

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

46+1(2022)27corr
17 November 2022

**16TH MEETING OF THE CDDH AD HOC NEGOTIATION GROUP
ON THE ACCESSION OF THE EUROPEAN UNION TO THE
EUROPEAN CONVENTION ON HUMAN RIGHTS**

Possible drafting proposals for and analysis of the consequences of the various options in relation to voting by the Committee of Ministers under Article 7, paragraph 4 of the Accession Agreement (document prepared by the Secretariat)

Strasbourg, Tuesday 22 November 2022 (9.30 am) – Thursday 24 November 2022 (5.00 pm)

(Palais de l'Europe, Room 8)

Council of Europe

Possible drafting proposals for and analysis of the consequences of the various options in relation to voting by the Committee of Ministers under Article 7, paragraph 4 of the Accession Agreement (document prepared by the Secretariat)

I. Introduction

1. At its 15th meeting (5-7 October 2022), the Group continued its discussion of issues relating to Article 7 of the draft Accession Agreement concerning voting in the Committee of Ministers on decisions concerning implementation of judgments of the European Court of Human Rights (the Court) by the EU. These discussions took into account a Background Paper prepared by the Secretariat, intended to consolidate the information set out in existing documents and the various ideas that had arisen so far, and, if appropriate, indicating other possible ways forward suggested by the discussions.¹

2. This Background Paper addressed three possible alternatives to the approach taken under the 2013 draft accession instruments:

- The existing proposal to revise Article 7 of the draft Accession Agreement and relevant parts of other accession instruments, in particular as regards the majorities required to adopt final and interim resolutions.²
- An approach inspired by the Protocol amending the Council of Europe data protection convention,³ under which a Party would not vote on decisions concerning its own implementation of a Court judgment, and in the case of adoption of a decision concerning implementation by the EU, neither the EU nor its member States would vote (the “0-vote approach”).
- A variant on the 0-vote approach, under which the EU and its member States would collectively exercise a single vote in the case of adoption of a decision concerning implementation of a judgment by the EU, with no other change (the “1-vote approach”).

3. Some delegations preferred the 0- or 1-vote approaches, and some delegations expressed concerns about them. Equally, some delegations preferred an approach based on the 2013 draft accession instruments, such as the existing proposal, whilst others expressed concerns. However, all delegations that took the floor stated that at this stage, they were open to discussing all solutions and would not like to exclude any of the alternative approaches set out in the Background Paper.

4. At the conclusion of these discussions, the Group instructed the Secretariat to prepare possible drafting proposals for the various options, along with an analysis of their consequences, including the numerical implications.⁴ On this basis, it agreed to resume its examination of the issue at its next meeting. This document responds to this instruction.

II. The matter of coordinated voting by the EU and its member States on decisions of the Committee of Ministers concerning implementation of Court judgments in cases to which the EU is a (co-)respondent

5. The accession instruments have two essential purposes: to accommodate the specificities of the EU’s internal legal order; and to preserve the fundamental principles of the

¹ See document 46+1(2022)25.

² See “Text proposals and amendments regarding the revision of Articles 6, 7 and 8 of the Accession Agreement including the relevant parts of other accession instruments” (restricted document).

³ CETS 223, amending CETS 108.

⁴ The Secretariat had previously prepared a Numerical Analysis of the effects of the various majorities being proposed under the proposal to amend Rule 18: see document 46+1(2022)21, restricted.

Convention system. One of the fundamental principles of the Convention system is equality of the Parties in proceedings before the Committee of Ministers when supervising the implementation of the Court's judgments, which reflects the nature of the Council of Europe as an inter-governmental organization. A judgment of the Court is not self-executing but is given effect by action taken at national level by the respondent Party, under the supervision of the Committee of Ministers. The Committee of Ministers determines whether the actions proposed and then taken by the respondent Party are sufficient, when the obligation to implement the judgment has been fulfilled, and, in exceptional cases, whether to take further action under Article 46 of the Convention in response to serious problems in implementation.

6. One of the specificities of the EU's internal legal order is the obligation for the EU and its member States to coordinate their positions on decisions that have legal effects for the EU. This means that there would be prior internal coordination between the EU member States on proposed decisions of the Committee of Ministers concerning the implementation of a Court judgment in a case to which the EU is a (co-)respondent. Once the EU member states have agreed on a common position, each of their votes, in addition to that of the EU itself, would become an indissociable part of a bloc of 28 votes in support of the coordinated position.

