

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

47+1(2021)14  
16 November 2021

**12<sup>TH</sup> 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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**Revised proposals by the Secretariat on issues contained in Basket 3  
("The principle of mutual trust between the EU member states")**

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Strasbourg, Tuesday 7 December 2021 (10:00 am) – Friday 10 December 2021 (4:30 pm)

(Due to the COVID-19 situation, the meeting will be held as a hybrid meeting through the KUDO videoconferencing system and Room G03 of the Agora building)

Council of Europe

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("The principle of mutual trust between the EU member states")**

**I. Introduction:**

1. For the 11<sup>th</sup> meeting (5-8 October 2021), the Secretariat prepared a document (CDDH47+1(2021)11) with revised proposals for discussion on the principle of mutual trust between the EU member states. In light of that discussion the Secretariat was tasked with further revising the proposals for the next meeting (see paragraph 18 of the 11<sup>th</sup> meeting report, CDDH47+1(2021)R11). The following proposals are tabled for discussion at the 12<sup>th</sup> meeting (7-10 December 2021).

**II. Element for the preamble of the draft Accession Agreement:**

2. The first part of the revised proposal is an additional element for the preamble of the draft Accession Agreement, which has not been revised. The proposal is currently in brackets, given that there has not been consensus within the Group on the need for such a preambular paragraph in the draft Accession Agreement:

*[Preamble*

Recalling that the Court is mindful in its case-law of the importance of the mutual-recognition mechanisms within the European Union and of the mutual trust which they require, ]

**III. Revised provision for the draft Accession Agreement:**

3. A revised substantive provision for the draft Accession Agreement is proposed which reads as follows:

*Article 5b – Mutual trust under European Union law*

Accession of the European Union to the Convention shall not affect the application of the principle of mutual trust within the European Union. The protection of human rights guaranteed by the Convention shall however be ensured.

4. An additional hyphen is added to Article 1 ("Scope of the accession and amendments to Article 59 of the Convention"), paragraph 5 of the draft Accession Agreement:

"5. Where any of the terms:

...

- 'protection of human rights guaranteed by the Convention' is mentioned in the present Agreement, it shall be understood as referring to the Convention as interpreted by the Court."

#### IV. Corresponding paragraphs for the explanatory report:

5. Corresponding to the first two proposals above, the following paragraphs 74b.-d. for the explanatory report are being proposed:

##### *Article 5b – Mutual trust under European Union law*

74b. [In the preamble to the Accession Agreement, it is recalled that] the Court is mindful in its case-law of the importance of the mutual-recognition mechanisms within the European Union and of the mutual trust which they require. The Court regarded the creation of an area of freedom, security and justice within the European Union, and the adoption of the means necessary to achieve it (notably the principle of mutual trust), to be wholly legitimate in principle from the standpoint of the Convention (see *Avotins v. Latvia*, no. 17502/07, Grand Chamber judgment of 23 May 2016, paragraph 113).

74c. The principle of mutual trust allows an area without internal borders to be created and maintained. According to the case-law of the CJEU, this principle means that, when implementing EU law, the EU member States are required to consider, save in exceptional circumstances, that fundamental rights have been observed by other EU member States (see Court of Justice of the European Union, *Aranyosi (C-404/15) and Căldăraru (C-659/15 PPU)*, judgment of 5 April 2016, paragraph 78). A principle of mutual trust can also be relevant to non-EU member states in the context of bilateral agreements concluded with the EU.

74d. The Court, for its part, has noted the increased convergence between its own case-law and the case-law of the CJEU with regard to the limits to the operation of mutual recognition-mechanisms in light of a real and individual risk of a violation of Article 3 of the Convention (*Bivolaru and Moldovan v. France*, nos. 40324/16 and 12623/17, judgment of 25 March 2021, paragraph 114). With regard to the mutual-recognition mechanisms under EU law, the Court held that it must verify that the principle of mutual trust is not applied automatically and mechanically to the detriment of human rights (*Avotins v. Latvia*, cited above, paragraph 116; *Bivolaru and Moldovan v. France*, cited above, paragraph 100-101).<sup>1</sup>

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<sup>1</sup> In these judgments, the Court dealt with the European arrest warrant (*Bivolaru and Moldovan*) and the recognition and enforcement of judgments in civil and commercial matters (*Avotins*).