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**18TH MEETING OF THE CDDH AD HOC NEGOTIATION GROUP ON THE ACCESSION  
OF THE EUROPEAN UNION TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS**

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**CDDH Ad Hoc Negotiation Group (“46+1”) on the Accession of the European Union to  
the European Convention on Human Rights: [DRAFT] Report to the CDDH**

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Strasbourg, Tuesday 14 March 2023 (10:00 am) – Friday 17 March 2023 (5:00 pm)

(Room 7, Palais de l'Europe)

Council of Europe

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## **CDDH Ad Hoc Negotiation Group (“46+1”) on the Accession of the European Union to the European Convention on Human Rights: [DRAFT] Report to the CDDH<sup>1</sup>**

1. In June 2013, the CDDH submitted to the Committee of Ministers a report containing a package of draft accession instruments intended to allow the European Union (EU) to accede to the European Convention on Human Rights (the Convention). The Ministers’ Deputies took note of this report at their 1177<sup>th</sup> meeting in September 2013.<sup>2</sup>

2. In the meantime, in July 2013 the European Commission had submitted the draft accession instruments to the Court of Justice of the European Union (CJEU) with a request for an opinion on their compatibility with the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU).

3. In December 2014, the CJEU delivered its Opinion 2/13, in which it concluded, on the basis of lengthy and detailed reasoning, that “The agreement on the accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms is not compatible with Article 6(2) TEU or with Protocol (No 8) relating to Article 6(2) of the Treaty on European Union on the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms.”<sup>3</sup>

4. In October 2019, the President and the First Vice-President of the European Commission informed the Secretary General of the Council of Europe that the EU stood ready to resume the negotiations on its accession to the Convention. In January 2020, the Ministers’ Deputies approved the continuation of the ad hoc terms of reference of the CDDH to finalise as a matter of priority, in co-operation with the representatives of the European Union, in an ad hoc group and on the basis of the work already conducted, the legal instruments setting out the modalities of accession of the EU to the Convention and, in this context, to examine any related issue.<sup>4</sup>

5. Work was initially delayed by the onset of the Covid-19 pandemic. Negotiations were resumed at a virtual informal meeting of the 46+1 Group in June 2020,<sup>5</sup> which was followed by a further [13] meetings, the most recent being in [March] 2023.<sup>6</sup> The Group held three exchanges of views with representatives of civil society, at its 7<sup>th</sup>, 10<sup>th</sup>, and 13<sup>th</sup> meetings in November 2020, June – July 2021, and May 2022.

6. At the June 2020 meeting, the European Commission confirmed that the EU sought only such amendments to the accession instruments as were strictly necessary to address the objections raised by Opinion 2/13. It bundled these issues into four “baskets”: (i) the EU-specific mechanisms of the procedure before the European Court of Human Rights (the Court); (ii) the operation of inter-party applications (Art. 33 of the Convention) and of references for an advisory opinion (Protocol No. 16 to the Convention) in relation to EU Member States; (iii) the principle of mutual trust between the EU Member States; and (iv) EU acts in the area of the common foreign and security policy (CFSP) that are excluded from the

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<sup>1</sup> The present report takes up the process from the point at which the Group adopted its earlier Final Report to the CDDH. The earlier Report contains an account of the preceding negotiations: see [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805c7ccc](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c7ccc)

<sup>2</sup> See [https://search.coe.int/cm/pages/result\\_details.aspx?objectid=09000016805c788b](https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016805c788b)

<sup>3</sup> See <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62013CV0002>

<sup>4</sup> See [https://search.coe.int/cm/pages/result\\_details.aspx?objectid=09000016809979be](https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016809979be)

<sup>5</sup> This meeting, being informal, was unnumbered. The following meeting, in September-October 2020, was numbered 6 in the series beginning in June 2012.

<sup>6</sup> Copies of all of the meeting reports, as well as non-restricted working and background documents, can be found at <https://www.coe.int/en/web/human-rights-intergovernmental-cooperation/accession-of-the-european-union-to-the-european-convention-on-human-rights>

jurisdiction of the CJEU.<sup>7</sup> At the 6<sup>th</sup> meeting (September – October 2020), the Group also examined the issue of the relationship between Article 53 of the Convention and Article 53 of the EU Fundamental Rights Charter, which was another issue raised in Opinion 2/13.

