



Strasbourg, 5 April 2013



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

47+1(2013)R05

**FIFTH NEGOTIATION MEETING BETWEEN THE CDDH AD HOC
NEGOTIATION GROUP AND THE EUROPEAN COMMISSION ON
THE ACCESSION OF THE EUROPEAN UNION TO THE EUROPEAN
CONVENTION ON HUMAN RIGHTS**

Meeting report

Strasbourg, Wednesday 3 April (10.00 am) – Friday 5 April 2013 (4.30 pm)
Agora Building, Room G02
Council of Europe

1. Opening of the meeting and adoption of the agenda

1. The fifth negotiation meeting between the CDDH ad hoc negotiation group and the European Commission on the accession of the European Union to the European Convention on Human Rights was held on 3-5 April 2013, in Strasbourg, under the chairmanship of Ms Tonje Meinich (Norway). The list of participants appears in Appendix I. The agenda, as adopted, appears in Appendix II.

2. Draft legal instruments on the accession of the European Union to the European Convention on Human Rights: examination of proposals for amendments and finalisation of the draft Accession Agreement

2. After opening the meeting, the Chair presented her new proposal on outstanding issues (document 47+1(2013)006), based on the conclusions of the last meeting and on informal consultations carried out thereafter. In presenting the proposal, she underlined that it should be considered in its entirety, as a package, and that it required all negotiating parties to show flexibility and to depart from their respective original positions. Several delegations thanked the Chair for her proposal, underlining that it provided interesting solutions to all the pending issues and that it facilitated greatly the identification of an acceptable compromise.

3. The participants then examined the draft accession instruments, revised on the basis of the Chair's proposals, as they appear in the Appendix to document 47+1(2013)006.

4. As regards the Preamble of the Accession Agreement and the revised "bridging clause" to be inserted in Article 59, paragraph 2, letter b of the Convention pursuant to Article 1, paragraph 2 of the Accession Agreement, the participants confirmed the agreement on the amendments already proposed at the previous meeting.

5. The participants discussed then the attribution clause contained in Article 1, paragraph 4, together with the corresponding passages of the explanatory report, in the light of the Chair's proposal and of the amendments to this proposal presented by the EU, and agreed on a few amendments to these texts.

6. The participants then discussed the question of a possible extension of the co-respondent mechanism to situations in which an application directed against a State, which is not a member of the EU, puts into question the compatibility with the Convention of an international agreement between that State and the EU. The compromise proposed by the Chair was accepted, with slight amendments to the corresponding passages of the explanatory report and to the draft model of Memorandum of Understanding to clarify that agreements would only be concluded upon request of the concerned State.

7. The participants also agreed to deal with the question of the non-binding character of the co-respondent mechanism according to the compromise proposal presented by the Chair. According to that proposal, the EU will make a declaration at the moment of the signature of the Accession Agreement stating that it will ensure to join the proceedings as co-respondent when the conditions set out in Article 3, paragraph 2 of the Accession Agreement are met.

8. Concerning the prior involvement procedure, it was agreed to transfer part of the text of Article 3, paragraph 6 to the explanatory report, as suggested in the Chair's proposal.
9. The participants agreed to slightly amend the proposed text of Article 3, paragraph 7 and of the corresponding passage of the explanatory report.
10. As regards the participation of the EU in the Committee of Ministers in matters other than the supervision of the execution of judgments and of the terms of friendly settlements, the participants discussed and agreed, with some drafting changes, to amend the draft Accession Agreement as suggested in the Chair's proposal. As a consequence, the EU shall be entitled to participate in the Committee of Ministers, with the right to vote, when the latter takes decisions on the adoption of protocols to the Convention, and shall be consulted on the adoption of other relevant instruments. The participants also agreed to insert additional clarifications in this respect in the explanatory report.
11. As regards the voting rights in cases involving the EU, the participants agreed on the proposal presented by the Chair, and on the corresponding provisions of the explanatory report. In this respect, it was agreed to insert additional clarifications in the explanatory report on the implications of the absence of specific voting rules for the adoption of interim resolutions and other decisions expressing a position on compliance by the EU with the obligations under Article 46, paragraph 1 of the Convention.
12. Finally, the participants agreed on the Chair's proposal to redraft the part of Article 7 dealing with the participation of the EU in the Committee of Ministers when it supervises obligations in cases against High Contracting Parties other than the EU.
13. As regards the other provisions of the explanatory report, the participants examined the draft revised text presented by the Secretariat (document 47+1(2013)007) and agreed on a number of amendments, including notably the addition of a sentence on the objectives of the accession and of a sentence on the importance of the explanatory report itself.
14. The participants agreed at negotiators' level on the draft revised instruments. 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 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 Memorandum of Understanding, and a draft explanatory report to the Accession Agreement. The participants agree that they all form a package and are equally necessary for the accession of the EU to the Convention.
15. 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.