7. The various decisions that may be taken by the Committee of Ministers when supervising the implementation of Court judgments can at present be grouped into three categories, with corresponding majorities required for their adoption:

- Substantive decisions, including final resolutions and interim resolutions (but not including decisions under Articles 46(3) and 46(4) of the European Convention on Human Rights (the Convention) – see below). Article 20.d. of the Statute of the Council of Europe requires a two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to sit on the Committee of Ministers for adoption of these decisions.
- Decisions under Article 46(3) of the Convention to refer a judgment to the Court for a ruling on its interpretation and decisions under Article 46(4) to refer a case to the Court for a ruling on whether the respondent Party has failed to fulfil its obligation to abide by the judgment (infringement proceedings). In both cases, adoption of the decision requires a majority of two-thirds of the representatives entitled to sit on the Committee of Ministers.
- Decisions concerning procedural matters. Article 20.b. of the Statute requires a simple majority of the representatives entitled to sit on the Committee of Ministers for adoption of these decisions.

8. Under the present rules, if the EU and its member States were opposed to any type of decision in a case involving the EU, it would be impossible for the Committee of Ministers to reach the required majority regardless of the position of any or all of the other Parties. It would also be possible for the EU and its member States alone to ensure the adoption of certain decisions to which they agreed, notably procedural decisions and, depending on how many other Parties vote, substantive decisions (other than those on referrals for interpretation or infringement proceedings). Other decisions to which the EU and its member States agreed could be adopted with the additional votes of only a small minority of non-EU member States. No other Party to the Convention, including the EU member States, would be in such a position when the Committee of Ministers supervises implementation of judgments.

9. The 2013 package of accession instruments sought to address this problem by adding a new Rule 18 to the Committee of Ministers' rules for the supervision of the execution of judgments and of the terms of friendly settlements. The new Rule 18 would introduce special rules on voting on final resolutions (a higher majority requirement, to ensure sufficient support from all Parties, whether EU member States or not); decisions on referral for interpretation or infringement proceedings (a hyper-minority, to ensure that such decisions could be adopted

even without the support of the EU and its member States); and decisions on procedural issues or merely requesting information (again, a hyper-minority, but set at a lower level to distinguish these decisions from those on referrals for interpretation or infringement proceedings).

10. Discussions since the resumption of negotiations in 2020, taking into account changes in the practice of the Committee of Ministers (including more frequent votes and more frequent adoption of interim resolutions), have revealed inadequacies in the 2013 agreement as a complete solution to the problems arising from coordinated voting by the EU and its member States.

11. The existing proposal to revise the 2013 draft accession instruments has two main aims: to ensure that the rules on voting appropriately cover all types of decision concerning the EU; and to ensure meaningful participation of non-EU member States in the adoption of final resolutions concerning the EU. It seeks to do this by applying the hyper-minority rule foreseen for the adoption of procedural decisions also to interim resolutions, which would otherwise remain subject to the rule under Article 20.d. of the Statute; and by additionally requiring a simple majority of non-EU member States to vote in favour of a final resolution in order for it to be adopted.

12. Further discussions have, however, revealed inadequacies with this proposal – inadequacies which, in fact, apply to any rule requiring a hyper-minority of votes for adoption of a type of decision to which it is assumed that the EU and its member States would be opposed. The problem is that the EU and its member States would be able to propose and then ensure adoption, without the support of any other Party, of a more favourable alternative text that they support.

13. No other concrete proposal has been made by the negotiating parties. The Group has, however, “affirmed the need to revisit the provisions of the 2013 instruments so as to ensure that the supervisory system remains effective in cases where the EU and its member States are obliged by EU law to vote in a coordinated manner, which could determine the outcome of voting. It was also necessary to ensure meaningful participation of non-EU member States where the votes of the EU and its member States alone are insufficient to determine the outcome. The overall solution should also take account of the fact that the interest of the EU in voting for or against a particular decision may vary”.⁵

14. It is further recalled that discussions have also emphasised the need to avoid a system involving decisions being taken by only a very low number of Parties, or requiring the support of a very high number of Parties.

III. Analysis of the consequences of the various approaches, including the numerical implications

15. This paper will now set out the numerical consequences of three possible new approaches that have emerged, as well as of the rules currently in force prior to EU accession to the Convention, and Rule 18 as contained in the 2013 accession instruments.

16. The first new approach involves, where necessary, modification of Rule 18, where relevant on the basis of the existing proposal to revise Rule 18. The proposed modifications are intended:

⁵ See the Report of the 15th meeting, CDDH46+1(2022)R15, para. 5.

- (i) to avoid possible counter-productive effects of a hyper-minority rule, notably by introducing, for the type of decisions where this is necessary, different voting rules depending on who tables a decision; and
- (ii) to include hyper-minority rules that maintain the hierarchical distinction between procedural decisions (currently subject to the rule under Article 20.b. of the Statute – a simple majority of those entitled to sit), interim resolutions and “other decisions” (currently both subject to the same rule under Article 20.d. of the Statute – a two-thirds majority of votes and a simple majority of those entitled to sit), and referrals for interpretation and infringement proceedings (subject to the same rule, as found in both Articles 46(3) and (4) of the Convention – a two-thirds majority of those entitled to sit). This means, inter alia, introducing a “new” hyper-minority of two-ninths of the representatives entitled to sit on the Committee of Ministers for interim resolutions and “other decisions”, in order to distinguish them from procedural decisions.

