



47+1(2020)Rinf
Le 25 juin 2020

**RÉUNION VIRTUELLE INFORMELLE DU GROUPE
DE NEGOCIATION AD HOC DU CDDH ("47+1") SUR
L'ADHÉSION DE L'UNION EUROPÉENNE À LA CONVENTION
EUROPÉENNE DES DROITS DE L'HOMME**

Rapport de réunion

Lundi 22 juin 2020 (9h30 - 12h)

Réunion virtuelle (KUDO) avec interprétation simultanée à distance
Conseil de l'Europe

1. Le Groupe de négociation ad hoc du CDDH ("Groupe 47+1") sur l'adhésion de l'Union européenne (UE) à la Convention européenne des droits de l'homme (CEDH) a tenu une réunion virtuelle informelle avec interprétation simultanée à distance (en utilisant la plate-forme KUDO) lundi 22 juin 2020 (9h30 - 12h).

1. Ouverture de la réunion et adoption de l'ordre du jour

2. La Présidente du "Groupe 47+1", Mme Tonje MEINICH (Norvège), ouvre la réunion virtuelle informelle. Le Groupe adopte l'ordre du jour (Annexe I). La liste des participants figure ci-après à l'Annexe II. En plus des participants, la réunion virtuelle est suivie par environ 70 "spectateurs" des délégations, à savoir, des personnes qui suivent la réunion mais ne peuvent pas intervenir. Les allocutions d'ouverture mentionnées aux points 2-5 de l'ordre du jour figurent ci-après aux Annexes III-VI (disponible uniquement en anglais).

2. Allocution d'ouverture de M. Christos GIAKOUMOPOULOS, Directeur général des droits de l'homme et de l'État de droit

3. M. Giakoumopoulos, Directeur général des droits de l'homme et de l'État de droit, souhaite la bienvenue à tous les participants à la réunion. Au nom du Conseil de l'Europe, il salue la décision de l'UE de reprendre les négociations. Il rappelle que la Secrétaire Générale, Mme Marija PEJCINOVIC BURIC, dans ses récents discours au Comité des Ministres et à l'Assemblée parlementaire du Conseil de l'Europe, a clairement identifié les négociations en vue de l'adhésion comme étant une priorité absolue pour l'Organisation. En outre, les Hautes Parties contractantes à la CEDH ont souligné à plusieurs reprises l'importance de l'adhésion de l'UE, notamment dans la Déclaration de Copenhague de 2018.

4. M. Giakoumopoulos félicite Mme Tonje Meinich pour son élection par le Comité directeur pour les droits de l'homme (CDDH) à la présidence du "Groupe 47+1" et souligne la pertinence de cette décision compte tenu de l'implication antérieure de Mme Meinich en tant que Présidente des différents Groupes de négociation ayant opéré durant la période 2010-2013. Il rappelle brièvement l'historique du processus de négociation et les raisons sous-tendant les obligations juridiques qui découlent du traité de Lisbonne et qui visent à ce que l'UE adhère à la CEDH.

5. Soulignant que le contexte politique et juridique a également évolué depuis que la Cour de justice de l'Union européenne (CJUE) a rendu son avis 2/13 le 18 décembre 2014, il déclare que les risques d'une adhésion retardée ou d'un échec sont non seulement réels, mais qu'ils pourraient se multiplier à l'avenir. Toute fragmentation de l'espace juridique et politique européen doit être évitée. Les raisons pour lesquelles l'adhésion constitue une obligation juridique en vertu du traité de Lisbonne restent plus valables et urgentes que jamais et cela rend d'autant plus importants le mandat et les travaux du "Groupe 47+1".

6. Le Secrétariat du Conseil de l'Europe est conscient de la complexité des négociations à venir et des défis lancés par les objections figurant dans l'avis 2/13. Pour autant, ce n'est pas insurmontable. Un accord d'adhésion révisé devrait naturellement être envisagé comme un paquet de compromis qui, au bout de l'exercice, doit être acceptable pour les 48 partenaires de la négociation et bénéficier d'un solide soutien politique. Il appartient maintenant aux membres du "Groupe 47+1" de faire un effort collectif et d'explorer toutes les possibilités afin d'identifier les voies qui peuvent fournir la base de compromis mutuellement acceptables. Cela devrait se faire si toutes les parties prenantes s'efforcent sincèrement pour parvenir aux compromis nécessaires, afin d'accomplir le mandat du Groupe par l'adoption d'un projet d'Accord d'adhésion révisé en

tant que base pour l'adhésion de l'UE à la CEDH, convention qui est un instrument constitutionnel de l'"ordre public" européen.

