



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 22 June 2010

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FREMP	30
JAI	577
COHOM	168
COSCE	18

NOTE

by :	Presidency
to :	Delegations
Subject :	Outcome of discussions in the CDDH, Council of Europe, on 15-17 June 2010; coordination in International organizations

The Presidency wishes to submit some observations relating to the captioned meeting. An official outcome of the meeting will, as is the practice in the Council of Europe, be sent out by its Secretariat.

Before the meeting, the Presidency had, via the General Secretariat, circulated the report of the Bureau meeting of the CDDH and the outcome of an informal discussion at the beginning of May in the Council of Europe (as an annex to the Bureau report). No EU coordination had taken place on these documents as the Presidency was seeking to obtain an adoption of the negotiating directives at the meeting of the Council on 4 June 2010 – which was also *de facto* obtained.

No EU delegation requested coordination on the Bureau document or on the position the EU would take at the meeting. An information meeting was organized in the margins of the CDDH meeting for EU Ambassadors by the EU delegation together with the Commission but this meeting had no influence on the outcome of the discussions in the CDDH.

As a result, the meeting was held on the basis of the meeting report from the Bureau and the informal consultations that took place on 4 May 2010 (page 33 et seq of the Bureau Report).

The outcome of the discussions was that an “informal drafting group” was set up consisting of 14 “individual experts” designated “in their individual capacity” by the CDDH. These experts were “from” but not “representing” 7 non-EU member states (CH, NO, RU, TK, AL, HR, AR) and 7 from EU Member States (FI, FR, DE, LV, NL, RO and UK). Norway was appointed as Chair. The experts are mostly agents before the Strasbourg Court or having extensive experience of the work of the CDDH. The EU is represented in the group by the European Commission. In addition the CAHDI (a working party of the Council of Europe dealing with international law) and the Registry of the ECtHR will be participating as observers. The Secretariat of the group will be ensured by the Secretariat of the Council of Europe.

In the Bureau report and in subsequent discussions in the CDDH, it was stated by delegates that the group could not take any decisions but that it had to report to the CDDH; several CDDH delegates also mentioned that the group needed to be “steered”, needed a “mandate” for negotiations and must report to the CDDH which should take all decisions (together with the Committee of Ministers).

The setting up of the group raises a number of issues which seem to be important for the future of the negotiations, as they raise unclarity in the status of the negotiations, at least in so far as the EU side is concerned.

What is the status of the group? What does it mean that the group will report to the CDDH (which in the Council of Europe system has the status of a steering group)? What is the status of the 7 “individual experts” in the group, in particular in relation to the Council Decision on the negotiating directives that provides that “Member States present at the negotiations shall, in accordance with Article 4 (3), in full mutual respect support the Union negotiator in carrying out the tasks following from the Treaties” (this seems particularly important as a number of interventions at the CDDH clearly showed that individual delegates at the CDDH meeting did not adhere to the negotiating directives (see below))? What is the position of FREMP, in particular since neither the future BE and HU Presidencies are represented in the group?

The question should also be raised as to how FREMP and Coreper should coordinate in relation to the group, meetings of the CDDH and the Committee of Ministers, as well as to the wider issue of EU coordination that has recently been discussed at Coreper.

As to the substance, it should be noted that individual delegates of EU Member States at the CDDH meeting openly questioned in statements in particular the following negotiating directives (to be noted that the Ministers had adopted them 12 days before the meeting of the CDDH):

- a) The principle contained in 1 e) – that the Union should be allowed to participate in the ECtHR as well as other Council of Europe bodies to the extent that their activities are linked to the purpose of the ECtHR on an equal footing.
- b) Directive 6 that the EU should have its own judge with the same status and duties of the other Contracting Parties.
- c) That an appropriate number of members of the EP should be allowed to participate in sessions of the Parliamentary Assembly of the CoE when the latter exercises functions related to the application of the Convention (especially elections) (directive 7).
- d) That the Union should be allowed to participate in meetings of the Committee of Ministers and to vote when the latter exercises its role in relation to the Convention (directive 8).
- e) The necessity of having a co-respondent mechanism (directive 10 b).

The Presidency suggests that the FREMP should discuss how better to ensure coordination so that it would henceforth speak with one voice in accordance with the negotiating directives, and beyond, in accordance with the provisions of the Lisbon Treaty.