17. The other two are the 0- and 1-vote approaches. In each case, it is assumed that current, i.e. pre-accession majority requirements would apply *mutatis mutandis* under the 0-vote and 1-vote approaches – the difference being that instead of the majority relating to the number of representatives entitled to sit on the Committee of Ministers, it would relate to the number of representatives entitled to vote. These approaches could potentially involve different majority rules for different decisions. Under a 1-vote approach, the feasibility of an EU member State retaining its individual vote when it is the respondent Party in a case to which the EU is co-respondent could be further examined. Such “variants” have not, however, been further explored.

18. The underlying problem and the various approaches under consideration raise numerous questions of principle. These include the principle of equality of the Parties in proceedings before the Committee of Ministers, the principle of equal participation in decision-making, and principles of efficiency, sufficiency, and legal certainty with respect to the various possible solutions. The Group has not yet fully examined how all of these principles should be articulated and applied in the present context, whether there are tensions between them, whether some are of greater relative importance than others, and what they might imply for the acceptability or otherwise of the various approaches under consideration.

a. Final resolutions

	Article 20(d) of the Statute (current rule if applied following accession)	Rule 18(1) under the 2013 instruments	0-vote	1-vote
	A two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to sit on the Committee of Ministers	A majority of four fifths of the representatives casting a vote and a majority of two thirds of the representatives entitled to sit on the Committee of Ministers	A two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to vote	A two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to vote
Number of representatives entitled to sit/vote on the CM	47	47	19	20
Bottom threshold of total favourable votes needed for adoption	24	32	10	11
Max number of possible votes cast by EU+MS	28	28	0	1
Max number of possible votes cast by NEUMS	19	19	19	19
Votes in favour required to adopt the resolution⁶	32	38	13	14
EU+MS support is necessary to adopt the resolution⁶	Yes	Yes	No	No
NEUMS support is necessary to adopt the resolution⁶	Yes	Yes	Yes	Yes
NEUMS support required to adopt the resolution⁶	4	10	13	13
NEUMS required to block adoption⁶	16	10	7	7

⁶ If all representatives entitled to sit/vote cast a vote. For a complete analysis of the NEUMS votes required depending on the votes cast see the Appendix.

b. Referrals for interpretation and infringement proceedings

Referrals and infringements in cases to which the EU is a party				
	Article 46(3) and (4) ECHR (current rule if applied following accession)	Rule 18(2) under the 2013 instruments	0-vote	1-vote
	A two-thirds majority of the representatives entitled to sit on the Committee of Ministers	One fourth of the representatives entitled to sit on the CM	A two-thirds majority of the representatives entitled to vote	A two-thirds majority of the representatives entitled to vote
Number of representatives entitled to sit/vote on the CM	47	47	19	20
Votes needed for adoption	32	12	13	14
Max number of possible votes cast by EU+MS	28	28	0	1
Max number of possible votes cast by NEUMS	19	19	19	19
EU+MS support is necessary to adopt the decision⁷	Yes	No	No	No
NEUMS support is necessary to adopt the decision⁷	Yes	Yes	Yes	Yes
NEUMS required to adopt the decision⁷	4	12	13	14
NEUMS required to block adoption⁷	16	8	7	6

⁷ If all representatives entitled to sit/vote cast a vote. For a complete analysis of the NEUMS votes required depending on the votes cast see the Appendix.

c. Procedural issues

19. This table includes a possible revision of Rule 18(3) of the draft accession instruments. This would involve a one-fifth hyper-minority as the default (lower than the levels required for adoption of either interim resolutions/ other decisions, or referrals for interpretation/ infringement proceedings), with a majority required for decisions tabled by the EU or one of its member States that would be lower than the level required for adoption of either final or interim resolutions, or other decisions, when tabled by the EU or one of its member States.

Procedural issues in cases to which the EU is a party						
	Article 20(b) of the Statute (current rule if applied following accession)	Rule 18(3) under the 2013 instruments	Possible new rule		0-vote	1-vote
	A simple majority of the representatives entitled to sit on the CM	One fifth of the representatives entitled to sit on the CM	One fifth of the representatives entitled to sit on the CM <u>if tabled/ amended by the Chair or a NEUMS</u>	Three quarters of the representatives casting a vote and two thirds of representatives entitled to sit on the CM <u>if tabled/ amended by EU/EUMS</u>	A simple majority of the representatives entitled to vote	A simple majority of the representatives entitled to vote
Number of representatives entitled to sit/vote on the CM	47	47	47	47	19	20
Bottom threshold of total favourable votes needed for adoption	24	10	10	32		
Votes in favour needed for adoption⁸	24	10	10	36	10	11
Max number of possible votes cast by EU+MS	28	28	28	28	0	1
Max number of possible votes cast by NEUMS	19	19	19	19	19	19
EU+MS support is necessary to adopt the decision⁸	Yes	EU+MS cannot block the adoption of a decision they do not support but EU+MS can adopt a decision they support without the support of NEUMS	EU+MS cannot block the adoption of a decision they do not support but EU+MS can adopt a decision they support without the support of NEUMS	Yes	No	No
NEUMS support is necessary to adopt a decision⁸	No	NEUMS cannot block the adoption of a decision they do not support but NEUMS can	NEUMS cannot block the adoption of a decision they do not support but NEUMS can	Yes	Yes	Yes