3. Allocution d'ouverture de Mme Meglena KUNEVA, Chef de la délégation de l'Union européenne auprès du Conseil de l'Europe

7. La Chef de la délégation de l'Union européenne auprès du Conseil de l'Europe, Ambassadrice Meglena Kuneva, se félicite de la tenue de la présente réunion du "Groupe 47+1" malgré les circonstances difficiles liées à la crise sanitaire. Elle déclare que l'UE est pleinement engagée dans l'adhésion à la CEDH, ce qui constitue non seulement une obligation conventionnelle, mais aussi un moyen d'atteindre l'objectif commun de renforcer le système paneuropéen de protection des droits fondamentaux. Au nom de l'UE, elle exprime la ferme conviction que toutes les délégations participantes partagent l'intérêt commun de parvenir à l'adhésion de l'UE à la CEDH aussi rapidement que possible.

8. Tout en reprenant ces négociations en vue de les couronner de succès, elle souligne que l'UE, qui n'est pas un État, ne pourra devenir Partie à la CEDH aux côtés de ses États membres que si des dispositions sont mises en place pour ménager la spécificité de l'UE et celle de son ordre juridique. À cet égard, la CJUE a soulevé un certain nombre d'objections dans son avis 2/13 à l'encontre du projet d'Accord d'adhésion de 2013. C'est pourquoi la renégociation d'un nombre limité de dispositions de l'Accord d'adhésion s'avère nécessaire. L'UE limitera ses demandes de modification à ce qui sera strictement nécessaire pour répondre à ces objections. Dans le même temps, il est nécessaire de remédier pleinement aux objections soulevées par la CJUE dans l'intérêt de l'État de droit et de la sécurité juridique.

9. L'Ambassadrice Kuneva rappelle que la Vice-présidente de la Commission européenne, Mme Vera JOUROVA, a déclaré que l'adhésion de l'UE à la CEDH est une priorité pour la Commission. En tant que négociateur de l'UE, la Commission européenne est fermement résolue à faire avancer le processus d'adhésion et à le mener rapidement à son terme. L'Ambassadrice Kuneva exprime sa ferme conviction qu'avec la volonté politique nécessaire, les délégations seront en mesure de franchir ensemble cette étape importante pour renforcer la protection des droits de l'homme au bénéfice de tous les Européens.

4. Déclaration d'ouverture de Mme Tonje MEINICH, Présidente du Groupe de négociation ad hoc du CDDH

10. Mme Tonje Meinich (Norvège), Présidente du "Groupe 47+1", souhaite la bienvenue à tous les participants et rappelle brièvement l'historique des travaux du Groupe au cours de la période 2010-2013. Elle rappelle aux participants que ni le CDDH ni le Comité des Ministres n'ont formellement adopté en 2013 les projets d'instruments, dans l'attente de l'achèvement des procédures internes par les parties aux négociations et en particulier, au niveau de l'UE, de l'avis de la CJUE. C'est en raison de l'avis 2/13 de la CJUE qu'il a fallu poursuivre les négociations pour amender le projet d'Accord d'adhésion et ses annexes et répondre ainsi aux préoccupations exprimées par la CJUE.

11. Mme Meinich rappelle les principes de base que le "Groupe 47+1" avait adoptés en 2011 comme base de négociation du projet initial d'Accord d'adhésion. Ces principes sont énumérés au paragraphe 7 du rapport explicatif du projet d'Accord d'adhésion¹. Elle estime important de les

¹ Selon ces principes généraux, l'Accord d'adhésion vise à préserver l'égalité des droits de tous les individus en vertu de la Convention, les droits des demandeurs dans les procédures de la Convention et l'égalité de toutes les Hautes Parties contractantes. Le mécanisme de contrôle actuel de la Convention devrait, dans la mesure du possible, être préservé et appliqué

rappeler dès le début de la reprise des négociations d'adhésion. En outre, elle se déclare convaincue que ces principes restent la base fondamentale de la poursuite des négociations et que les problèmes identifiés par la CJUE peuvent être résolus par des solutions qui s'inscrivent dans le cadre de ces principes.