7. At the 6<sup>th</sup> meeting (October 2020), two delegations indicated their intention to raise issues in relation to Articles 6, 7, and 8 of the draft Accession Agreement (including the relevant parts of the other accession instruments). At the 11<sup>th</sup> meeting (October 2021), one delegation presented a non-paper containing its proposal to revisit these issues in light of developments since adoption of the draft accession agreement in 2013.

8. As of the date of the present report,<sup>8</sup> the situation concerning the various issues examined by the Group since the resumption of negotiations in June 2020 is as follows, on the understanding that “nothing is finally agreed until everything is agreed”:<sup>9</sup>

- Basket 1: the Group reached a tentative agreement on these issues (see Article 3 of the draft Accession Agreement and accompanying paragraphs of the explanatory report). One delegation had reservations in relation to the prior involvement procedure (Article 3, paragraph 6 of the draft Accession Agreement) and the principle of joint responsibility (Article 3, paragraph 7 of the draft Accession Agreement). *(Discussions on this issue are ongoing – to be updated at the 18<sup>th</sup> meeting)*
- Basket 2: the Group reached a tentative agreement on these issues (see Articles 4 and 4a of the draft Accession Agreement and accompanying paragraphs of the explanatory report).
- Basket 3: the Group reached a tentative agreement on these issues (see Articles 5b of the draft Accession Agreement and accompanying paragraphs of the explanatory report).
- Basket 4: at the 9<sup>th</sup> meeting, the EU presented the outline of a possible “retribution clause” that would enable the EU to allocate, for the purposes of the Convention, responsibility for an CFSP act of the EU to one or more EU member state(s) if such act is excluded from the judicial review of the CJEU due to the limitations of the latter’s jurisdiction. This proposal was further examined at the 12<sup>th</sup> and 13<sup>th</sup> meetings. A number of questions were raised but have remained unanswered. At the 15<sup>th</sup> meeting, the representative of the EU informed the Group that the EU was working on the issue internally, and provided further updates at the 16<sup>th</sup> and 17<sup>th</sup> meetings. *(Discussions on this issue are ongoing – to be updated)*
- Article 53 of the Convention: the Group reached a tentative agreement on this issue (Article 1, paragraph 7b of the draft Accession Agreement and accompanying paragraphs of the explanatory report).
- Article 6 of the draft Accession Agreement (election of judges): the Group reached a tentative agreement on this issue. One delegation had a reservation in relation to this issue. *(Discussions on this issue are ongoing – to be updated at the 18<sup>th</sup> meeting)*
- Article 7 *(discussions on this issue are ongoing – to be updated at the 18<sup>th</sup> meeting)*
- Article 8 of the draft Accession Agreement (participation of the EU in the expenditure related to the Convention): the Group reached a tentative agreement on this issue.

9. The draft revised instruments on the accession of the EU to the European Convention on Human Rights consist of a draft agreement on the accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms, a draft declaration by the EU, a draft rule to be added to the Rules of the Committee of Ministers for

<sup>7</sup> See <https://rm.coe.int/eu-position-paper-echr-march-2020/1680a06264>

<sup>8</sup> N.b. this draft report sets out the position at the end of the 17<sup>th</sup> meeting and will be subject to revision in the light of developments at the 18<sup>th</sup> meeting.

<sup>9</sup> Further details of the issues on which the Group has reached tentative agreement can be found in the “consolidated text”: see <https://rm.coe.int/consolidated-version-of-the-draft-accession-instruments-as-of-2-februa/1680aa3443>

the supervision of the execution of judgments and of the terms of friendly settlements in cases to which the EU is a party, a draft model of a memorandum of understanding and a draft explanatory report to the Accession Agreement. They all form a package and are equally necessary for the accession of the EU to the Convention. The participants agreed to recommend to the Committee of Ministers that, when taking note of the “package” of instruments, it also stresses the importance of all the instruments elaborated, including the explanatory report, which all form part of the context underlying the accession of the EU to the Convention.<sup>10</sup>

10. [To be completed on the basis of the outcome of the 18<sup>th</sup> meeting]

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<sup>10</sup> [Paragraph 9 is taken from the 2013 report of the Group to the CDDH.]