⁸ If all representatives entitled to sit/vote cast a vote. For a complete analysis of the NEUMS votes required depending on the votes cast see the Appendix.

		adopt a decision they support without the support of EU+MS	adopt a decision they support without the support of EU+MS			
NEUMS required to adopt the decision ⁸	Number of NEUMS votes insufficient to adopt the decision	10	10	8	10	11
NEUMS required to block adoption ⁸	Number of NEUMS votes insufficient to block adoption	10	10	12	10	9

d. Interim resolutions

20. This table includes a modified version of the existing proposal to revise Rule 18(3). This would involve a two-ninths hyper-minority as the default (higher than the level required for adoption of procedural decisions, but lower than for referrals for interpretation/ infringement proceedings), with the existing Rule 18(1) for final resolutions applying also to interim resolutions when tabled by the EU or one of its member States (reflecting the fact that at present, the same rules apply to adoption of both final and interim resolutions).

	Article 20(d) of the Statute (current rule if applied following accession)	Under the 2013 instruments (no change was proposed)	Modified version of the existing proposal to revise Rule 18(3)		0-vote	1-vote
	A two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to sit on the CM	A two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to sit on the CM	Two-ninths of the representatives entitled to sit on the CM if <u>tabled-amended by the Chair or a NEUMS</u>	A majority of four fifths of the representatives casting a vote and a majority of two thirds of the representatives entitled to sit on the CM <u>if tabled/ amended by EU/EUMS</u>	A two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to vote	A two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to vote
Number of representatives entitled to sit/vote on the CM	47	47	47	47	19	20
Bottom threshold of total favourable votes needed for adoption	24	24	11	32	10	11
Max number of possible votes cast by EU+MS	28	28	28	28	0	1
Max number of possible votes cast by NEUMS	19	19	19	19	19	19
Votes in favour required to adopt the resolution ⁹	32	32	11	38	13	14
EU+MS support is necessary to adopt the resolution ⁹	Yes	Yes	No	Yes	No	No

⁹ If all representatives entitled to sit/vote cast a vote. For a complete analysis of the NEUMS votes required depending on the votes cast see the Appendix.

NEUMS support is necessary to adopt the resolution⁹	Yes	Yes	Yes	Yes	Yes	Yes
NEUMS votes required to adopt the resolution⁹	4	4	11¹⁰	10	13	14
NEUMS votes required to block adoption⁹	17	17	9¹¹	10	7	6

¹⁰ Assuming that the EU+MS vote against.

¹¹ Assuming the EU+MS vote against.

e. Other decisions

21. “Other decisions” refers to those that do not fall within the categories examined in the tables above. As with the previous table, this table includes a modified version of the existing proposal to revise Rule 18(3). This would involve a two-ninths hyper-minority as the default (higher than the level required for adoption of procedural decisions, but lower than for referrals for interpretation/ infringement proceedings), with the existing Rule 18(1) for final resolutions applying also to other decisions when proposed by the EU or one of its member States (reflecting the fact that at present, the same rules apply to adoption of both other decisions and final resolutions). It may be recalled that under the current system, the same rule applies to the adoption of both interim measures and ‘other’ decisions (Article 20.d. of the Statute).

	Article 20(d) of the Statute (current rule if applied following accession)	Under the 2013 instruments (no change was proposed)	Modified version of the existing proposal to revise Rule 18(3)		0-vote	1-vote
	A two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to sit on the CM	A two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to sit on the CM	Two ninths of the representatives entitled to sit on the CM <u>if tabled/ amended by the Chair or a NEUMS</u>	A majority of four fifths of the representatives casting a vote and a majority of two thirds of the representatives entitled to sit on the CM <u>if tabled/ amended by EU/EUMS</u>	A two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to vote	A two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to vote
Number of representatives entitled to sit/vote on the CM	47	47	47	47	19	20
Bottom threshold of total favourable votes needed for adoption	24	24	11	32	10	11
Max number of possible votes cast by EU+MS	28	28	28	28	0	1
Max number of possible votes cast by NEUMS	19	19	19	19	19	19
Votes in favour required to adopt the resolution¹²	32	32	11	38	13	14

¹² If all representatives entitled to sit/vote cast a vote. For a complete analysis of the NEUMS votes required depending on the votes cast see Appendix.