12. Mme Meinich explique aux participants le but de la réunion virtuelle informelle, à savoir tirer le meilleur parti de la situation créée par le fait que les deux réunions de négociation prévues respectivement pour mars et mai 2020 ont dû être reportées au second semestre en raison de la crise sanitaire. Elle indique que l'ordre du jour de la présente réunion comporte une présentation par la Commission européenne de sa prise de position et que toutes les délégations sont invitées à prendre la parole pour des commentaires, des questions ou des remarques générales. Les délégations sont également invitées à prendre la parole pour exposer leurs propres positions.

13. Enfin, Mme Meinich marque son accord avec les orateurs précédents sur le fait que les problèmes identifiés par la CJUE sont difficiles, mais pas insurmontables. Elle est convaincue que l'effort commun du Groupe aboutira à un Accord d'adhésion révisé qui répondra aux préoccupations et obtiendra l'approbation de toutes les délégations participant au processus.

5. Présentation par la Commission européenne de sa prise de position sur l'adhésion de l'UE à la CEDH

14. La Commission européenne présente son document de position, déjà distribué à toutes les délégations (document 47+1(2020)1). Elle rappelle tout d'abord brièvement les caractéristiques particulières de l'UE et de son ordre juridique, ce dernier constituant un cadre sans précédent dans le domaine de la protection internationale des droits fondamentaux.

15. La Commission européenne, en collaboration avec les Etats membres de l'UE, a évalué très attentivement l'avis 2/13 et en a tiré ses conclusions. Dans les négociations à venir au sein du "Groupe 47+1", l'UE ne demandera que les amendements au projet d'Accord d'adhésion qui sont strictement nécessaires pour répondre aux objections soulevées par l'avis 2/13. Dans le même temps, la Commission européenne souligne l'importance de répondre pleinement à ces objections avec le degré de sécurité juridique requis.

16. La Commission européenne déclare qu'elle ne cherche nullement à mettre en péril l'équilibre sous-jacent au projet d'Accord d'adhésion. L'UE ne cherche pas non plus à déroger à la CEDH ou à son système de contrôle. Ce à quoi la Commission européenne souhaiterait parvenir ce serait plutôt à certains arrangements ou "modulations" spécifiques qui préservent les caractéristiques propres à l'UE et à son ordre juridique, conformément aux exigences constitutionnelles définies par la CJUE.

17. La Commission européenne souligne que les amendements préconisés par l'UE concernent principalement quatre domaines : premièrement, les mécanismes propres à l'UE en matière de procédure devant la Cour européenne des droits de l'homme (CEDH) ; deuxièmement, le fonctionnement des requêtes interétatiques (article 33 de la CEDH) et l'introduction de

à l'UE de la même manière qu'aux autres Hautes Parties contractantes, en n'apportant que les adaptations strictement nécessaires. L'UE devrait, par principe, adhérer à la Convention sur un pied d'égalité avec les autres Parties contractantes, c'est-à-dire avec les mêmes droits et obligations. Il a toutefois été reconnu que, l'UE n'étant pas un État, certaines adaptations seraient nécessaires. Il a également été entendu que les droits et obligations existants des Etats parties à la Convention, qu'ils soient ou non membres de l'UE, ne devraient pas être affectés par l'adhésion, et que la répartition des compétences entre l'UE et ses Etats membres et entre les institutions de l'UE doit être respectée.

demandes d'avis consultatifs (Protocole n° 16) en rapport avec des Etats membres de l'UE ; troisièmement, le principe de confiance mutuelle entre les Etats membres de l'UE ; et quatrièmement, les actes de l'UE en matière de politique étrangère et de sécurité commune qui sont exclus de la juridiction de la CJUE.

