

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

46+1(2023)R18

17 March 2023

**18TH MEETING OF THE CDDH AD HOC NEGOTIATION
GROUP (“46+1”) ON THE ACCESSION OF THE EUROPEAN
UNION TO THE EUROPEAN CONVENTION ON HUMAN
RIGHTS**

Meeting Report

Tuesday 14 March 2023 – Friday 17 March 2023

Palais de l'Europe, Room 7

Council of Europe

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

1. The CDDH ad hoc negotiation group (“46+1 Group”) on the accession of the European Union (EU) to the European Convention on Human Rights (the Convention) held its 18th meeting on 14–17 March 2023 with Tonje MEINICH (Norway) in the chair. The list of participants appears in [Appendix I](#).
2. The Group adopted the agenda as it appears in [Appendix II](#).

Item 2: Issues relating to Article 7 of the Accession Agreement (including the relevant parts of the other accession instruments)

3. The Group resumed its discussion of issues relating to Article 7¹ of the Accession Agreement regarding voting in the Committee of Ministers on decisions concerning the implementation of judgments of the European Court of Human Rights by the EU. With respect to the proposal to add an additional threshold in paragraph 1 of Rule 18, namely that of a simple majority of votes cast by representatives of High Contracting Parties other than the EU and its member States, it was reiterated that it was also necessary to ensure meaningful participation of non-EU member States in addition to the EU and its member States, even though this threshold concerns a situation where the votes of the latter alone are insufficient to determine the outcome. The Group reaffirmed that such an additional threshold should not be a departure from established practice in the Committee of Ministers of adopting decisions by consensus, with formal votes only exceptionally being taken, and that it would not constitute a precedent for voting arrangements under other Council of Europe conventions and partial agreements to which the EU may accede, given the unique nature of the Convention system. On this basis, the Group provisionally agreed on Rule 18, as thus revised, and on accompanying text for the explanatory report.
4. The Group resumed its discussion of the proposal to add a review clause to Rule 18. It recalled that the Committee of Ministers would in any case be able to review the application of Rule 18 at any time; the added value of the review clause would be to ensure that this happened within a certain timeframe. The Group revised the wording of the proposal retained at the previous meeting, drafted text for the corresponding paragraph of the explanatory report, and provisionally agreed on these changes.
5. On the basis of the foregoing, the delegation that had a reservation to Article 7 lifted that reservation.

Item 3: Article 3 of the draft Accession Agreement

6. The Group examined a non-paper submitted by one delegation containing text proposals and amendments concerning Article 3 of the draft Accession Agreement, and in particular the provisions on the triggering and termination of the co-respondent mechanism, the principle of joint responsibility, and the prior involvement procedure. Following discussions, the Group provisionally agreed to make further changes to Article 3, paragraphs 5-8, and to corresponding paragraphs of the explanatory report. On this basis, the delegation that had submitted the non-paper lifted its reservation to Article 3.

¹ Article numbering from the 2013 text, as used in the draft agenda. Article 7 has become Article 8 in the final text that appears in appendix to the Group’s Report to the CDDH (document 46+1(2023)35).

Item 4: Basket 4 (the situation of EU acts in the area of the Common Foreign and Security Policy that are excluded from the jurisdiction of the Court of Justice of the European Union)

7. The representative of the EU informed the Group of the EU's intention to resolve the Basket 4 issue internally, and of its expectation that the Group would not be required to address this issue as part of its own work, but that resolution of this issue has not yet been achieved within the EU.

8. The Group noted that it would be necessary for all parties to the negotiations to be informed of and consider the manner in which the Basket 4 issue had been resolved before they would be able to give their final agreement to the whole package of accession instruments. Against this background and in order to maintain momentum, the EU undertook to inform the CDDH at appropriate intervals about the status of the EU's internal discussions on Basket 4.

Item 5: Editorial review of the draft revised accession instruments

9. The Group conducted an editorial review of the English versions of the revised draft accession instruments. It asked the Secretariat to make any corresponding further changes to the French version of the "Proposed editorial revisions" document (46+1(2023)32) and invited interested members to make any suggestions for further editorial revision of the French texts to the Secretariat.

Item 6: Adoption of the Report of the Group to the CDDH

10. The Group concluded that it had resolved all of the issues that it was currently expected to address. The delegation that had a reservation to Article 6 lifted that reservation. Several non-EU member states recalled the particular importance of the Common Statement of the Informal Group of Non-European Union Member States on key negotiating principles, adopted in the margins of the 6th meeting (see 47+1(2020)R6, Appendix III), and welcomed the fact that the negotiations had respected these principles.

11. The Group then provisionally agreed to adopt the resulting package of revised draft accession instruments, with no delegation indicating any reservation. It decided that the revised draft accession instruments would be appended to its Report to the CDDH.

12. The Group then examined the draft Report to the CDDH, revised the draft in the light of the results of the present meeting, and adopted its Report to the CDDH, as it appears in document 46+1(2023)35. The Secretariat informed the Group that it would also make available a copy of the revised accession instruments showing all of the changes made to the 2013 texts.

Item 7: Other business

13. The Group recalled the process that had followed the adoption of its April 2013 Final Report to the CDDH. It recommended to the CDDH that, pending resolution of Basket 4, whilst transmitting the draft instruments to the Committee of Ministers for information, it should continue actively to follow this issue. In the absence of formal meetings of the Group in future, it was also suggested by several delegations that an informal Group of Friends of EU accession to the Convention could be created to function as a "sounding board" for discussion of the EU's proposed internal Basket 4 solution.

14. The Group warmly thanked its Chairperson, Tonje MEINICH, for her exemplary leadership, enduring commitment and consummate diplomatic skill in conducting the Group's negotiations over

more than ten years. It also extended its gratitude to the Vice-chair, and to the Secretariat for the excellent manner in which it has supported the work of the Group.