EU+MS support is necessary to adopt the resolution¹⁰	Yes	Yes	No	Yes	No	No
NEUMS support is necessary to adopt the resolution¹⁰	Yes	Yes	Yes	Yes	Yes	Yes
NEUMS votes required to adopt the resolution¹⁰	4	4	11	10	13	14
NEUMS votes required to block adoption¹⁰	17	17	9	10	7	6

IV. Possible drafting proposals for these approaches

a. Option I – based on Rule 18 from the draft accession instruments

22. The first new approach – involving, where necessary, modification of either Rule 18 as drafted in 2013 or the existing proposal to revise Rule 18, where relevant – could be drafted as follows.

Rule 18 – Judgments and friendly settlements in cases to which the European Union is a party”

1. Decisions by the Committee of Ministers under Rule 17 (Final Resolution) of the present rules shall be considered as adopted if a majority of four fifths of the representatives casting a vote and a majority of two thirds of the representatives entitled to sit on the Committee of Ministers are in favour.

2. Decisions by the Committee of Ministers under Rule 10 (Referral to the Court for interpretation of a judgment) and under Rule 11 (Infringement proceedings) of the present rules shall be considered as adopted if one fourth of the representatives entitled to sit on the Committee of Ministers is in favour.

2a. Decisions by the Committee of Ministers under Rule 16 (Interim Resolution) and decisions other than those under Rules 10, 11 or 17, when proposed by the Chair or by a State which is not a member of the European Union, shall be [considered as] adopted if two ninths of the representatives entitled to sit on the Committee of Ministers is in favour.

2b. Decisions by the Committee of Ministers under Rule 16 (Interim Resolution) and decisions other than those under Rules 10, 11 or 17, when proposed by the European Union or one of its member States, shall be [considered as] adopted in accordance with the rule set out in paragraph 1.

3. Decisions on procedural issues ~~or merely requesting information, when proposed by the Chair or by a State which is not a member of the European Union,~~ shall be [considered as] adopted if one fifth of the representatives entitled to sit on the Committee of Ministers is in favour.

3a. Decisions on procedural issues, when proposed by the European Union or one of its member states, shall be [considered as] adopted if a majority of three quarters of the representatives casting a vote and a majority of two thirds of representatives entitled to sit on the Committee of Ministers are in favour.

4. Amendments to the provisions of this rule shall require consensus by all High Contracting Parties to the Convention.

b. Option II – 0-vote approach

23. The second new approach, under which no Party would vote on decisions concerning its own implementation of a judgment, and neither the EU nor EU member States would vote on decisions concerning implementation of a judgment by the EU (the 0-vote approach), could be drafted as follows.

- (i) New Article 7, paragraph 3a of the draft Accession Agreement:

1. Article 46, paragraph 3 of the Convention, shall be amended as follows : “[...] A referral decision shall require a majority vote of two thirds of the representatives entitled to **vote sit on the committee.**”
2. Article 46, paragraph 4 of the Convention shall be amended as follows: [...] and by decision adopted by a majority vote of two thirds of the representatives entitled to **vote sit on the committee,** [...]”

(ii) Amendments to Article 7, paragraph 4 of the draft Accession Agreement:

The exercise of the right to vote by the European Union and its member States shall not prejudice the effective exercise by the Committee of Ministers of its supervisory functions under Articles 39 and 46 of the Convention. In particular, the following shall apply:

- a. in relation to cases where the Committee of Ministers supervises the fulfilment of obligations either by the European Union alone, or by the European Union and one or more of its member States jointly, it derives from the European Union treaties that the European Union and its member States express positions and vote in a co-ordinated manner. **In such circumstances, neither the European Union nor its member States shall vote.** The Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements shall be adapted to ensure that the Committee of Ministers effectively exercises its functions in those circumstances;
- b. where the Committee of Ministers ~~otherwise~~ supervises the fulfilment of obligations by a High Contracting Party other than the European Union, the member States of the European Union are free under the European Union treaties to express their own position and exercise their right to vote;
- c. **where the Committee of Ministers supervises the fulfilment of obligations by a High Contracting Party other than the European Union, the Party concerned shall not vote.**

(iii) Amendments to the Committee of Ministers' Rules:

Rule 1

1. The exercise of the powers of the Committee of Ministers under Article 46, paragraphs 2 to 5, and Article 39, paragraph 4, of the European Convention on Human Rights, is governed by the present Rules.
2. Unless otherwise provided in the present Rules, the general rules of procedure of the meetings of the Committee of Ministers and of the Ministers' Deputies shall apply when exercising these powers.
3. **The High Contracting Party which is a party to a case under examination shall not vote when the Committee of Ministers exercises these powers. Where the European Union alone, or the European Union and one or more of its member States jointly, are party to a case under examination, neither the European Union nor its member States shall vote.**

Rule 10 - Referral to the Court for interpretation of a judgment

1. When, in accordance with Article 46, paragraph 3, of the Convention, the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to **vote sit on the Committee.**
2. A referral decision may be taken at any time during the Committee of Ministers' supervision of the execution of the judgments.