18. Au nom de l'UE, la Commission européenne rappelle sa détermination à adhérer à la CEDH. Elle rappelle que l'adhésion ne nécessite pas de négocier un nouvel Accord d'adhésion, mais plutôt d'apporter plusieurs amendements spécifiques à l'accord déjà existant, tout en préservant l'équilibre qui le sous-tend. La Commission européenne se dit convaincue que, avec de la bonne volonté et de la créativité, cela sera possible pour le "Groupe 47 + 1".

6. Tour général de déclarations, commentaires ou questions des délégations

19. La **Suisse** se félicite de la reprise des négociations et rappelle que l'adhésion de l'UE à la CEDH constituera un pas important vers le développement, la consolidation et la cohérence de la protection des droits de l'homme en Europe. N'étant pas membre de l'UE, la Suisse souligne l'importance du principe d'une adhésion de l'UE à la CEDH sur pied d'égalité avec les actuelles 47 Hautes Parties contractantes. Toute dérogation à ce principe en invoquant les caractéristiques particulières de l'UE devra être étayée par des raisons convaincantes et pertinentes. Pour la Suisse, il est important que le résultat global respecte dûment le fonctionnement judiciaire et l'indépendance de la CEDH. Elle se félicite du fait que la Commission européenne limite ses demandes d'amendement à ce qui est strictement nécessaire à la lumière de l'avis 2/13. Pour sa part, la Suisse ne formulera pas de demandes de réouverture d'autres dispositions qui ne sont pas concernées par cet avis. Enfin, elle suggère que le Comité des Ministres donne à la Cour européenne des droits de l'homme la possibilité de se prononcer sur un Accord d'adhésion révisé, afin de garantir que la Cour n'a pas de difficultés avec le contenu de l'accord.

20. La **France** souligne l'importance de l'adhésion de l'UE à la CEDH et exprime son plein engagement à l'égard des négociations et du processus qui sous-tend celles-ci.

21. La **Norvège** se félicite vivement de la reprise du processus de négociation et souligne l'amélioration que l'adhésion de l'UE à la CEDH apportera à la cohérence du système européen de protection des droits de l'homme. Les différentes allocutions d'ouverture de la présente réunion sont très encourageantes. La Norvège souligne le principe sous-jacent d'égalité tant à l'égard des droits des requérants en vertu de la CEDH que des situations de toutes les Hautes Parties contractantes à la CEDH, tout en tenant compte des caractéristiques particulières de l'UE et tout en maintenant l'interprétation autorisée de la CEDH par la Cour européenne des droits de l'homme. Il conviendra de trouver un juste équilibre entre ces paramètres. Toutefois, aucune des questions en suspens ne pose d'obstacles qui ne pourraient être surmontés. Le "Groupe 47+1" devra chercher des solutions créatives tout en adoptant une approche pragmatique. La Norvège se déclare pleinement déterminée à accomplir cette tâche.

22. La **Turquie** note que plus de cinq ans se sont écoulés depuis que le CJUE a rendu son avis 2/13 et que de nombreux changements ont eu lieu depuis lors. Elle invite la Commission européenne à soumettre des propositions concrètes pour remédier aux problèmes identifiés par la CJUE dans son avis 2/13. La Turquie souligne l'importance de l'adhésion de l'UE à la CEDH. Dans le même temps, cette adhésion ne devrait pas porter atteinte au rôle du système de la CEDH dans les 47 Etats membres du Conseil de l'Europe. Les négociations devraient se poursuivre sur la base des grands principes sur lesquels le précédent projet d'Accord d'adhésion avait été élaboré, notamment le principe selon lequel l'UE devrait adhérer à la CEDH sur un pied d'égalité avec les 47 autres Hautes Parties contractantes. Elle note que la Cour européenne des

droits de l'homme est déjà, à l'heure actuelle, en mesure de statuer sur des affaires impliquant le droit de l'UE. La Turquie forme l'espoir que des solutions aux questions en suspens puissent être trouvées au bénéfice de toutes les délégations participantes.