16. Many participants underlined that the completion of internal procedures would be required before the final adoption of the instruments. In particular, the representative of the EU indicated that the signature of the Accession Agreement by the EU was subject to a series of internal political and procedural steps. The representative of the EU indicated in particular that firstly, an opinion of the Court of Justice of the EU would be sought on the compatibility of the draft agreement with the EU treaties, and that secondly, the Council of the European Union would have to adopt unanimously the decision authorising the signature of the Accession Agreement. That Council Decision is, in turn, conditional on a political agreement on the EU internal rules.

17. The participants also adopted a final report to the CDDH on the negotiation (document 47+1(2013)008). The draft revised instruments, as agreed, are appended to that final report.

3. Any other business

18. The participants discussed the letter from the AIRE centre to the Chair and the comments appended thereto. Taking into account that no more negotiation meetings are scheduled, it was agreed to recommend to the CDDH to invite the AIRE centre to its next meeting.

APPENDIX I**List of participants****ALBANIA / ALBANIE**

Ms Ledina MANDIA, General State Advocate of the Republic of Albania, Ministry of Justice, TIRANA

ANDORRA / ANDORRE

Mr Joan FORNER ROVIRA, Senior Legal Adviser, Government Agent to the European Court of Human Rights, Department of General and Legal Affairs, Ministry of Foreign Affairs

ARMENIA / ARMENIE

Mr Stepan KARTASHYAN, Deputy Permanent Representative, Chancery, Strasbourg

AUSTRIA / AUTRICHE

Dr. Albert POSCH, Bundeskanzleramt-Verfassungsdienst, Wien

AZERBAIJAN / AZERBAIDJAN

Ms Saadat NOVRUSOVA, Senior Adviser, Human Rights Protection Unit, Administration of President of the Republic of Azerbaijan, Baku

Mr. Huseyn AKHUNDOV, Deputy to the Permanent Representative of the Republic of Azerbaijan to the Council of Europe, F- Strasbourg

BELGIUM / BELGIQUE

Excused/excusé

BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE

Ms Sandra MALEŠIĆ, Assistant Agent of the Council of Ministers, of Bosnia and Herzegovina before European Court of Human Rights, Sarajevo

BULGARIA / BULGARIE

Ms Jorkanda PARPAROVA, Human Rights Directorate, Ministry of Foreign Affairs of Bulgaria, Sofia

CROATIA / CROATIE

Mrs Romana KUZMANIĆ OLUIĆ, Counselor in the Division for Human Rights and International Regional Organizations and Initiatives, Ministry of Foreign and European Affairs, Directorate for Multilateral Affairs and Global Issues, Zagreb

CYPRUS / CHYPRE

Mr. Nikolas KYRIAKOU, Counsel for the Republic, Law Office of the Republic, European Law Section, Nicosia

CZECH REPUBLIC / REPUBLIQUE TCHEQUE

Mr Vit SCHORM, Government Agent, Ministry of Justice, Praha

DENMARK / DANEMARK

Ms. Nina HOLST-CHRISTENSEN, Ministry of Justice, Copenhagen K

Ms Mette UNDALL-BEHREND, Head of Division, EU Law Division, Ministry of Justice, Copenhagen

ESTONIA / ESTONIE

Ms Arnika KALBUS, Legal Adviser, Permanent Representation of Estonia to the EU, Bruxelles

FINLAND / FINLANDE

Mr Arto KOSONEN, Government Agent, Director, Unit for Human Rights Court and Conventions, Legal Service, Ministry of Foreign Affairs

Ms Mia SPOLANDER, Legal Officer, Unit for Human Rights Courts and Conventions, Legal Service, Ministry for Foreign Affairs of Finland

FRANCE

Emmanuel JAUFFRET, Sous-direction des droits de l'homme, Direction des affaires juridiques, Ministère des affaires étrangères et européennes, Paris