3. A referral decision shall take the form of an interim resolution. It shall be reasoned and reflect the different views within the Committee of Ministers, in particular that of the High Contracting Party concerned.

4. If need be, the Committee of Ministers shall be represented before the Court by its Chair, unless the Committee decides upon another form of representation. This decision shall be taken by a two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to **vote sit on the Committee**.

Rule 11 - Infringement Proceedings

1. When, in accordance with Article 46, paragraph 4, of the Convention, the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two thirds of the representatives entitled to **vote sit on the Committee**, refer to the Court the question whether that Party has failed to fulfil its obligation.

2. Infringement proceedings should be brought only in exceptional circumstances. They shall not be initiated unless formal notice of the Committee's intention to bring such proceedings has been given to the High Contracting Party concerned. Such formal notice shall be given ultimately six months before the lodging of proceedings, unless the Committee decides otherwise, and shall take the form of an interim resolution. This resolution shall be adopted by a majority vote of two-thirds of the representatives entitled to **vote sit on the Committee**.

3. The referral decision of the matter to the Court shall take the form of an interim resolution. It shall be reasoned and concisely reflect the views of the High Contracting Party concerned.

4. The Committee of Ministers shall be represented before the Court by its Chair unless the Committee decides upon another form of representation. This decision shall be taken by a two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to **vote sit on the Committee**.

c. Option III – 1-vote approach

24. The third new approach, under which the EU and its member States would collectively exercise a single vote in the case of adoption of a decision concerning implementation of a judgment by the EU, with no other change (the 1-vote approach), could be drafted as follows:

(i) New Article 7, paragraph 3a of the draft Accession Agreement:

1. Article 46, paragraph 3 of the Convention, shall be amended as follows : “[...] A referral decision shall require a majority vote of two thirds of the representatives entitled to **vote sit on the committee**.”

2. Article 46, paragraph 4 of the Convention shall be amended as follows: “[...] and by decision adopted by a majority vote of two thirds of the representatives entitled to **vote sit on the committee**, [...].”

(ii) Amendments to Article 7, paragraph 4 of the draft Accession Agreement:

The exercise of the right to vote by the European Union and its member States shall not prejudice the effective exercise by the Committee of Ministers of its supervisory functions under Articles 39 and 46 of the Convention. In particular, the following shall apply:

a. in relation to cases where the Committee of Ministers supervises the fulfilment of obligations either by the European Union alone, or by the European Union and one or more of its member States jointly, it derives from the European Union treaties that the European Union and its member States express positions and vote in a co-

ordinated manner. **In such circumstances, the European Union and its member States together shall be entitled to one vote.** The Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements shall be adapted to ensure that the Committee of Ministers effectively exercises its functions in those circumstances;

b. where the Committee of Ministers otherwise supervises the fulfilment of obligations by a High Contracting Party other than the European Union, the member States of the European Union are free under the European Union treaties to express their own position and exercise their right to vote.

(iii) Amendments to the Committee of Ministers' Rules:

Rule 1

1. The exercise of the powers of the Committee of Ministers under Article 46, paragraphs 2 to 5, and Article 39, paragraph 4, of the European Convention on Human Rights, is governed by the present Rules.

2. Unless otherwise provided in the present Rules, the general rules of procedure of the meetings of the Committee of Ministers and of the Ministers' Deputies shall apply when exercising these powers.

3. Where the European Union alone, or the European Union and one or more of its member States jointly, are party to a case under examination, the European Union and its member states shall be entitled to one vote when the Committee of Ministers exercises these powers.

Rule 10 - Referral to the Court for interpretation of a judgment

1. When, in accordance with Article 46, paragraph 3, of the Convention, the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to ~~vote sit on the Committee~~ **vote**.

2. A referral decision may be taken at any time during the Committee of Ministers' supervision of the execution of the judgments.

3. A referral decision shall take the form of an interim resolution. It shall be reasoned and reflect the different views within the Committee of Ministers, in particular that of the High Contracting Party concerned.

4. If need be, the Committee of Ministers shall be represented before the Court by its Chair, unless the Committee decides upon another form of representation. This decision shall be taken by a two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to ~~vote sit on the Committee~~ **vote**.

Rule 11 - Infringement Proceedings

1. When, in accordance with Article 46, paragraph 4, of the Convention, the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two thirds of the representatives entitled to ~~vote sit on the Committee~~ **vote**, refer to the Court the question whether that Party has failed to fulfil its obligation.

