47+1(2021)R11

8 October 2021

11TH MEETING OF THE CDDH AD HOC NEGOTIATION GROUP ("47+1") ON THE ACCESSION OF THE EUROPEAN UNION TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS

______

Meeting Report

______

Tuesday 5 October 2021 (10:00 a.m.) – Friday 8 October 2021 (4:30 p.m.)

Agora, Room G03 (with the possibility to attend the meeting also externally through the KUDO videoconferencing system)

Council of Europe

_____

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 its 11th meeting from 5 – 8 October 2021. Due to the COVID-pandemic, the meeting was held as a hybrid meeting. The list of participants is attached as Appendix II. The meeting was held under the Chair of the "47+1 Group", Ms Tonje MEINICH (Norway).

Item 1: Opening of the meeting and adoption of the agenda

2. Mr Daniele CANGEMI, Head of Department for Human Rights, Justice and Legal Co-operation Standard-setting Activities, welcomed the participants and underlined the importance of the task entrusted to the Group by the Committee of Ministers and the Steering Committee for Human Rights (CDDH) to negotiate the revised draft Accession Agreement on the EU's accession to the European Convention on Human Rights. The Group adopted the agenda without further changes (Appendix I).

3. One delegation had distributed before the meeting an informal paper entitled "Preliminary considerations on the subject of possible solutions to issue raised in Opinion 2/13 of the CJEU consistent with the approach enshrined in the '2013 package' and in the negotiating principles of NEUMS". Elements of this paper were discussed within the various agenda items, but the Group will revert in more detail to this informal paper at a later meeting.

Item 2: Discussion of proposals submitted on inter-Party applications under Article 33 of the European Convention of Human Rights (Basket 2)

4. The Norwegian delegation introduced a revised proposal on "Inter-party applications under Article 33 of the European Convention of Human Rights" which it had elaborated together with the Secretariat and which is contained in document CDDH47+1(2021)10. This proposal, which was based on document CDDH47+1(2021)9, consisted of a new paragraph 3 of Article 4 of the draft Accession Agreement which would provide the EU with the possibility to establish whether an inter-party dispute between EU member states or the EU falls within the scope of Article 344 of the Treaty on the Functioning of the European Union (TFEU) and which would contain an obligation for the applicant High Contracting Party to withdraw such dispute insofar as this was the case. The provision was accompanied by four paragraphs for the explanatory report, setting out further details of the procedure (in particular, the expectation that the Court would, following such withdrawal, strike out the application to the extent necessary by applying Article 37 of the Convention, and that in the unlikely event that a High Contracting Party fails to comply with its obligation to withdraw its application, it would be understood that it would no longer be justified to continue the examination of the application and that the Court could be expected to make the necessary arrangements to that effect under Article 37 of the Convention), as well as the types of inter-party cases which are not concerned by the proposal.

5. A large majority of delegations welcomed the revised proposal as it captured many aspects from the discussion which the Group held at its last meeting. They considered that the revised proposal would point into the right direction and should form the basis for further discussion. One delegation expressed its position that the proposal would create inequalities between the High Contracting Parties, as well as between individuals under the Convention, and deprive the Court of its role as the "master of its proceedings" because it would ultimately force the applicant Contracting Party, upon decision of the EU, to abdicate its right to lodge an inter-party application under Article 33 of the Convention. That delegation also referred to the possibility for the Court to continue the examination of the application under Article 37 of the Convention under certain circumstances.

6. The revised proposal encompassed the treatment of both "horizontal disputes" (i.e. inter-party cases between EU member states) and "vertical disputes" (i.e. inter-party cases between EU member

states and the EU). The EU proposed to deal with these two categories separately and referred to its proposal for "vertical disputes" tabled at the 7th meeting of the Group in November 2020.

7. With regard to inter-party applications which would partly fall within the scope of Article 344 TFEU ("mixed applications"), the Group considered ways how to better separate the various aspects of such applications, and whether it would be conceivable to entrust the distribution of the issues to the well-established informal coordination between the two European courts. At the same time, it was noted that such distribution of the issues might prove difficult in practice. Some delegations underlined the importance to indicate how to proceed with the remainder of an inter-party application which does not come within the scope of Article 344 TFEU. In this regard, the possibility for the Court to declare applications as "partly inadmissible *ratione materiae*" was stressed.

8. The Group also discussed a number of other aspects, such as *inter alia*: how the exact sequencing of the procedure indicated in the proposal would unfold; whether the elements referring to the obligation to withdraw an application and possible consequences if the applicant High Contracting Party does not follow such obligation should be deleted; whether Article 55 of the Convention already provides for a potentially exclusive basis to settle inter-party applications in other fora than the Court; whether the expectation expressed in the explanatory report that the Court would strike out an application after the applicant High Contracting Party has withdrawn the application was providing for sufficient legal certainty in light of the established case-law by the Court which was summarised in a respective footnote; whether the assessment by the EU referred to in the proposed Article 4, paragraph 3 of the draft Accession Agreement regularly involves the establishment of infringement proceedings and how the duration of such proceedings could be accommodated with the requirement in the proposal that the EU communicates such an assessment quickly; and whether other ways than using Article 37 of the Convention ("Striking-out applications") could also be envisaged, such as the inclusion of a new inadmissibility criterion.

9. The EU provided a number of concrete text proposals which are annexed as Appendix IV, together with a recirculation of the EU's informal non-paper on the scope of Article 344 TFEU (Appendix V). Other delegations made additional proposals with the aim of making the text more concise or aligning the two language versions of the revised proposal.

10. The Chair thanked the Group for a fruitful discussion and concluded that the Group would revert back to the issue at its next meeting after delegations had sufficient time to study the proposed amendments by the EU on the proposal.

Item 3: Discussion of proposals submitted on the principle of mutual trust between the EU member states (Basket 3)

11. The Secretariat introduced a revised proposal on the principle of mutual trust between the EU member states as contained in document CDDH47+1(2021)11. A large majority of delegations welcomed the revised proposal as a good basis for further discussion on the matter which pointed into the right direction. One delegation expressed its concerns about inserting in the draft Accession Agreement any provision which would enshrine therein the principle of mutual trust between the EU member states which in its view would be incompatible with the principle of equality between all High Contracting Parties, as well as between individuals under the Convention, due to steep requirements of having to prove "manifest deficiency" in protection of rights.

12. Several delegations raised concerns with the insertion of a preambular paragraph referring to the principle of mutual trust between the EU member states, questioning the need for such a

paragraph or its consistency in substance with the other paragraphs in the Preamble. Other delegations, notably the EU, retained their support for the proposed preambular paragraph.

13. Delegations suggested several changes and amendments to the proposed substantive provision to the draft Accession Agreement (Article X) which are reproduced in Appendix III of this meeting report and mentioned in the following paragraphs.