Item 8: Adoption of the meeting report

15. The Group adopted the present meeting report.

APPENDIX I**List of participants****MEMBERS / MEMBRES**

ALBANIA / ALBANIE	Migena MAKISHTI Department of International and European Law, Ministry for Europe and Foreign Affairs of Albania
ANDORRA / ANDORRE	Joan FORNER ROVIRA Permanent Representative of Andorra to the Council of Europe Marc CASADEVALL TOUSEIL Third Secretary Department of International Legal Affairs and Human Resources Ministry of Foreign Affairs Enya FOLGUERA DIAZ Juriste / Département des Affaires Juridiques Internationales Ministères des Affaires Étrangères - Principauté d'Andorre
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AUSTRIA / AUTRICHE	Martin MEISEL Head of Department for EU Law, Federal Ministry for Foreign Affairs Brigitte OHMS Deputy Government Agent of Austria, Deputy Head of Department, European and International Law, Human Rights, Federal Chancellery
AZERBAIJAN / AZERBAIDJAN	Saadat NOVRUZOVA Head of the Human Rights Protection Unit of the Law Enforcement Bodies Department of the Administration of the President of the Republic of Azerbaijan
BELGIUM / BELGIQUE	Marie SNEYERS Legal adviser, Permanent Representation of Belgium to the European Union
BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE	Monika MIJIC Acting Agent of the Council of Ministers of Bosnia and Herzegovina before the European Court of Human Rights Jelena CVIJETIC Acting Agent of the Council of Ministers of Bosnia and Herzegovina before the European Court of Human Rights
BULGARIA / BULGARIE	Aleksandra DIMITROVA

	Deputy to the Permanent Representative Permanent Representation of Bulgaria to the Council of Europe
CROATIA / CROATIE	Narcisa BEĆIREVIĆ Deputy to the Permanent Representative, Permanent Representation of the Republic of Croatia to the Council of Europe
CYPRUS / CHYPRE	Demetris LYSANDROU Senior Counsel of the Republic Law Office of the Republic of Cyprus Nicoletta IOANNOU Senior Counsel of the Republic Law Office of the Republic of Cyprus
CZECH REPUBLIC / REPUBLIQUE TCHÈQUE	Vladimír JANOUŠEK PYSK Senior Ministerial Counsellor – Head of the Department Department for the Proceedings before the UN Treaty Bodies Office of the Government Agent before the European Court of Human Rights Dominika CZECHOVÁ Lawyer, Permanent Representation of the Czech Republic to the EU
DENMARK / DANEMARK	Christine BERG Legal Consultant, The Ministry of Justice, Constitutional and Human Rights Law Division
ESTONIA / ESTONIE	Helen-Brigita SILLAR Lawyer, Legal Department, Ministry of Foreign Affairs
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GEORGIA / GEORGIE	Nino MICHIDZE First category chief specialist in EU law department, Ministry of Justice of Georgia
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LIECHTENSTEIN	Helen LOREZ-SCHWEIG Deputy Permanent Representative, Permanent Representation of Liechtenstein
LITHUANIA / LITUANIE	Karolina BUBNYTĖ-ŠIRMENĖ Government Agent of the Republic of Lithuania to the European Court of Human Rights
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MALTA / MALTE	Daniel INGUANEZ Lawyer, Office of the State Advocate
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SERBIA / SERBIE	excused
SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE	<p>Marián FILČÍK 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</p>
SLOVENIA / SLOVENIE	<p>Matija VIDMAR Secretary, Ministry of Justice of the Republic of Slovenia, Office for International Cooperation and Mutual Legal Assistance</p>
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SWITZERLAND / SUISSE	<p>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</p> <p>Sophie HEEGAARD-SCHROETER Adjointe au Représentant permanent de la Suisse auprès du Conseil de l'Europe</p> <p>Daniel FRANK</p>

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OBSERVERS / OBSERVATEURS

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DIRECTORATE OF LEGAL ADVICE AND PUBLIC INTERNATIONAL LAW / DIRECTION DU CONSEIL JURIDIQUE ET DU DROIT INTERNATIONAL PUBLIC	Jörg POLAKIEWICZ Director, Directorate of Legal Advice and Public International Law, Council of Europe Irene SUOMINEN Directorate of Legal Advice and Public International Law, Council of Europe Alina OROSAN CAHDI
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INTERPRETERS / INTERPRÈTES

Chloé CHENETIER-KIPPING

Lucie DE BURLET

Corinne McGEORGE-MAGALLON

Jean-Jacques PEDUSSAUD

APPENDIX II**Agenda / Ordre du jour**

1. Opening of the meeting and adoption of the agenda	1. Ouverture de la réunion et adoption de l'ordre du jour
2. Issues relating to Article 7 of the Accession Agreement (including the relevant parts of the other accession instruments)	2. Questions relatives à l'article 7 de l'accord d'adhésion (y compris les parties pertinentes des autres instruments d'adhésion)
3. Article 3 of the draft Accession Agreement	3. Article 3 du projet d'accord d'adhésion
4. Basket 4 (the situation of EU acts in the area of the Common Foreign and Security Policy that are excluded from the jurisdiction of the Court of Justice of the European Union)	4. Panier 4 (la situation des actes de l'UE dans le domaine de la politique étrangère et de sécurité commune qui sont exclus de la juridiction de la Cour de justice de l'Union européenne)
5. Editorial review of the draft revised accession instruments	5. Révision éditoriale des projets d'instruments d'adhésion révisés
6. Adoption of the Report of the Group to the CDDH	6. Adoption du Rapport du Groupe au CDDH
7. Other business	7. Questions diverses
8. Adoption of the meeting report	8. Adoption du rapport de réunion