2. Infringement proceedings should be brought only in exceptional circumstances. They shall not be initiated unless formal notice of the Committee's intention to bring such proceedings has been given to the High Contracting Party concerned. Such formal notice shall be given ultimately six months before the lodging of proceedings, unless the Committee decides otherwise, and shall take the form of an interim resolution. This resolution shall be adopted by a majority vote of two-thirds of the representatives entitled to sit ~~vote on the Committee~~ **vote**.

3. The referral decision of the matter to the Court shall take the form of an interim resolution. It shall be reasoned and concisely reflect the views of the High Contracting Party concerned.

4. The Committee of Ministers shall be represented before the Court by its Chair unless the Committee decides upon another form of representation. This decision shall be taken by a two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to **vote** ~~sit on the Committee~~.

b. REFERRALS AND INFRINGEMENTS: Analysis of the three proposed voting options according to the number of votes cast

Rule 18(2) under the 2013 instruments - no change proposed				1-vote proposal				0-vote proposal		
Votes Cast	One fourth of the representatives entitled to sit on the CM	Number of NEUMS votes required to adopt a decision (assuming EU 28 abstaining or voting against)	Number of NEUMS votes required to block a decision	Votes Cast	A two-thirds majority of the representatives entitled to vote	Number of NEUMS votes required to adopt a decision ¹³	Number of NEUMS votes required to block a decision	Votes Cast	A two-thirds majority of the representatives entitled to vote	Number of NEUMS votes required to block a decision
47	12	12	8	20	14	14	6	19	13	7
46	12	12	8	19	14	14	5	18	13	6
45	12	12	8	18	14	14	4	17	13	5
44	12	12	8	17	14	14	3	16	13	4
43	12	12	8	16	14	14	2	15	13	3
42	12	12	8	15	14	14	1	14	13	2
41	12	12	8	14-1	bottom threshold not reached			13	13	1
40	12	12	8					12-1	bottom threshold not reached	
27	12	12	8							
26	12	12	8							
25	12	12	8							
24	12	12	8							
23	12	12	8							
22	12	12	8							
21	12	12	8							
20	12	12	8							
19	12	12	8							
18	12	12	7							
17	12	12	6							

¹³ It is assumed that the EU+MS would not vote in favour of adoption of the decision.

16	12	12	5
15	12	12	4
14	12	12	3
13	12	12	2
12	12	12	1
11-1	bottom threshold not reached		

c. PROCEDURAL ISSUES: analysis of the three proposed voting options according to the number of votes cast

New Proposal				1-vote proposal				0-vote proposal					
Votes Cast	If tabled-amended by a NEUMS			If tabled-amended by EU/EUMS			Votes Cast	A simple majority of the representatives entitled to vote	Number of NEUMS votes required to adopt a decision	Number of NEUMS votes required to block a decision	Votes Cast	A simple majority of the representatives entitled to vote	Number of NEUMS votes required to block a decision
	One fifth of the representatives entitled to sit on the CM	Number of NEUMS votes required to adopt a decision (assuming EU 28 abstaining or voting against)	Number of NEUMS votes required to block a decision	Three quarters of the representatives casting a vote and two thirds of representatives entitled to sit on the CM	Number of NEUMS votes required to adopt a decision in addition to the EU 28	Number of NEUMS votes required to block a decision							
47	10	10	10	36	8	12	20	11	11	10	19	10	10
46	10	10	10	35	7	12	19	10	10	10	18	10	9
45	10	10	10	34	6	12	18	10	10	9	17	9	9
44	10	10	10	33	5	12	17	9	9	9	16	9	8
43	10	10	10	33	5	11	16	9	9	8	15	8	8
42	10	10	10	32	4	11	15	8	8	8	14	8	7
41	10	10	10	32	4	10	14	8	8	7	13	7	7
40	10	10	10	32	4	9	13	7	7	7	12	7	6
39	10	10	10	32	4	8	12	7	7	6	11	6	6
38	10	10	10	32	4	7	11	6	6	6	10	6	5
37	10	10	10	32	4	6	10	6	6	5	9	5	5
36	10	10	10	32	4	5	9	5	5	5	8	5	4
35	10	10	10	32	4	4	8	5	5	4	7	4	4
34	10	10	10	32	4	3	7	4	4	4	6	4	3
33	10	10	10	32	4	2	6	4	4	3	5	3	3
32	10	10	10	32	4	1	5	3	3	3	4	3	2
31	10	10	10	bottom threshold not reached			4	3	3	2	3	2	2
30	10	10	10	bottom threshold not reached			3	2	2	2	2	2	1
29	10	10	10	bottom threshold not reached			2	2	2	1	1	1	1
28	10	10	10	bottom threshold not reached			1	1	1	1	1	1	1
27	10	10	10	bottom threshold not reached			1	1	1	1	1	1	1

