to organise it in order to make the best of the fact that we involuntarily lost time due to the Corona epidemic.

I think it is important to start the negotiations as soon as possible. At the same time, virtual meetings with so many delegates and concerning so many complicated questions is new to all of us, and certainly to me. This meeting will therefore be short and apart from the various welcome addresses you have heard this morning, include a presentation by the European Commission of its position paper. This paper has been circulated to all delegations in March (and was re-circulated with the invitation to today's meeting).

After the presentation from the Commission, I will invite all delegations which so wish, to ask questions to the Commission, to provide comments or to state their positions regarding the negotiations.

In particular, it would be very helpful to already learn at this stage if any delegation would wish to discuss any matters in the draft Accession Agreement or any other instruments in the package that are not covered by the position paper by the European Commission.

This would help us to get a grasp of the extent to which this Group will have to elaborate amendments to the draft Accession Agreement or other instruments, and to structure the discussion accordingly.

As we already indicated in the invitation, this virtual informal meeting will serve as a preliminary exchange of views, without in-depth discussion on substance which will commence at the negotiation meeting at the end of September.

Given the informal nature of today's meeting, delegations which do not wish to express their positions at this stage are not obliged to do so. They will of course not face any disadvantages if they reserve their position for the negotiation meetings later this year.

Ladies and gentlemen,

I fully concur with the words of the previous speakers: the issues identified by the Court of Justice of the European Union are challenging, but not insurmountable. Anybody who reads about the subject comes across a large number of options and proposals to overcome the outstanding issues.

It is now the task of our Group to scrutinise all existing options and identify and discuss those which are promising enough to both address the issues identified in Opinion 2/13 and obtain a consensus by all 48 negotiating parties.

I am confident that our common effort will result in a revised Agreement that meets the concerns and obtains the approval of all delegations involved in the process.

## **APPENDIX VI**

### **Presentation by the European Commission of its position paper on the accession of the European Union (EU) to the European Convention on Human Rights (ECHR)**

*Check against delivery*

Mme Chair, Excellencies, Mr Director-General, Mr Deputy Registrar, Ladies and Gentlemen,

I am very pleased, as negotiator for the European Union, to be back at the negotiation table of the 47 + 1 group. I am very grateful to the Chair and to the secretariat of the Council of Europe for having set up this informal virtual meeting despite the difficult circumstances.

Before presenting the EU position paper in more detail, let me briefly make some more general remarks:

I am fully aware that many of the member states of the Council of Europe outside the European Union have impatiently waited for the negotiations on the Union's accession to the European Convention on Human Rights to resume.

You are all aware of the reasons for the need to renegotiate certain points of the draft Accession Agreement of 2013. It follows from the opinion of the Court of Justice of the European Union of 18 December 2014 that certain amendments to the draft Accession Agreement are required in order to adequately reflect the specificities of the European Union. As a party to the Convention – and hence as being subjected to the control system set up by the Convention –, the Union will be composed of other parties to the Convention, namely its own Member States. The Union's very existence rests on the founding treaties concluded by its Member States. By those Treaties the Member States have not only transferred competences to the Union but also established an autonomous legal order, with its own constitutional structure and institutional framework and a judicial system intended to ensure consistency and uniformity in the interpretation of Union law. An integral part of Union law is the Charter of Fundamental Rights, which contains a catalogue of Fundamental Rights that builds upon the rights enshrined in the Convention. This whole setting is unique in the area of international protection of fundamental rights.

The Commission, together with the EU Member States has very carefully assessed the opinion of the Court of Justice and has drawn its conclusions from that opinion. In the negotiations that lie ahead of us, the European Union will demand only such amendments to the 2013 draft Accession Agreement, which are strictly necessary to address the objections raised by our Court. But it is course also very important that we fully remedy these objections, with the required degree of legal certainty.

The European Union is by no means seeking to jeopardize the balance underlying the draft Accession Agreement of 2013. Nor is it seeking exceptions from the Convention or its control system. What the European Union seeks to achieve are rather some specific arrangements or "modulations", which preserve its specific characteristics and those of its legal order in a manner which complies with the constitutional requirements defined by the Court of Justice.



With that, I would like to turn to the content of the Union's demands:

The amendments sought by the European Union mainly concern four areas:

- Firstly, the EU specific mechanisms of the procedure before the European Court of Human Rights,
- Secondly, the operation of inter-party applications (Art. 33 ECHR) and of references for an advisory opinion (Protocol 16) in relation to EU Member States,
- Thirdly, the principle of mutual trust between the EU Member States,
- And fourthly, EU acts in the area of the Common foreign and security policy ("CFSP") that are excluded from the CJEU's jurisdiction.

Regarding the first area, the **EU specific mechanisms of the procedure before the ECtHR**, the objections of the CJEU relate in essence to the fact that when applying these procedural mechanisms the ECtHR may lead to incidentally interpret provisions of EU law. For instance, when admitting the EU as a co-respondent to the proceedings under Art. 3(2) of the draft Accession Agreement, the ECtHR would have to assess incidentally whether an alleged violation actually calls into question the compatibility with a Convention right of a provision of EU law. Such an assessment is however not possible without interpreting EU law. Likewise, when deciding to afford sufficient time for the prior involvement procedure to take place under Art. 3(6) of the draft Accession Agreement, the ECtHR would have to assess whether the Court of Justice has already assessed the compatibility with a Convention right of a relevant provision of European Union law. This would mean that the ECtHR would have to incidentally interpret the case-law of the Court of Justice.