14. Several delegations were in favour of deleting the expression "which allows for the creation and maintenance of an area without internal borders" on the basis that this would already be captured by the second paragraph proposed for the explanatory report. Other delegations, notably the EU, supported the maintaining of this expression.

15. Delegations also expressed differing support for the expressions "while also ensuring the protection of human rights guaranteed by the Convention" or "to the extent that such application also ensures the protection of human rights guaranteed by the Convention". It was also inquired about the difference of these two proposals, in particular whether the former would set out a given fact and the latter would set out a necessary condition. Other delegations suggested that alternative formulations for "to the extent that" could be "provided that" or "inasmuch as".

16. Delegations also discussed whether the expression "the protection of human rights guaranteed by the Convention" should be accompanied by "as interpreted by the Court". While delegations agreed that the Court would be the ultimate body to apply and interpret the Convention, the Group discussed whether a general clarification to that effect could instead be added to the accession instruments, either in the explanatory report or elsewhere in the draft Accession Agreement. It was recalled, in this context, that already the 2013 draft explanatory report was seen as part of a package of instruments prepared by the Group which all formed part of the context underlying the accession of the EU to the Convention within the meaning of Article 31.2.b of the Vienna Convention on the Law of Treaties. One delegation noted that moving an important provision from the body of a treaty to the explanatory report is risky as it removes the legally binding force of the provision. Another delegation proposed the formulation "in an individual case", which could be inserted into the provision as an addition to "as interpreted by the Court". If it could serve as a compromise solution, that delegation stated that that addition may however also serve as a stand-alone criterion.

17. Delegations welcomed the streamlined proposal for the accompanying paragraphs to the explanatory report for Article X but expressed differing views of whether the text should be further shortened by deleting the citation of the Court's case-law or contain further references, in particular to paragraph 116 of the Court's judgment in *Avotins v. Latvia* (no. 17502/07, Grand Chamber judgment of 23 May 2016).

18. The Chair concluded that a large majority of delegations did not object to the insertion of a substantive provision in the draft Accession Agreement, although there remained several unresolved wording proposals which resulted from the discussion. In light of that discussion the Secretariat was tasked with revising both Article X and its accompanying paragraphs of the explanatory report.

Item 4: Discussion of proposals submitted on amendments to Articles 6-8 of the Accession Agreement (including the relevant parts of the other accession instruments)

19. The Turkish delegation presented its non-paper submitted ahead of the meeting regarding the proposal to revisit Articles 6-8 of the Accession Agreement (including the relevant parts of the other accession instruments) in light of developments which have taken place since the adoption of the draft

Accession Agreement of 2013. The non-paper is attached in Appendix VI. It underlined the need to preserve the integrity of the Council of Europe and the Convention system in view of the size of the EU as a regional organisation comprising 27 member states. The Group thanked the Turkish delegation for the initiative. The Secretariats of the Parliamentary Assembly (PACE) and the Committee of Ministers as well as the Director of the Human Rights Directorate were present during the discussion.

20. Regarding Article 7 (Participation of the European Union in the meetings of the Committee of Ministers of the Council of Europe), the Turkish delegation underlined the need to avoid a situation in the Committee of Ministers (when supervising the execution of judgments by the Court) in which the sheer number of the EU and its member states render the presence of the non-EU member states meaningless in terms of negotiating and voting. This would require revisiting the provision and Appendix III of the draft Accession Agreement as well as the relevant paragraphs of the explanatory report. The Turkish delegation also asked that cases where the EU is not a party or co-respondent are also addressed in the draft instruments. As to the rules regarding judgments to which the EU is a party (where the EU and its member states would be obliged to coordinate), several delegations stated that it was important to establish whether developments within the Committee of Ministers since 2013 would require amendments of these provisions to ensure that the latter could effectively exercise its function. However, several delegations expressed caution to revise the situation of the supervision of the execution of judgments in which the EU is not a party since Article 7, paragraph 4b. of the draft Accession Agreement already states that the EU member states are free under the EU treaties to express their own position and exercise their right to vote in such a situation. The EU confirmed that the legal situation had not changed since the adoption of the draft Accession Agreement in 2013. The Secretariat was tasked with elaborating a paper with the various scenarios in which the Committee of Ministers could potentially vote and provide concrete examples in numbers for them. The Secretariat was also tasked to present an informal paper on the various special decision-mechanisms in other Council of Europe treaties in light of accession by the EU.

21. Regarding Article 6 (Election of judges), the Turkish delegation suggested to revisit that provision in order to ensure that the participation of the members of the European Parliament (EP) would be limited to the election of judges and to avoid coordination amongst parliamentarians through their EP-based political groups. The Turkish delegation especially drew attention to the different nature of PACE (formed of national parliamentarians) and the EP (directly elected and representing all EU citizens) as well as the difference of political groups in the two parliamentary forums and its implications in terms of being represented in the relevant committee of the PACE as well as its Bureau. The representative of the PACE Secretariat gave an overview of the process within the PACE to elect the judges to the Court, as well as previous consultations in 2011 between the PACE and the EP on the modalities for the latter's participation in the election of judges. The latter document would however need technical revision in light of developments since then (in particular the replacement of the Sub-Committee on the Elections of Judges by a full Committee within the PACE). The representative of the PACE Secretariat also stated that the PACE's engagement with other parliamentary bodies (including, but not restricted to the EP) should not be touched upon as the PACE's competence derives from the Statute of the Council of Europe. The Turkish delegation asked for a brief paper covering those explanations as well as any text referring to the discussions in 2011 between PACE and the EP. Several delegations underlined that the discussion should only encompass the EP's participation in PACE as far as EU's accession to the Convention is concerned and not touch upon PACE's engagement with other parliamentary bodies (including, but not restricted to the EP) and for which the PACE's competence derives from the Statute of the Council of Europe. They also noted that the wording of Article 6 already restricts the EP's participation to the election of judges. The PACE Secretariat will share with the Group further information in writing on the process of the election of judges, including if possible the text referring to the 2011 discussions.

22. Regarding Article 8 (Participation of the European Union in the expenditure related to the Convention), the Turkish delegation suggested to adapt the percentage of the expenditure dedicated within the ordinary budget of the Council of Europe to the functioning of the Convention contained in Article 8 (34%) to the present-day figures (36%, as identified by the Secretariat in a non-paper submitted to the Group for its 8th meeting in February 2021). Several delegations supported this proposal. The EU stated that it has taken good note of the proposal as well as the more recent figures and suggested that this issue should be discussed towards the final stage of the negotiation procedure. The Group decided to revert to the matter at a later stage in order to take as a basis the latest budgetary figures available.