M. Jean-Baptiste LAIGNELOT, Conseiller juridique, Représentation Permanente de la France à Bruxelles, Belgique

M. Diégo COLAS, sous-directeur du droit de l'union européenne et du droit international économique, direction des affaires juridiques, ministère des affaires étrangères

GEORGIA

Ms Ketevan TSKHOMELIDZE, Deputy Head, Department of State Representation to the International Courts of Human Rights, Tbilisi

GERMANY / ALLEMAGNE

Mr Hans-Jörg BEHRENS, Head of Unit IVC1, Human Rights Protection; Government Agent before the European Court of Human Rights, Bundesministerium der Justiz, Berlin

Mrs Jutta KEMPER, Head of the division IV C 2, Bundesministerium der Justiz, Berlin

GREECE / GRECE

M. Elias KASTANAS, Conseiller juridique adjoint, Service juridique, Ministère des Affaires Etrangères, Athènes

HUNGARY / HONGRIE

Ms Monika WELLER, Co-Agent for the Hungarian Government before the European Court of Human Rights, Ministry of Public Administration and Justice, Budapest

ICELAND / ISLANDE

Ms Bjorg THORARENSEN, Professor of Law, Ministry of the Interior, Reykjavík

IRELAND / IRLANDE

Mr Peter WHITE, Co-Agent for the Government of Ireland, Assistant Legal Adviser, Legal Division, Department of Foreign Affairs and Trade, Dublin

Mr David KELLY, Legal Counsellor at the Permanent Representation of Ireland to the European Union, Bruxelles, Belgium

ITALY / ITALIE

M. Stefano MARGUCCIO, Adjoint au Représentant Permanent, Permanent Representation of Italy to the Council of Europe, Strasbourg

Ms Stefania FERIOZZI, Administrative Assistant, Permanent Representation of Italy to the Council of Europe, Strasbourg

LATVIA / LETTONIE

Ms Kristīne LĪCE, Government Agent, Ministry of Foreign Affairs of the Republic of Latvia, Rīga

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LIECHTENSTEIN

Mr Manuel FRICK, Deputy Permanent Representative to the Council of Europe, Office for Foreign Affairs, Vaduz

LITHUANIA / LITUANIE

Ms Vygantė MILAŠIŪTĖ, Head of the Division of International Agreements Law Ministry of Justice of the Republic of Lithuania, International Law Department, Vilnius

LUXEMBOURG

Mme Brigitte KONZ, Conseillère à la Cour d'Appel, Luxembourg

M. Robert BEVER, Conseiller Justice et Affaires intérieures, Représentation permanente du Luxembourg auprès de l'Union européenne, Bruxelles

Mme Anne KAYSER-ATTUIL, Représentante Permanente Adjointe, Représentation Permanente du Luxembourg auprès du Conseil de l'Europe et Consulat Général, Strasbourg

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Mlle Corina CĂLUGĂRU, Chef de la Direction des affaires globales et droits de l'homme, Direction générale de la coopération multilatérale, Ministère des affaires étrangères et de l'intégration européenne de la République de Moldova, Chisinau

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Ms Tonje MEINICH, (**Chairperson/Présidente**), European and International Affairs, Norwegian Ministry of Justice, Oslo

POLAND / POLOGNE

Ms Marta KACZMARSKA, Senior Expert, Department for the Proceedings before International Human Rights Protection Bodies, Ministry of Foreign Affairs, Warsaw

Ms Beata WŚCISŁY-BIAŁEK, Chief expert/FRA National Liaison Officer, Department of European Policy, Ministry of Foreign Affairs, Warsaw

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ROMANIA / ROUMANIE

Mme Aniela BĂLUȚ, Directrice, Direction du Droit Européenne, Ministère des Affaires Etrangères, Bucharest

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Mr Vasily NEBENZIA, Director of the Department of Humanitarian Cooperation and Human Rights, Ministry of Foreign Affairs of the Russian Federation, Moscow

Mme Maria MOLOTSOVA, 1st Secretary, Department for International Humanitarian Cooperation and Human Rights, Ministry of Foreign Affairs, Moscow

Mr Vyacheslav EGOROV, Deputy Permanent Representative, Chancery, Strasbourg

Mr Vladislav ERMAKOV, Deputy to the Permanent Representative, Chancery, Strasbourg