23. La **Croatie** déclare que, sous son actuelle Présidence du Conseil de l'Union européenne, elle considère l'adhésion à la CEDH comme l'une des priorités essentielles de l'UE. Le projet d'Accord d'adhésion élaboré en 2013 a constitué une étape importante. À la suite de l'avis 2/13 de la CJUE, l'ensemble de la *communauté européenne* (y compris l'UE et ses États membres, la société civile et le monde juridique universitaire) a apporté des contributions à ce sujet qui pourraient constituer une bonne base pour trouver des solutions à toutes les questions en suspens. La Croatie souligne la grande opportunité qu'offre l'adhésion de l'UE à la CEDH pour combler les lacunes restantes et assurer une plus grande cohérence du système européen de protection des droits de l'homme.

24. L'**Espagne** souligne l'importance de l'adhésion de l'UE pour le renforcement de la protection des droits de l'homme en Europe et salue la reprise du processus de négociation.

25. Les **Pays-Bas** soulignent l'importance de trouver des solutions solides aux questions en suspens dans le cadre du processus de négociation, afin d'éviter un deuxième "avis négatif" de la CJUE sur un projet révisé d'Accord d'adhésion. Les amendements à apporter au projet d'Accord d'adhésion devraient se limiter au strict nécessaire, tout en étant politiquement acceptables pour toutes les délégations participant au processus de négociation. L'adhésion de l'UE devrait se faire autant que possible sur un pied d'égalité avec les autres Hautes Parties contractantes. Enfin, les Pays-Bas soulignent qu'ils s'attendent à des négociations constructives.

26. **Andorre** se félicite de l'organisation de la présente réunion et souligne l'importance de l'adhésion de l'UE, autant que possible sur un pied d'égalité avec les autres Hautes Parties contractantes. Elle encourage l'ensemble des délégations à participer activement au processus de négociation. Les solutions aux questions en suspens sont à envisager comme un « paquet » mais les défis pourraient être surmontés par des négociations menées dans un bon esprit. Le résultat final de l'adhésion de l'UE à la CEDH devrait être considéré comme une situation "gagnant-gagnant" pour toutes les parties prenantes.

27. La **Commission européenne** prend la parole pour réagir brièvement à certaines des interventions, en remerciant les délégations pour leurs réponses constructives et positives. La Commission souligne que toute solution doit être politiquement acceptable pour toutes les Hautes Parties contractantes à la CEDH. En même temps, l'avis 2/13 définit pour l'UE les paramètres dans lesquels celle-ci fonctionnera.

28. La **Présidente** résume la discussion en notant en particulier que toutes les délégations ayant pris la parole ont manifesté une approche positive à l'égard de l'adhésion de l'UE à la CEDH et ont exprimé leur volonté de participer de manière constructive aux négociations. La plupart des délégations ont souligné la nécessité de trouver un équilibre entre, d'une part, la mise en œuvre des exigences de l'avis 2/13 de la CJUE et, d'autre part, la garantie de l'égalité de traitement tant à l'égard des requérants que des autres Hautes Parties contractantes. Bien que le groupe ait encore beaucoup de travail à accomplir, la présente réunion informelle a été un signe encourageant de l'engagement et de la volonté des participants d'atteindre cet objectif commun.

7. Autres questions

29. Le Secrétariat rappelle que les deux réunions qui ont été reportées en raison de la crise sanitaire sont reprogrammées pour le second semestre. Les négociations ayant simplement été relancées (et ne partant donc pas à nouveau depuis le début) ces réunions seront considérées comme étant les 6^e et 7^e réunions de négociation. Alors que la 6^e réunion de négociation est prévue du 29 septembre au 2 octobre, la 7^e est envisagée pour les 24-27 novembre. D'autres réunions suivront l'année prochaine à des dates qui restent à fixer. Le Secrétariat tiendra les délégations informées au cours de l'été de tout changement concernant les dates ou le format des réunions, en suivant la politique générale du Conseil de l'Europe en matière de réunions intergouvernementales. Enfin, le Secrétariat attire l'attention des participants sur une sélection d'articles académiques pertinents et d'autres éléments mis à disposition sur le site web du CDDH dédié à l'adhésion à l'UE.