Item 5: Discussion of proposals submitted on the EU's specific mechanisms of the procedure before the European Court of Human Rights (Basket 1)

23. The Secretariat introduced a revised proposal on certain issues contained in Basket 1 ("The EU's specific mechanisms of the procedure before the European Court of Human Rights") as contained in document CDDH47+1(2021)12.

24. With regard to a revised proposal for Article 3, paragraph 5 of the draft Accession Agreement (and corresponding paragraphs for the explanatory report), many delegations considered that the revisions made in the document duly reflected the discussion which the Group had held at its last meeting and were leading into the right direction. One delegation reserved its position that the proposal would not sufficiently maintain the Court's role of being the "master of its own proceedings", noting also the contradictions between the proposed texts for Article 3 of the draft Accession Agreement and for the explanatory report, in particular the apparent obligation of the Court to terminate the co-respondent proceedings according to a "determinative and authoritative" assessment by the EU.

25. Delegations suggested a number of additions to the revised proposals which are replicated in Appendix III. These concerned *inter alia*: whether with regard to the initiation of the co-respondent mechanism the words "by a request" should be deleted; whether the words "one or more EU member states" should be replaced by "all EU member states" in the scenario of Article 3, paragraph 3 of the draft Accession Agreement; whether the assessment by the EU of the material conditions for triggering the co-respondent mechanism should be specified with "of the applicable EU law"; whether the Court should admit a co-respondent "according to" or "in consideration of" the EU's assessment; when and to what extent the applicant should be involved in the process of triggering the co-respondent mechanism; whether the EU should provide its assessment also in the instance that it does not accept an invitation to join as co-respondent; and whether paragraph 56 of the explanatory report should become part of the operative provision of Article 3, paragraph 5 of the draft Accession Agreement.

26. The EU presented an alternative proposal for an operative provision of Article 3, paragraph 5 of the draft Accession Agreement which is likewise reproduced in Appendix III. Several delegations expressed hesitation to the approach taken in that proposal as it appeared to deviate in their opinion in substance from the previous discussion. Other delegations highlighted that the differences to the working proposal submitted by the Secretariat for the present meeting would not be significant and could be overcome. It was decided that the Group reverts to both proposals at a later meeting, in particular after delegates had more time to study the EU's proposal.

27. The Group also considered a revised proposal for Article 3, paragraph 5a. of the draft Accession Agreement on the termination of the co-respondent mechanism (and corresponding provisions to the explanatory report). Delegations welcomed the revised proposal which reflected well

the previous discussion and went into the right direction. One delegation reserved its position on the proposal because it considered it as unduly restricting the role of the Court as the "master of its own proceedings", reducing in its opinion the function of the Court to that of communicator between the EU and the applicant. A text amendment (the insertion of the word "only", to make clear the limited circumstances in which the correspondent mechanism could be terminated) was made to the operative provision which the Group will revisit in light of a future discussion on Basket 4.

Item 6: Any other business

28. The Group will hold its 12th meeting from 7-10 December 2021. The Group was informed about the tentative dates for the 13th meeting (1-4 March 2022), the 14th meeting (3-6 May 2022) and the 15th meeting (5-8 July 2022).

29. For the next meeting, the Secretariat will compile a consolidated version of the draft accession instruments which includes the changes under consideration by the Group.

Item 7: Adoption of the meeting report

30. The Group adopted the present meeting report before the closure of the meeting.

APPENDIX I

Agenda

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

2. **Discussion of proposals submitted on inter-Party applications under Article 33 of the European Convention of Human Rights (Basket 2)**

3. **Discussion of proposals submitted on the principle of mutual trust between the EU member states (Basket 3)**

4. **Discussion of proposals submitted on amendments to Articles 6-8 of the Accession Agreement (including the relevant parts of the other accession instruments)**

5. **Discussion of proposals submitted on the EU's specific mechanisms of the procedure before the European Court of Human Rights (Basket 1)**

6. **Any other business**

7. **Adoption of the meeting report**

Working documents

Document	Reference
Draft revised agreement on the accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms	CM(2013)93 add1, Appendix 1, pp. 3-9
Draft declaration by the European Union to be made at the time of signature of the Accession Agreement	CM(2013)93 add1, Appendix 2, p. 10
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	CM(2013)93 add1, Appendix 3, p. 11
Draft model of memorandum of understanding between the European Union and X [State which is not a member of the European Union]	CM(2013)93 add1, Appendix 4, p. 12
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	CM(2013)93 add1, Appendix 5, pp. 13-28
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
Paper by the Chair to structure the discussion at the 6th negotiation meeting	47+1(2020)2

Compilation by the Secretariat of recent cases in the area of Basket 3 ("The principle of mutual trust between the EU member states")	47+1(2020)4rev
Negotiation Document submitted by the European Union on 2 November 2020	Restricted
Compilation by the European Commission of recent and currently pending cases before the Court of Justice of the European Union in the area of Basket 4 ("Common Foreign and Security Policy")	Non-paper
Proposals by the Secretariat for discussion of agenda items 4 and 5 [*refers to the 8th meeting*]	47+1(2021)5
Non-paper prepared by the Secretariat regarding the estimated expenditure related to the Convention regarding Article 8 of the draft Accession Agreement	47+1(2021)6
Proposals by the Secretariat for the discussion on Basket 1 ("The EU's specific mechanisms of the procedure before the European Court of Human Rights") [*for the 10th meeting*]	47+1(2021)7
Proposals by the Secretariat for the discussion on Basket 3 ("The principle of mutual trust between the EU member states") [*for the 10th meeting*]	47+1(2021)8
Proposal prepared by the Norwegian delegation on "Inter-Party applications under Article 33 of the European Convention of Human Rights" [*for the 10th meeting*]	47+1(2021)9
Revised proposal on "Inter-Party applications under Article 33 of the European Convention of Human Rights" by the Norwegian delegation and the Secretariat	47+1(2021)10
Revised proposals by the Secretariat on issues contained in Basket 3 ("The principle of mutual trust between the EU member states")	47+1(2021)11
Revised proposals by the Secretariat on certain issues contained in Basket 1 ("The EU's specific mechanisms of the procedure before the European Court of Human Rights")	47+1(2021)12

Reference documents

Ad hoc terms of reference concerning accession of the EU to the Convention given to the CDDH by the Ministers' Deputies during their 1085th meeting (26 May 2010)	CDDH(2010)008
Decision by the Minister's Deputies Committee of Ministers at its 1364th 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	CM/Del/JAN(2020)1364/4.3
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	DD(2019)1301
Opinion 2/13 of 18 December 2014 of the Court of Justice of the European Union	A-2/13 ; EC LI: EU: C : 2014: 2454

Protocol No. 16 to the European Convention on Human Rights and its explanatory memorandum	Council of Europe Treaty Series No. 214