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Mr Slavoljub CARIC, Government Agent, Ministry of Justice and Public Administration, Office of the Agent before the ECHR, Boul. Belgrade

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SLOVENIA/SLOVENIE

Ms Marija LOVŠIN, Undersecretary at the Ministry of Justice and Public Administration, Ljubljana

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SWITZERLAND / SUISSE

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Mr Daniel FRANK, Head Human Rights Section, Federal Department of Foreign Affairs,

Mme Silvia GASTALDI, Office fédéral de la justice, Berne

“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA” / “L’EX-RÉPUBLIQUE YUGOSLAVE DE MACÉDOINE”

Excused/Excusé

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Mr Mehmet ÖNCÜ, Counsellor, Représentation permanente de la Turquie auprès du Conseil de l’Europe, Strasbourg

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Mr Yevgen PERELYGIN, Ambassador, Embassy of Ukraine in Italy, Roma, Italia

UNITED KINGDOM / ROYAUME-UNI

Mr Rob LINHAM, Head of Council of Europe Human Rights Policy, Justice Policy Group, Ministry of Justice, London

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EUROPEAN UNION/UNION EUROPEENNE

Mr Hannes KRAEMER, Member of the Legal Service of the European Commission, Brussels

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Ms Kristi RABA, Fundamental Rights and Criminal Justice, DG D – Justice and Home Affairs, General Secretariat of the Council of the European Union, Brussels

Ms Katerina MARKOVOVA, Adjointe au Chef de la Délégation, Delegation of the European Union to the Council of Europe, Strasbourg

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Mme Elise CORNU, Legal Advisor, Directorate of Legal Advice and Public International Law

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INTERPRETERS / INTERPRÈTES

Chef d’équipe : Sally BAILEY

Chloé CHENETIER

Lucie DE BURLET

APPENDIX II**Agenda****1. Opening of the meeting and adoption of the agenda****2. Draft legal instruments on the accession of the European Union to the European Convention on Human Rights: examination of proposals for amendments and finalisation of the draft Accession Agreement****Working documents**

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	47+1(2013)007
Revised chairperson's proposal on outstanding issues	47+1(2013)006
Participation of the EU in the Committee of Ministers when the latter takes decisions other than those expressly provided in the Convention: implications of the various options under discussion	47+1(2013)005
Secretariat proposal for a Draft additional Rule 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	47+1(2013)004
Common paper of Andorra, Armenia, Azerbaijan, Bosnia-Herzegovina, Iceland, Liechtenstein, Monaco, Montenegro, Norway, Serbia, Switzerland, Russian Federation, Turkey and Ukraine on major concerns regarding the Draft revised Agreement on the Accession of the European Union to the European Convention on Human Rights	47+1(2013)003
Chairperson's proposal on outstanding issues	47+1(2013)001
<u>Appendix III</u> to the Report of the 3rd negotiation meeting (7-9 November 2012): Draft Revised Agreement on the Accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms	47+1(2012)R03
CDDH report to the Committee of Ministers on the elaboration of legal instruments for the accession of the European Union to the European Convention on Human Rights	CDDH(2011)009
Negotiation document submitted by the European Union on 30 October 2012	(Restricted)
Negotiation document submitted by the European Union on 14 June 2012	(Restricted)
Comments from Armenia	47+1(2012)003 bil (Restricted)
Comments from Norway	47+1(2012)004 bil (Restricted)

Comments from Switzerland	47+1(2012)005 bil (Restricted)
Letter from the Russian Federation	47+1(2012)006 bil (Restricted)
Andorra paper : “EU accession to the European Convention on Human Rights - Reflections dealing with problems arising from the second 47 +1 meeting”	47+1(2012)007

Reference documents

Report of the 4 th negotiation meeting (21-23 January 2013)	47+1(2013)R04
Report of the 3 rd negotiation meeting (7-9 November 2012)	47+1(2012)R03
Report of the 2 nd negotiation meeting (17-19 September 2012)	47+1(2012)R02
Report of the 1 st negotiation meeting (21 June 2012)	47+1(2012)R01
Decisions of the 1145 th meeting of the Ministers' Deputies (13 June 2012)	47+1(2012)001 bil
Report of the Extraordinary meeting of the CDDH (12-14 October 2011)	CDDH(2011)R Ex

3. Any other business