



**COUNCIL OF
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NOTE

From: German Delegation

To: Delegations

Subject: Accession of the European Union to the European Convention of Human Rights

Delegations will find attached comments by the German delegation on the above mentioned issue.

**Statement by the German delegation regarding the Working Document
"Accession of the EU to the ECHR"**

The Federal Republic of Germany thanks the Spanish Presidency for presenting the Working Document and the list of questions. Germany's response to those questions is as follows:

1. Co-defendant mechanism

Germany does not believe it is necessary to create a co-defendant mechanism in regard to the participation of the European Union (EU) in proceedings before the European Court of Human Rights. There have already been case-scenarios in which European law has been directly affected. The European Court of Human Rights has in the past always invited the European Community (EC) to participate in such proceedings. The possibility of intervening pursuant to Article 36 § 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) provides the opportunity of submitting written comments and of taking part in hearings and making statements in such hearings. The EC has already had sufficient opportunity to safeguard the interests of Community law by availing itself of this possibility of making statements. Accession by the EU to the ECHR will not change that in any way. Rather, the EU's status as a High Contracting Party guarantees the direct right to participate under Article 36 § 2 of the ECHR. Since it is well known that in practice the European Court of Human Rights is very generous in regard to permitting participation under Article 36 § 2 of the ECHR, there need be no fears that due consideration will not be given to the Union. If necessary, expression could be given in the treaty with the Council of Europe to the Union's expectation that generous use be made of leave to participate under Article 36 § 2 of the ECHR.

By contrast, Germany does not believe it possible that the Union participate under Article 36 § 1 of the ECHR. It is not permissible to equate nationality with Union citizenship, since these are fundamentally different legal positions, as the European Court of Justice has already established on several occasions.

2. Scope of EU accession

Germany endorses EU accession to the ECHR and to Protocols ratified by all the Member States.

At the same time, a non-affectation clause should be included in the treaty with the Council of Europe. This clause should clearly establish that both the rights of the Union and the rights of the Member States will not be impaired on account of the EU's accession to the ECHR.

As regards the reservations expressed by the Member States in regard to the Protocols to the ECHR, the German Government assumes that these must in principle remain. Whether a separate declaration by the Union in respect of these reservations will be necessary still needs to be further examined.

3. Competency of the European Court of Justice

In connection with Article 55 of the ECHR Germany would welcome the inclusion in the treaty with the Council of Europe of a means of clarifying that the competences of the Court of Justice will remain unaffected. Agreement should be reached with the Council of Europe on the form this clarification should take.

4. Observance of preliminary ruling procedures

Germany supports the incorporation as far as possible of the decisions of interpretation by the European Court of Justice in proceedings relating to human rights issues. In view of the requirements under primary law, a formal obligation to submit such proceedings to the European Court of Justice should not be aspired to. Germany does not believe that special provision need be made in regard to this issue.

5. Non-affectation clause

Germany supports the inclusion of a non-affectation clause in the treaty with the Council of Europe.

6. Union participation in the bodies of the Council of Europe

Germany supports the designation by the EU of a judge at the European Court of Human Rights. In addition, Germany advocates Union participation in the bodies of the Council of Europe insofar as this is necessary in regard to the application of the ECHR, in particular to the system of courts of the ECHR. The Accession Treaty therefore needs to include a specific regulation.