APPENDIX II

List of participants

MEMBERS / *MEMBRES*

ALBANIA / *ALBANIE*	Ms Migena MAKISHTI, Department of International and European Law, Ministry for Europe and Foreign Affairs of Albania
ANDORRA / *ANDORRE*	Mr Joan FORNER ROVIRA, Permanent Representative of Andorra to the Council of Europe
ARMENIA / *ARMÉNIE*	Dr Vahagn PILIPOSYAN, Head of International Treaties and Law Department of the Ministry of Foreign Affairs of the Republic of Armenia
AUSTRIA / *AUTRICHE*	Mr Gerhard JANDL, Ambassador Extraordinary and Plenipotentiary, Permanent Representative Ms Brigitte OHMS, Deputy Government Agent of Austria, Deputy Head of Department, European and International Law, Human Rights, Federal Chancellery Mr Martin MEISEL, Head of Department for EU Law, Federal Ministry for Foreign Affairs
AZERBAIJAN / *AZERBAIDJAN*	Mr Şahin ABBASOV, Lead Consultant, Human Rights Unit, Law Enforcement Bodies Department, Administration of the President of the Republic of Azerbaijan Ms Zhala IBRAHIMOVA, Deputy to the Permanent Representative of the Republic of Azerbaijan to the Council of Europe
BELGIUM / *BELGIQUE*	Ms Isabelle NIEDLISPACHER, Co-Agent du Gouvernement de la Belgique auprès de la Cour européenne des droits de l'homme Mr Olivier SACALIS, Attaché, Service Privacy et égalité des chances Ms Florence SAPOROSI, Attachée, Service des Droits de l'Homme
BOSNIA AND HERZEGOVINA / *BOSNIE-HERZEGOVINE*	Ms Monika MIJIC, Acting Agent of the Council of Ministers of Bosnia and Herzegovina before the European Court of Human Rights

	Ms Jelena CVIJETIC, Acting Agent of the Council of Ministers of Bosnia and Herzegovina before the European Court of Human Rights Ms Harisa BACVIC, Acting Agent of the Council of Ministers of Bosnia and Herzegovina before the European Court of Human Rights
BULGARIA / *BULGARIE*	EXCUSED
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 Ms Narcisa Bećirević, Minister Plenipotentiary, Deputy to the Permanent Representative of Croatia to the Council of Europe Ms Petra JURINA, JHA Councellor at the Permanent Representation of the Republic of Croatia to the EU Ms Ana FRANGES, Head of Unit, Directorate for European Affairs, International and Judicial Cooperation
CYPRUS / *CHYPRE*	Mr Demetris LYSANDROU, Senior Counsel, Law Office of the Republic of Cyprus
CZECH REPUBLIC / *REPUBLIQUE TCHÈQUE*	Mr Vít Alexander SCHORM, Agent of the Czech Government before the European Court of Human Rights / Agent du Gouvernement tchèque devant la Cour européenne des Droits de l'Homme
DENMARK / *DANEMARK*	Ms Lea Elkjær TARPGARD, Danish Ministry of Justice
ESTONIA / *ESTONIE*	Ms Maris KUURBERG, Government Agent before the European Court of Human Rights, Ministry of Foreign Affairs Ms Helen-Brigita SILLAR, Lawyer, Legal Department, 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 Ms Satu SISTONEN, Legal Counsellor, Unit for Human Rights Courts and Conventions, Legal Service, Ministry for Foreign Affairs Ms Maria GUSEFF, Director, Unit for EU and Treaty Law, Legal Service, Ministry for Foreign Affairs

FRANCE	Ms Bathilde RICHOUX, Consultante juridique pour la Direction des Affaires Juridiques du Ministère de l'Europe et des Affaires Etrangères. Ms Anne-Clémence DROUANT, Consultante juridique pour la Direction des Affaires Juridiques du Ministère de l'Europe et des Affaires Etrangères.
GEORGIA/*GEORGIE*	Mr. Irakli LIKLIKADZE, Head of the Supervisory Division over the Execution of Judgments, Department of State Representation to International Courts, Ministry of Justice of Georgia Ms Nana TCHANTURIDZE – Head of the Litigation Division of the Department of State Representation in International Courts, Ministry of Justice of Georgia
GERMANY / *ALLEMAGNE*	Mr Hans-Jörg BEHRENS, Head of Unit IVC1, Human Rights Protection; Government Agent before the ECtHR, Federal Ministry of Justice and for Consumer Protection Dr Kathrin MELLECH, Legal Advisor, Federal Ministry of Justice and for Consumer Protection
GREECE / *GRÈCE*	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 Ms Monika WELLER, Co-agent before European Court of Human Rights, Ministry of Justice Mr Péter CSUHAN, Senior legal adviser
ICELAND / *ISLANDE*	Ms Ragnhildur ARNLJÓTSDÓTTIR, Ambassador and Permanent Representative of Iceland to the Council of Europe Ms Elísabet GISLADOTTIR, specialist at the Icelandic Ministry of Justice Sandra LYNGDORF, Deputy to the Permanent Representative, Legal Advisor
IRELAND / *IRLANDE*	Mr Barra LYSAGHT, Assistant Legal Adviser, Department of Foreign Affairs, Dublin 2
ITALY / *ITALIE*	Ms Maria Laura AVERSANO, Attachée Juridique

LATVIA / *LETTONIE*	EXCUSED
LIECHTENSTEIN	Ms Helen LOREZ, Deputy Permanent Representative, Permanent Representation of the Principality of Liechtenstein to the Council of Europe
LITHUANIA / *LITUANIE*	Ms Karolina BUBNYTE-SIRMENE, Agent of the Government of the Republic of Lithuania to the European Court of Human Rights Ms Vygantė MILASIUTE, Chief Legal Advisor of the Ministry of Justice Mr Ričard DZIKOVIČ, Head of Legal Representation Ministry of Justice of the Republic of Lithuania
LUXEMBOURG	Ms Brigitte KONZ, Présidente du Tribunal, Tribunal d'Arrondissement de Diekirch Mr Robert BEVER, Conseiller – Coordination Justice et Affaires intérieures
MALTA / *MALTE*	Dr 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 Ms Doina MAIMESCU, Head of the Government Agent Division Ms Mihaela MARTINOV-GUCEAC, Deputy to the Permanent Representative
MONACO	Mr Gabriel REVEL, Représentant Permanent adjoint de Monaco auprès du Conseil de l'Europe
MONTENEGRO	Ms Valentina PAVLICIC, Representative of Montenegro before the European Court of Human Rights
NETHERLANDS / *PAYS-BAS*	Ms Marjolein BUSSTRA, Legal counsel, Legal Department, International law, Ministry of Foreign Affairs Ms Laura van HEIJNINGEN, Senior lawyer, Legal department, European law, Ministry of Foreign Affairs Ms Liesbeth A CAMPO, Legal adviser, Permanent Representation of the Kingdom of the Netherlands to the EU
NORTH MACEDONIA / *MACÉDOINE DU NORD*	Ms Elena BODEVA, Head of Council of Europe Unit, Directorate for Multilateral Relations