30. La Présidente informe le "Groupe 47+1" que le Secrétariat préparera un rapport de réunion qui sera envoyé à toutes les délégations pour d'éventuels commentaires. Compte tenu de la nature informelle de la réunion, ce rapport ne sera pas officiellement adopté par le "Groupe 47+1".

ANNEXE I

Ordre du jour

Lundi 22 juin 2020 (9 h 30 - midi)

- 1. Ouverture de la réunion et adoption de l'ordre du jour**
- 2. Allocution d'ouverture de M. Christos GIAKOUMOPOULOS, Directeur général des droits de l'homme et de l'État de droit**
- 3. Allocution d'ouverture de Mme Meglena KUNEVA, Ambassadeur, Chef de la délégation de l'Union européenne auprès du Conseil de l'Europe**
- 4. Déclaration d'ouverture de Mme Tonje MEINICH, Présidente du Groupe de négociation ad hoc du CDDH**
- 5. Présentation par la Commission européenne de sa prise de position sur l'adhésion de l'Union européenne (UE) à la Convention européenne des droits de l'homme (CEDH)**
- 6. Tour général de déclarations, observations ou questions des délégations**
- 7. Autres questions**

Documents de référence

Projet révisé d'accord portant adhésion de l'Union européenne à la Convention de sauvegarde des droits de l'homme et des libertés fondamentales	CM(2013)93 add1, Annexe 1, p. 3-9
Projet de déclaration de l'Union européenne à faire au moment de la signature de l'accord d'adhésion	CM(2013)93 add1, Annexe 2, p. 10
Projet de règle à ajouter au Règlement du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables dans les affaires auxquelles l'Union européenne est partie	CM(2013)93 add1, Annexe 3, p. 11
Projet de modèle de mémorandum d'accord entre l'Union européenne et X [État non membre de l'Union européenne]	CM(2013)93 add1, Annexe 4, p. 12
Projet de rapport explicatif à l'Accord d'adhésion de l'Union européenne à la Convention de sauvegarde des droits de l'homme et des libertés fondamentales	CM(2013)93 add1, Annexe 5, p. 13-28
Document de position pour la négociation de l'adhésion de l'Union européenne à la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales	47+1(2020)1

Mandat ad hoc concernant l'adhésion de l'UE à la Convention donné au CDDH par les Délégués des Ministres lors de leur 1085e réunion (26 mai 2010)	CDDH(2010)008
Décision du Comité des Délégués des Ministres lors de sa 1364e réunion (15 janvier 2020) sur la poursuite du mandat ad hoc du CDDH pour la finalisation des instruments juridiques fixant les modalités d'adhésion de l'Union européenne à la Convention européenne des droits de l'homme	CM/Del/JAN(2020)1364/4.3
Lettre du 31 octobre 2019 du Président et de la Première Vice-présidente de la Commission européenne au Secrétaire Général du Conseil de l'Europe	DD(2019)1301
Avis 2/13 de la Cour européenne de justice (CEJ) du 18 décembre 2014	A-2/13 ; EC LI : EU : C : 2014 : 2454

ANNEXE II

Liste des Participants

MEMBERS / MEMBRES

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

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

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POLAND / POLOGNE

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

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

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

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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)

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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

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INTERPRETERS / INTERPRÈTES

Chloé CHENETIER-KIPPING

Luke TILDEN

Grégoire DEVICTOR

ANNEXE III

**Discours d'ouverture par M. Christos Giakoumopoulos
Directeur General, Droit de l'Homme et Etat de droit
(disponible uniquement en anglais)**

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.

* * * * *

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 70th 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.

ANNEXE IV

Discours d'ouverture par Mme Meglena Kuneva, Ambassadrice, Chef de la délégation de l'Union européenne près du Conseil de l'Europe (disponible uniquement en anglais)

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".

ANNEXE V

Discours d'introduction par Mme Tonje Meinich, Présidente du groupe de négociation ad hoc du CDDH (disponible uniquement en anglais)

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.

ANNEXE VI

Présentation par la Commission européenne de son document de position sur l'adhésion de l'Union européenne à la Convention européenne des Droits de l'homme (CEDH) (disponible uniquement en anglais)

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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.