

TEXT PROPOSALS AND AMENDMENTS

SUBMITTED BY THE UNITED KINGDOM FOR THE 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

Since the 17th meeting of the 46+1 Group, we have looked again at certain key areas of the text on which we continue to hold reservations, in the hope of being able to resolve our concerns. In this non-paper, we put forward some additional proposals for amendments following the last round of negotiations on Article 3(5), (5a) and (7), the co-respondent mechanism and joint responsibility; and a new approach to the outstanding issues on Article 3(6), the prior involvement procedure.

Further updates may be needed to various parts of the Explanatory Report in light of these proposed changes, but we have omitted such proposals here in the interests of clarity and brevity.

Joint Responsibility and Co-Respondent - Article 3(5), (5a), and (7)

At the previous round of negotiations, we put forward amendments to the text to clarify that the joint responsibility of a respondent and co-respondent would be decided by the Court and communicated by it to the parties. These were tentatively agreed by the group.

Having revisited this matter with our authorities, we have suggested below some further amendments with the aim of adding more clarity to the text.

Amendments to Article 3(5), (5a) and (7) (the UK’s proposed amendments are in bold or strikethrough)

5. The European Union or its member States may become a co-respondent, either by accepting an invitation from the Court or upon their initiative. The Court **shall** admit a co-respondent by decision if **a reasoned assessment by the European Union sets out that** the conditions in paragraphs 2 or 3 of this article are met ~~according to a reasoned assessment by the European Union~~. The Court **shall** communicate its decision to the parties. Before a High Contracting Party becomes co-respondent, the Court shall grant the applicant an opportunity to state its views on the matter. The admission of the co-respondent does not prejudice the Court’s decision on the case.

5a. The Court **shall** ~~terminate~~ the co-respondent mechanism by decision at any stage of the proceedings only if **a reasoned assessment by the European Union sets out that** the conditions in paragraph 2 or 3 of this article are no longer met ~~according to a reasoned assessment by the European Union~~. The Court **shall** ~~communicate~~ its decision to the parties. Before the co-respondent mechanism is terminated, the Court shall grant the applicant an opportunity to state its views on the matter.

[...]

7. If the violation in respect of which a High Contracting Party is a co-respondent to the proceedings is established, the Court in its judgment **shall** hold the respondent and the co-respondent jointly responsible for that violation. The Court **shall** communicate its judgment to the parties.

Prior Involvement Procedure - Article 3(6)

At the previous meeting we agreed to return with new text proposals on Article 3(6). We are grateful to the representatives of the European Commission for the constructive conversations we have had on the text so far, and are open to continuing these with the EU and the rest of the group to reach an agreeable text.

Paragraphs 180 and 181 of Opinion 2/13 (2014) note that the EU and its institutions, including the Court of Justice, would be subject to the control mechanisms provided for by the ECHR. It follows that the prior involvement procedure will fall within the EU's obligations under Article 6 of the Convention, including that it must be made within a reasonable time; and that the Strasbourg Court must be able to respond appropriately should this reasonable time be exceeded.

Amendments to Article 3(6)(the UK's proposed additions are in bold)

6. In proceedings to which the European Union is a co-respondent, if the Court of Justice of the European Union has not yet assessed the compatibility with the rights at issue defined in the Convention or in the protocols to which the European Union has acceded of the provision of European Union law as under paragraph 2 of this article, sufficient time shall be afforded for the Court of Justice of the European Union to make such an assessment, and thereafter for the all parties to make observations to the Court. The European Union shall ensure that such assessment is made quickly so that the proceedings before the Court are not unduly delayed. **The undertaking of the assessment shall fall *mutatis mutandis* within the obligations of the European Union under Article 6 of the Convention, including that it must be made within a reasonable time, and the Court shall be able to take any such measures as it deems necessary to address any undue delay.** The provisions of this paragraph shall not affect the powers of the Court, **including to make a final determination of whether there has been a violation of the Convention rights in respect of the relevant provision of EU law.**

6 March 2023