NORWAY / *NORVÈGE*	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 Mr Steinar TRAET, Advisor, Legislation Department Section for Criminal and Procedural Law Ms Tone Cecilia LANG, Deputy Permanent Representative of Norway to the Council of Europe
POLAND / *POLOGNE*	Ms Agata ROGALSKA-PIECHOTA, Co-Agent of the Government of Poland in cases and proceedings before the European Court of Human Rights, Head of Criminal Proceedings Section, Legal and Treaty Department, Ministry of Foreign Affairs Ms Katarzyna PADŁO- PĘKALA, Senior Specialist, Legal and Treaty Department, Ministry of Foreign Affairs Ms Justyna SOBKIEWICZ, Second Secretary for Legal and Institutional Matters, Permanent Representation of the Republic of Poland to the European Union
PORTUGAL	Ms Filipa ARAGAO HOMEM, Legal Consultant, Department of European Affairs, Ministry of Justice Mr João Arsénio de OLIVEIRA, European Affairs Coordinator of the Directorate-General for Justice Policy – Ministry of Justice
ROMANIA / *ROUMANIE*	Ms Mirela PASCARU, Deputy director, Directorate for International and EU Law Division, Ministry of Foreign Affairs Ms Cornelia ZEINEDDINE, III secretary, Treaties Division, Ministry of Foreign Affairs of Romania
RUSSIAN FEDERATION / *FEDERATION DE RUSSIE*	Dr. Grigory LUKIYANTSEV, Special Representative of the Ministry of Foreign Affairs of the Russian Federation for Human Rights, Democracy and the Rule of Law, Deputy Director of the Department for Humanitarian Cooperation and Human Rights Mr Vladislav ERMAKOV, Deputy to the Permanent representative of the Russian Federation to the Council of Europe, Deputy member of CDDH

	Mr Konstantin KOSORUKOV, Deputy to the Permanent representative of the Russian Federation to the Council of Europe Mr Konstantin VOROBYOV, Deputy to the Permanent representative of the Russian Federation to the Council of Europe Ms Olga ZINCHENKO, Third Secretary, Department for Humanitarian Cooperation and Human Rights, Ministry of Foreign Affairs of the Russian Federation Ms Victoria MAZAYEVA, Attaché, Department for Humanitarian Cooperation and Human Rights, Ministry of Foreign Affairs of the Russian Federation
SAN MARINO / *SAINT-MARIN*	Ms Michela BOVI, Co-Agent of the Government before the European Court of Human Rights
SERBIA / *SERBIE*	EXCUSED
SLOVAK REPUBLIC / *REPUBLIQUE SLOVAQUE*	Mr 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*	Ms Irena VOGRINCIC, Senior legal advisor, Ministry of Justice of the Republic of Slovenia Officfor International Cooperation and Mutual Legal Assistence Mr Matija VIDMAR, Secretary, Ministry of Justice of the Republic of Slovenia, Office for International Cooperation and Mutual Legal Assistence
SPAIN / *ESPAGNE*	Mr José Antonio JURADO RIPOLL, State Attorney General
SWEDEN / *SUEDE*	Mr Victor HAGSTEDT, Legal advisor at the Ministry for Foreign Affairs
SWITZERLAND / *SUISSE*	Dr Alain CHABLAIS, Département fédéral de justice et police DFJP, Office fédéral de la justice OFJ, Agent du Gouvernement suisse devant la Cour européenne des droits de l'Homme Dr Daniel FRANK, Département fédéral des affaires étrangères DFAE, Direction du droit international public DDIP, Chef de la Section droits de l'homme Dr Christoph SPENLÉ, Département fédéral des affaires étrangères DFAE, Direction du droit international public DDIP, Chef suppléant de la Section droits de l'homme

	Ms Anna BEGEMANN, Adjointe au Représentant Permanent de la Suisse auprès du Conseil de l'Europe Julien BRIGUET, Département fédéral des affaires étrangères DFAE, Chef suppléant de la Section Droit et Accords, Secrétariat d'Etat, Division Europe
TURKEY / *TURQUIE*	Ms Esra DOGAN-GRAJOVER, Deputy Permanent Representative Ms Aysen EMÜLER, Experte Juridique, Ministère des Affaires Etrangères, Représentation Permanente de la Turquie auprès du Conseil de l'Europe Ms Naz TÛFEKÇIYASAR ULUDAĜ Deputy to the Permanent Representative
UKRAINE	EXCUSED
UNITED KINGDOM / *ROYAUME-UNI*	Ms Debra GERSTEIN, Assistant Legal Adviser, Legal Directorate; Foreign, Commonwealth & Development Office Ms Patricia ZIMMERMANN, Head, Domestic and United Nations Human Rights, Ministry of Justice Ms Victoria HERBERT, Desk Officer, European Institutions Team, Human Rights Policy Unit; Foreign, Commonwealth & Development Office Ms Claire DEMARET, Deputy Head, Human Rights, Open Societies & Human Rights Directorate, Foreign, Commonwealth & Development Office
EUROPEAN UNION / *UNION EUROPEENNE*	Mr Felix RONKES AGERBEEK, Member of the Legal Service, European Commission Ms Mihaela CARPUS CARCEA, Member of the Legal Service, European Commission Mr Per IBOLD, Minister Counsellor, Delegation of the European Union to the Council of Europe Ms Milena YOTOVA, Desk Multilateral Relations, European External Action Service

OBSERVERS / *OBSERVATEURS*

REGISTRY OF THE EUROPEAN COURT OF HUMAN RIGHTS / *GREFFE DE LA COUR EUROPEENNE DES DROITS DE L'HOMME*	Mr Johan CALLEWAERT, Deputy Grand Chamber Registrar / Greffier Adjoint de la Grande Chambre
DIRECTORATE OF LEGAL ADVICE AND PUBLIC INTERNATIONAL LAW / *DIRECTION DU CONSEIL JURIDIQUE ET DU DROIT INTERNATIONAL PUBLIC*	Mr Jörg POLAKIEWICZ, Director, Directorate of Legal Advice and Public International Law, Council of Europe Ms Irene SUOMINEN, Directorate of Legal Advice and Public International Law, Council of Europe Ms Alina OROSAN, Representative of the Committee of Le Advisers on Public International Law (CAHDI)
PARLIAMENTARY ASSEMBLY / L'*ASSEMBLÉE PARLEMENTAIRE*	David MILNER, Secretariat of the Parliamentary Assembly; Committee on Legal Affairs and Human Rights /Secrétariat de l'Assemblée parlementaire Commission des questions juridiques et des droits de l'homme
COMMITTEE OF MINISTERS/ *COMITÉ DES MINISTRES*	Zoë BRYANSTON-CROSSM Secretariat of the Committee of Ministers /Secrétariat du Comité des Ministres
DIRECTORATE OF PROGRAMME AND BUDGET / *DIRECTION DU PROGRAMME ET DU BUDGET*	Ms Alison SIDEBOTTOM, Director, Directorate of Programme Budget, Council of Europe/ Directrice, Direction du programme et du budget, Conseil de l'Europe