In order to address the objections of the CJEU, we thus need to find solutions, which ensure that neither the co-respondent participation of the EU / the EU Member States in the proceedings nor the granting of sufficient time for the prior involvement procedure to be conducted will depend on an – even incidental – interpretation of EU law by the ECtHR. This should also apply to related issues, such as the allocation of responsibility where in a co-respondent situation the ECtHR finds a violation.

With that, Mme Chair, I come to the second area: The **operation of inter-party applications under Art 33 of the Convention and of references for an advisory opinion under Protocol 16**. Under EU law, the CJEU has exclusive jurisdiction to rule on compliance with fundamental rights, in disputes between EU institutions and EU Member States as well as in disputes between different EU Member States, where such disputes relate to acts of the institutions or to situations in which Member States implement Union law. There is a risk of that exclusive jurisdiction being undermined, if Member States were free to bring inter-party applications against other Member States or the Union or if the Union were allowed to bring inter-party applications against Member States.

In the same vein, the highest courts and tribunals of Member States are under an obligation, by virtue of Art. 267 TFEU, to make a preliminary reference to the CJEU where an interpretation of a provision of Union law is material for deciding the case and where the interpretation of the

relevant provision is neither clear beyond any reasonable doubt nor follows from existing case law of the CJEU. This also applies to provisions of the Charter that correspond to provisions of the Convention. There is thus a certain risk of the preliminary reference procedure being circumvented by the operation of references for an advisory opinion.

This whole issue is of course linked to the specific setting that the Union seeks to join the Convention alongside with its own Member States and that Union law provides for certain internal judicial procedures involving different Contracting Parties to the Convention, namely either the Union and a Member State or several Member States.

We therefore need to devise solutions that take account of these specificities. Let me be very clear: The aim of the Union is neither exempt itself or the Member States from inter-party applications nor to prevent the highest courts and tribunals of those Member States that have become parties to Protocol 16 from making use of the advisory opinion procedure. Our sole aim is to address the very specific situation where the operation of those procedures would jeopardize EU internal procedures. Since the problem is related to procedures, the solutions might also be mainly of a procedural nature.

Thirdly, I would like to address the **principle of mutual trust** between the EU Member States. That principle is of constitutional significance for the EU, in that it allows an area without internal borders to be created and maintained. Pursuant to the principle of mutual trust, EU law may provide for a specific distribution of responsibilities between the EU Member States involved in cross-border cooperation, regarding in particular the transfer of persons and the recognition and enforcement of decisions. EU law may thus determine the extent to which each Member State of the European Union is required to presume that fundamental rights have been observed by any other Member State.

The principle of mutual trust between the EU Member States should however not be seen as being at odds with the obligations of the state parties to the Convention. To the contrary, there is a high degree of convergence between the recent case-law of the ECtHR and the recent case-law of the CJEU regarding fundamental rights protection in the context of regimes of cross-border cooperation between EU-MS based on the principle of mutual trust.

We thus need to find a way to adequately reflect the principle of mutual trust between the EU Member States in the accession agreement.

Lastly, Mme Chair, let me turn, to the issue of EU acts in the area of the Union's **Common foreign and security policy (CFSP)**.

In that area, the legal situation under Union primary law as it currently stands is that there are certain types of acts of EU institutions or bodies for which domestic remedies can be afforded only before the courts and tribunal of the Member States, but not before the Union courts in Luxembourg.

Now, one of the core principles underlying the Convention system of fundamental rights protection is obviously the principle of subsidiarity. It is inherent in that principle that there should be a match

between responsibility for remedial action at domestic level, on the one hand, and liability under the Convention, on the other hand.

We therefore need to devise a solution which takes account of the manner in which the competences for remedial action in the area of CFSP are distributed between the Union and its Member States. Such a solution would thus have to involve the Member States in certain cases, where acts of EU institutions or bodies are challenged before the Strasbourg Court. A solution should moreover not be a black or white one but rather be of a procedural nature, in order to be able to take account of future developments in the interpretation of Union primary law as regards the distribution of competences for remedial action in the area of CFSP.

Ladies and Gentlemen, by seeking to accede to the ECHR the European Union aims at strengthening the pan-European system of fundamental rights protection in our common legal space, rather than at obtaining an advantage, political, economic or otherwise, for itself.

Given the decision of its highest judicial body, the CJEU, the European Union is confident that its request to re-open the draft accession agreement in order to address the objections raised by the CJEU will be understood by our partners in the Council of Europe as a démarche which is commanded by the very respect for the rule of law, which is a value common to the Council of Europe and the European Union.

The Union is determined to accede to the Convention and its negotiators are eager to work intensely with you, Mme Chair, with the delegates from the members of the Council of Europe outside the Union and with the secretariat in order to find solutions for the issues to be discussed. We are not required to negotiate a new accession Agreement but rather to make some specific amendments to the 2013 Agreement whilst preserving its underlying balance. I am convinced that with good will and creativity this will be possible. It is in that spirit that I am looking forward to our discussions and negotiations.

Thank you for your attention.