26	10	10	10
25	10	10	10
24	10	10	10
23	10	10	10
22	10	10	10
21	10	10	10
20	10	10	10
19	10	10	10
18	10	10	9
17	10	10	8
16	10	10	7
15	10	10	6
14	10	10	5
13	10	10	4
12	10	10	3
11	10	10	2
10	10	10	1
9-1	bottom threshold not reached		

d. INTERIM RESOLUTIONS: Analysis of the three proposed voting options according to the number of votes cast

d. INTERIM RESOLUTIONS: Analysis of the three proposed voting options according to the number of votes cast												
New Proposal							1-vote proposal			0-vote proposal		
Votes Cast	If tabled-amended by a NEUMS			If tabled-amended by EU/EUMS			Votes Cast	A two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to vote	Number of NEUMS votes required to block a resolution	Votes Cast	A two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to vote	Number of NEUMS votes required to block a resolution
	Two ninths of the representatives entitled to sit on the CM	Number of NEUMS votes required to adopt a resolution (assuming EU 28 abstaining or voting against)	Number of NEUMS votes required to block a resolution	4/5 Majority of the votes cast including a 2/3 majority of the parties entitled to sit on the CM	Number of NEUMS votes required to adopt a resolution in addition to the EU 28	Number of NEUMS votes required to block a resolution						
47	11	11	9	38	10	10	20	14	6	19	13	7
46	11	11	9	37	9	10	19	13	6	18	12	7
45	11	11	9	36	8	10	18	12	6	17	12	6
44	11	11	9	36	8	9	17	11	6	16	11	6
43	11	11	9	35	7	9	16	11	5	15	10	6
42	11	11	9	34	6	9	15	11	4	14	10	5
41	11	11	9	33	5	9	14	11	3	13	10	4
40	11	11	9	32	4	9	13	11	2	12	10	3
39	11	11	9	32	4	8	12	11	1	11	10	2
38	11	11	9	32	4	7	11	11	1	10	10	1
37	11	11	9	32	4	6	10-1	bottom threshold not reached			9-1 bottom threshold not reached	
36	11	11	9	32	4	5						
35	11	11	9	32	4	4						
34	11	11	9	32	4	3						
33	11	11	9	32	4	2						
32	11	11	9	32	4	1						
31	11	11	9	bottom threshold not reached								
30	11	11	9									
29	11	11	9									

28	11	11	9
27	11	11	9
26	11	11	9
25	11	11	9
24	11	11	9
23	11	11	9
22	11	11	9
21	11	11	9
20	11	11	9
19	11	11	9
18	11	11	8
17	11	11	7
16	11	11	6
15	11	11	5
14	11	11	4
13	11	11	3
12	11	11	2
11	11	11	1
10-1	bottom threshold not reached		

e. OTHER DECISIONS: Analysis of the three proposed voting options according to the number of votes cast

e. OTHER DECISIONS: Analysis of the three proposed voting options according to the number of votes cast													
New Proposal					If tabled-amended by EU/EUMS			1-vote proposal			0-vote proposal		
Votes Cast	If tabled-amended by a NEUMS			4/5 Majority of the votes cast including a 2/3 majority of the parties entitled to sit on the CM	Number of NEUMS votes required to adopt a decision in addition to the EU 28	Number of NEUMS votes required to block a decision	Votes Cast	A two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to vote	Number of NEUMS votes required to block a decision	Votes Cast	A two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to vote	Number of NEUMS votes required to block a decision	
	Two ninths of the representatives entitled to sit on the CM	Number of NEUMS votes required to adopt a decision (assuming EU 28 abstaining or voting against)	Number of NEUMS votes required to block a decision										
47	11	11	9	38	10	10	20	14	6	19	13	7	
46	11	11	9	37	9	10	19	13	6	18	12	7	
45	11	11	9	36	8	10	18	12	6	17	12	6	
44	11	11	9	36	8	9	17	11	6	16	11	6	
43	11	11	9	35	7	9	16	11	5	15	10	6	
42	11	11	9	34	6	9	15	11	4	14	10	5	
41	11	11	9	33	5	9	14	11	3	13	10	4	
40	11	11	9	32	4	9	13	11	2	12	10	3	
39	11	11	9	32	4	8	12	11	1	11	10	2	
38	11	11	9	32	4	7	11	11	1	10	10	1	
37	11	11	9	32	4	6	10-1	bottom threshold not reached			9-1 bottom threshold not reached		
36	11	11	9	32	4	5							
35	11	11	9	32	4	4							
34	11	11	9	32	4	3							
33	11	11	9	32	4	2							
32	11	11	9	32	4	1							
31	11	11	9	bottom threshold not reached									
30	11	11	9										

29	11	11	9
28	11	11	9
27	11	11	9
26	11	11	9
25	11	11	9
24	11	11	9
23	11	11	9
22	11	11	9
21	11	11	9
20	11	11	9
19	11	11	9
18	11	11	8
17	11	11	7
16	11	11	6
15	11	11	5
14	11	11	4
13	11	11	3
12	11	11	2
11	11	11	1
10-1	bottom threshold not reached		