SECRETARIAT / *SECRETARIAT*

DG I – Human Rights and Rule of Law / *Droits de l' Homme et État de droit Council of Europe*	Mr Christos GIAKOUMOPOULOS, Director General / Directeur général
DG I – Human Rights and Rule of Law / *Droits de l' Homme et État de droit Council of Europe*	Mr Christophe POIREL, Director / Directeur, Human Rights Directorate / Direction des droits de l'Homme
DG I – Human Rights and Rule of Law / *Droits de l' Homme et État de droit Council of Europe*	Mr Daniele CANGEMI, Head of Department, Department for Human Rights, Justice and Legal Cooperation Standard Setting activities / Chef de service, Service des activités normatives en matière de droits de l'homme, justice et coopération juridique
DG I – Human Rights and Rule of Law / *Droits de l' Homme et État de droit Council of Europe*	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

DG I – Human Rights and Rule of Law / *Droits de l' Homme et État de droit Council of Europe*	Ms Evangelia VRATSIDA, Assistant, Department for Human Rights, Justice and Legal Cooperation Standard Setting Activities/ Assistante, Service des activités normatives en matière de droits de l'homme, justice et coopération juridique

INTERPRETERS / INTERPRÈTES

Jean-Jacques PEDUSSAUD
Lucie DE BURLET
Chloé CHENETIER

APPENDIX III

I. Article X – 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, [which allows for the creation and maintenance of an area without internal borders,] [while also ensuring / to the extent that such application also ensures] the protection of human rights guaranteed by the Convention [as interpreted by the Court / in an individual case].

II. Proposals for a new paragraph 5 of Article 3:

Proposal by the Secretariat

A High Contracting Party may become a co-respondent, either by accepting an invitation from the Court or by decision of the Court upon the request of that High Contracting Party, if the conditions in paragraphs 2 or 3 of this article are met according to a reasoned declaration by the European Union based on an assessment of the applicable European Union law. Before a High Contracting Party becomes co-respondent, the Court shall ensure that the views of all parties to the proceedings have been heard.

Proposal by the EU

The European Union or its member States may initiate the co-respondent mechanism if the conditions in paragraphs 2 or 3 of this article are met according to an assessment by the European Union. The Court communicates the assessment to the applicant before admitting the European Union or its Member States to the proceedings as co-respondent.
The Court may also invite the Union European Union or its member States to become co-respondent. Before inviting a High Contracting Party to become co-respondent, the Court shall seek the views of the parties.

Revised proposal by the Secretariat for corresponding paragraphs to the explanatory report (which would replace its current paragraphs 52-58):

A. Applications directed against one or more member States of the European Union, but not against the European Union itself (or vice versa)

52. In cases in which the application is directed against one (or more) member State(s) of the EU, but not against the EU itself, the latter may, if the criteria set out in Article 3, paragraph 2, of the Accession Agreement are fulfilled, initiate the co-respondent mechanism [with a request to join the proceedings as co-respondent]. Where the application is directed against the EU, but not against one (or more) of its member States, the EU member States may, if the criteria set out in Article 3, paragraph 3, of the Accession Agreement are fulfilled, initiate the co-respondent mechanism [with a request to join the proceedings as co-respondents]. This should happen in a timely manner once the EU has received the relevant information.

53. Determining whether the material conditions for applying the co-respondent mechanism in both scenarios (Article 3, paragraphs 2 and 3) are met presupposes an assessment of the applicable

rules of EU law governing the division of powers between the EU and its member States. Therefore, in the event of a request by a High Contracting Party to join the proceedings as a co-respondent, the Court will admit the co-respondent if, [according to / in consideration of] an assessment by the EU of the material conditions for applying the co-respondent mechanism on the basis of the applicable EU law, those conditions are met. The conclusion of this assessment by the EU [regarding the applicable EU law] will be considered as determinative and authoritative. When admitting a co-respondent, the Court retains however a discretion for all other aspects of the procedure, for example with regard to the Court's decision to grant legal aid to the applicant in light of the triggering of the co-respondent mechanism.

54. Moreover, the Court may, when notifying an alleged violation or at a later stage of the proceedings, invite a High Contracting Party to participate in the proceedings as a co-respondent. In such case, the acceptance of the invitation by that High Contracting Party within a time-limit set by the Court would be a necessary condition for the latter to become co-respondent. [No High Contracting Party may be compelled to become a co-respondent. This reflects the fact that the initial application was not addressed against the potential co-respondent, and that no High Contracting Party can be forced to become a party to a case where it was not named in the application.] [The EU or one (or more) of its member State(s), as the case may be, will however accept the invitation if the EU's assessment [regarding the applicable EU law] has led to the result that the material conditions for applying the co-respondent mechanism are met (see Appendix 2, letter a. to the present Agreement).]

55. The EU's assessment should be provided to the Court [in writing] through a reasoned declaration, [irrespective of whether such assessment is made following an invitation or as the basis for a request. In the event of an invitation, it should be provided regardless of whether that invitation is accepted or declined.] The Court will inform the other parties and [may] set a short time limit for possible comments. Where a party, notably the applicant, has commented on the material conditions for the application of the co-respondent mechanism, the Court will communicate this to the EU [and set a short time limit to provide the EU with the possibility to reconsider its assessment in light of these comments].

56. The admission of the co-respondent is a prior procedural question and is thus to be distinguished from the Court's decision on the merits of the application, on which the assessment referred to above will have no bearing.

B. Applications directed both against the EU and one or more of its member States

57. In a case which has been directed against and notified to both the EU and one (or more) of its member States in respect of at least one alleged violation, the status of any respondent may be changed to that of a co-respondent if the conditions in paragraph 2 or paragraph 3 of this provision are met (Article 3, paragraph 4). The procedure outlined in the above paragraphs would apply *mutatis mutandis*.

III. Revised proposal for a new paragraph 5a of Article 3 on the termination of the co-respondent mechanism

[The Court may terminate the co-respondent mechanism / the co-respondent mechanism shall be terminated] at any stage of the proceedings only if the conditions in paragraph 2 or 3 of this article are no longer met according to a reasoned declaration by the European Union based on an assessment of the applicable European Union law. The Court shall ensure that the views of all parties to the proceedings have been heard.

Corresponding paragraphs to the explanatory report (which would replace its current paragraph 59):

Termination of the co-respondent mechanism

58. In the course of the proceedings, it may become apparent that the material conditions for the application of the co-respondent mechanism in Article 3, paragraph 2 or 3, as the case may be, no longer apply. In those circumstances, there would be no longer a legitimate reason to continue the application of the co-respondent mechanism, as the proper administration of justice would not require that a High Contracting Party is maintained as co-respondent if it is neither responsible for a violation nor capable of remedying it. On that basis, Article 3, paragraph 5a. provides for a possibility to terminate the co-respondent mechanism. Such termination shall in principle represent the *actus contrarius* to that mechanism's original application. Therefore, the Court will decide according to a renewed assessment by the EU - to be provided through a reasoned declaration in writing - of the material conditions for applying the co-respondent mechanism on the basis of the applicable EU law, the conclusion of which will be considered as determinative and authoritative.

59. Article 3, paragraph 5a. requires that the views of the other parties to the proceedings, notably the applicant, are heard. To that effect, the Court will inform the other parties of the assessment and set a short time limit for possible comments. The Court will submit the comments to the EU and set a short time limit to provide the EU with the possibility to reconsider its assessment in light of these comments. The co-respondent mechanism shall not be terminated for any reasons other than the fact that the material conditions for applying the mechanism no longer apply.

APPENDIX IV

Text proposals by the EU on the proposal contained in document CDDH47+1(2021)10:

Article 4 - Inter-Party cases
(…)
3 (new). The Court shall provide the European Union upon request with sufficient time to assess whether ~~**– and if so, to what extent –**~~ an inter-party dispute under Article 33 of the Convention between ~~**two or more**~~ member States of the European Union~~**, or between the European Union and one or more of its member States,**~~ concerns the interpretation or application of European Union law. Insofar as ~~**such an application**~~ **the dispute** concerns the interpretation or application of European Union law, ~~**the applicant High Contracting Party shall notify the Court that it no longer intends to pursue the application.**~~ **the application shall be inadmissible / the Court shall strike the application out of its list.**
► *For cases between the EU and its Member States, see the initial EU proposal:*
4 (new). The following sentence is added to Article 33 of the Convention:
"This Article shall not apply to applications brought by the European Union against one of its member States or to applications brought by a member State of the European Union against the European Union."

Proposal by the EU for corresponding paragraphs for the explanatory report in document CDDH47+1(2021)10:

Inter-party cases between member States of the EU
72. ~~**With the EU's accession to the Convention, it will be possible that inter-party disputes arise under Article 33 of the Convention between the EU and one or more of its member States, in addition to the already existing possibility of such disputes between two or more EU member States**~~. Insofar as ~~**such**~~ inter-party disputes concern the interpretation and application of EU law it follows from Article 344 of the TFEU (to which Article 3 of Protocol No. 8 to the Treaty of Lisbon refers) that EU member States "undertake not to submit a dispute concerning the interpretation or application of the Treaties to any method of settlement other than those provided for therein".
72a. Although the High Contracting Parties concerned can be expected to act in accordance with Article 344 of the TFEU, Article 4, paragraph 3 contains a safeguard clause which would provide the opportunity for the EU, having received information about any such communicated inter-party dispute in accordance with Article 3, paragraph 4a., to request sufficient time to assess whether – and if so, to what extent – ~~**that**~~ **a** dispute **between EU member States** concerns the interpretation or application of EU law. ~~**In order not to delay unduly the proceedings before the Court, the EU shall ensure that the conclusion of the assessment is duly reasoned and communicated quickly in writing.**~~ **With respect to the notion of 'sufficient time', it must be borne in mind that the process should allow for the initiation and completion of proceedings before the Court of Justice of the European Union (see, by way of example, Case C-459/03 Commission v Ireland).** Where the assessment concludes that an application falls within the scope of Article 344 of the TFEU, ~~**Article 4, paragraph 3 establishes an obligation for**~~ the applicant High Contracting Party **can be expected** to withdraw the inter-party application. ~~**Where it is established that only a part of the application falls within the scope of Article 344 TFEU ("mixed applications"), the obligation to withdraw is limited to this part, as captured by the wording "insofar as".**~~
72b. In light of its previous case-law[1], it can be expected that the Court would, following such withdrawal, strike out the application to the extent necessary by applying Article 37**(1)(a)** of the

[1] Georgia v. Russian Federation (III), Application No. 61186/09, decision by the ECtHR of 16 March 2010; Ukraine v. Russian Federation (III), Application No. 49537/14, decision by the ECtHR of 1 September 2015~~**; Latvia v. Denmark, Application No. 9717/20, decision by the ECtHR of 16 June 2020; see also Ireland v. United-Kingdom (II), Application No. 5451/72, decision by the European Commission of Human Rights of 1 October 1972.**~~

Convention ~~**in a spirit of cooperation**~~ having due regard to the nature of the EU legal system. In the unlikely event that a High Contracting Party fails to ~~**comply with its obligation to**~~ withdraw its application, ~~**it is understood that it would no longer be justified to continue the examination of the application and that**~~ the Court can be expected to make the necessary arrangements ~~**to that effect under Article 37, paragraph 1.c of the Convention**~~.
72c. Article 4, paragraph 3 does not concern inter-party **cases** ~~**applications**~~ ~~**between**~~ **brought by** High Contracting Parties which are not members of the EU ~~**and**~~ **against** EU member States or the EU, or vice versa. Moreover, inter-party applications between EU member States which do not concern EU law are likewise not affected by the provision.
► *A paragraph would have to be added regarding cases between the EU and its MS.*

APPENDIX V

INFORMATION PAPER

PROVIDED BY THE EU DELEGATION TO THE OTHER DELEGATIONS OF THE CDDH AD HOC NEGOTIATING GROUP ('47+1') ON THE ACCESSION OF THE EUROPEAN UNION TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS

This paper summarises the main points of the European Union's presentation, given during the 8th negotiating meeting, regarding inter-party applications and Article 344 TFEU.

General context

1. Article 344 TFEU provides: 'Member States undertake not to submit a dispute concerning the interpretation or application of the Treaties to any method of settlement other than those provided therein.'

2. The obligation of Member States to have recourse to the procedures for settling disputes established by the EU Treaties – and, in particular, to respect the jurisdiction of the Court of Justice of the EU – is a specific expression of the Member States' more general duty of loyalty (Case C-459/03 Commission v Ireland, EU:C:2006:345). It is a cornerstone of the EU legal order with its own legal system established by its basic constitutional charter, the EU Treaties (Case 26/62 Van Gend & Loos, EU:C:1963:1; Case 6/64 Costa v ENEL, EU:C:1964:66; Case 294/83 Les Verts v Parliament, EU:C:1986:166).

3. An international agreement cannot affect the allocation of powers fixed by the EU Treaties or the autonomy of the EU legal system (Joined cases C-402/05 P and C-415/05 P Kadi and Al Barakaat International Foundation v Council and Commission, EU:C:2008:461). Moreover, Article 3 of Protocol No 8 annexed to the EU Treaties expressly provides that the accession agreement must not affect Article 344 TFEU.

Vertical and horizontal disputes

4. The obligation to have recourse to the procedure for settling disputes established by the EU Treaties applies to disputes between Member States and the EU (vertical disputes) as well as disputes between Member States (horizontal disputes) (Opinion 2/13, EU:C:2014:2454, paragraphs 207, 208 and 213).

5. Vertical disputes are per definition within the exclusive jurisdiction of the Court of Justice. They take the form of proceedings between a Member State and an EU institution. Such proceedings are relatively common.

6. Horizontal disputes are within the exclusive jurisdiction of the Court of Justice if their subject matter falls within the scope of EU law. They take the form of proceedings brought by one Member State against another. Such proceedings are relatively rare.

The scope of EU law

7. As Article 344 TFEU applies in disputes concerning the interpretation and application of the EU Treaties, it does not cover disputes between EU Member States that are unrelated to EU law. Thus, the question arises whether the subject matter of a dispute between two EU Member States is governed by EU law.

8. An example of a dispute between two Member States the subject matter of which fell within the scope of EU law was the MOX Plant Case. The Court of Justice held that by instituting and pursing proceedings before the Arbitral Tribunal provided for by the United Nations Convention on the Law of the Sea (UNCLOS), a Member State had infringed (now) Article 344 TFEU (Case C-459/03, Commission v Ireland, EU:C:2006:345). An example of disputes between two Member States the subject matter of which generally falls outside the scope of EU law are disputes concerning the definition of territories. The Court of Justice lacks jurisdiction to rule in such disputes (Case C-457/18 Slovenia v Croatia, EU:C:2020:65), which are accordingly not covered by Article 344 TFEU.
9. The question whether the subject matter of a dispute between two Member States is governed by EU law also arises where such a dispute relates to fundamental rights. EU law guarantees the protection of fundamental rights, in particular those recognised by the Charter of Fundamental Rights of the European Union (Case C-234/17 XC and others, EU:C:2018:853). Fundamental rights guaranteed in the legal order of the EU are applicable in all situations governed by EU law, but not outside such situations (Case C-17/10 Åkerberg Fransson, EU:C:2013:105; Case C-260/89 ERT, EU:C:1991:254). Accordingly, in disputes between Member States, the scope of the Court of Justice's jurisdiction with respect to fundamental rights is linked with the field of application of EU law. This will remain the situation after EU accession to the Convention (Article 6(2) TEU and Article 2 of Protocol No 8 EU).

Conclusion

10. When EU Member States have a dispute with each other about the interpretation or application of EU law, or when there is a dispute between a Member State and an EU institution, the dispute must be settled before the Court of Justice, using the procedures for settling disputes that exist under the EU Treaties. The accession agreement must ensure that the inter-party procedure of Article 33 ECHR does not undermine this basic characteristic of the EU constitutional order.

11. This reflects the principle of equal footing between High Contracting Parties: the disputes in question are internal to the EU legal order; the European Court of Human Rights does not rule on internal disputes in any of the other High Contracting Parties.

APPENDIX VI

Non-Paper submitted by Turkey

Articles 6 and 7

General principles on EU's accession to the Convention (paragraph 7 of the Explanatory Report) as well as key negotiating principles of particular importance to Non-EU Member States of the Council of Europe (NEUMS) point to the importance of equality of all High Contracting Parties.

At the same time, EU's accession creates a new situation in terms of representation in the Statutory organs of the Council of Europe: All EU members states plus the EU (European Parliament (EP) in the case of Parliamentary Assembly of the Council of Europe and EU Council/Commission in the CMDH meetings) being present.

A solution therefore needs to be found so that this new situation does not go against the principle of equality of all High Contracting Parties. Such a solution should also make sure that the sheer number of EU and the 27 EU Member States do not render non-EU Member States presence meaningless in terms of negotiating and of voting.

1. CMDH should not be faced with a situation leading to a superiority in decision-making where EU and EU Member States act *de jure* or *de facto* in coordination.

Draft rules to be added to the rules of the procedure of the CM should respond to these challenges so that the ECHR system in its totality continue to function. This will also be a guarantee for non-EU member States of the Council of Europe, proving that their presence in the Council of Europe counts. When execution of European Court of Human Rights' judgements against the EU and/or against one or more EU member states are on the agenda of the Committee of Ministers, a way should be found so that by coordinating forces, EU and/or EU Member States would no be able to hinder the supervision role of the CM.

This requires a very serious look at Article 7 and Appendix 3 and make sure that such new rules cover all possible voting that takes place in the CM at its DH format.

A provision should be established that would impede any de facto or de jure EU joint position is imposed on the whole Committee on the execution of a judgement against any given State Party. This would require a provision to be added under article 7.

A selection of scenarios can be prepared by the Secretariat in order to clearly identify how the mechanism will function after EU's accession to the ECHR.

2. Concerning representation within PACE, a coordination among parliamentarians through their EP-based political groups, rather than within PACE, could leave the NEUMs parliamentarians out in the cold. Such a risk should be taken into consideration.

In order to make sure that this concern is taken into account in voting procedures in PACE, the wording of paragraph 6 should make sure that EP parliamentarians' presence would be limited to election of judges and no agreement between PACE and the EP will be allowed to change this limited presence. In case of election of judges (Article 6), this can be achieved through providing a right of participation in discussion in the Parliamentary Assembly to a delegation of European Parliamentarians. PACE is known to be one of the oldest forum of national Parliamentarians. EP, on the other hand cannot be considered as representing national parliaments. While EP participation in discussions would be

welcome, such participation should not change PACE's character of being an international forum of national parliamentarians.

3. These considerations require a review of not only Articles 6 & 7, but also Appendix 3 and the corresponding paragraphs of the Explanatory Report.

Article 8

In line with the information provided by the Secretariat (document 47+1(2021)5, dated 18 January 2021) EU's contribution to the functioning of the Convention needs to be equal to 36 % of the highest amount contributed in the previous year by any State to the Ordinary Budget of the Council of Europe. This will require a simple change in percentage figures in paragraph 1 of Article 8.

In cases where there is a deviation in each of consecutive years by more than 2.5 percentage points from 36 % (as to be indicated in paragraph 1 of Article 8), there is a need to clarify how the CoE and the EU "shall, by agreement" amend the percentage.