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## **GUARDIANS BETWEEN ORDERS: GOVERNMENT AGENTS IN THE ERA OF EU–ECHR INTEGRATION**

### **Abstract**

The main objective of this publication is to demonstrate that the process of accession of the European Union (EU) to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, entails significant consequences not only for the EU as an organization, but also for its Member States. Particular emphasis is placed on the implementation of the co-respondent mechanism, which is designed to ensure coherent participation of both the EU and its Member States in proceedings before the European Court of Human Rights (ECtHR). The analysis highlights that the introduction of this mechanism requires the development of procedural pathways and institutional practices.

The article examines the dual dimension of these consequences, illustrating them through the example of the role of the Government Agent representing the parties before the ECtHR – a function that has so far received relatively little attention in the literature. By focusing on this underexplored aspect, the study sheds light on how the co-respondent mechanism may affect both the practical organization of representation and the broader framework of interaction between the EU and its Member States in Strasbourg proceedings.

## KEYWORDS

European Convention on Human Rights, European Court of Human Rights, European Union, accession, co-respondent, Government Agent

## SŁOWA KLUCZOWE

Europejska Konwencja Praw Człowieka, Europejski Trybunał Praw Człowieka, Unia Europejska, akcesja, mechanizm współpozwanego, pełnomocnik rządu

## I. INTRODUCTION

The accession of the European Union (EU) to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) was initiated in 1979.<sup>1</sup> The process has been described from different angles by many scholars.<sup>2</sup> This publication aims to describe the co-respondent mechanism and the consequences of accession in relation to the practical aspects of cooperation between the EU Member States, represented by the Government Agents, and the European Union, and its future representative. Moreover, this publication also provides an opportunity to examine more broadly the institution of the Government Agent, whose role is invaluable, by looking at the example of the Plenipotentiary of the Minister of Foreign Affairs for Proceedings before the European Court of Human Rights.<sup>3</sup>

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<sup>1</sup> Bulletin of the European Communities, 'Accession of the Communities to the European Convention on Human Rights' COM (79) 210 final, 2 May 1979.

<sup>2</sup> See, e.g., Jed Odermatt, 'The EU's Accession to the European Convention on Human Rights: An International Law Perspective' (2015) 47 *New York University Journal of International Law and Politics* 59; Przemysław Tacik, 'After the Dust Has Settled: How to Construct the New Accession Agreement after Opinion 2/13 of the CJEU' (2017) 18 *German Law Journal* 919; Jörg Polakiewicz, 'Accession to the European Convention on Human Rights (ECHR) – an Insider's View Addressing One by One the CJEU's Objections in Opinion 2/13' (2016) 36 *Human Rights Law Journal* 10; Adam Lazowski and Ramses A Wessel, 'When Caveats Turn into Locks: Opinion 2/13 on Accession of the European Union to the ECHR' (2015) 16 *German Law Journal* 179.

<sup>3</sup> See Adam Bodnar, 'Instytucjonalne aspekty wykonywania wyroków Europejskiego Trybunału Praw Człowieka w sferze stanowienia prawa' in Andrzej Wróbel (ed), *Zapewnienie efektywności orzeczeń sądów międzynarodowych w polskim porządku prawnym* (Warsaw: Wolters Kluwer 2011) 261; Adam Bodnar, 'Metodologia' in *Wykonywanie orzeczeń Europejskiego Trybunału Praw Człowieka w Polsce. Wymiar instytucjonalny* (Warsaw: Helsińska Fundacja Praw Człowieka 2018); Joanna Chrzanowska, 'Rola Agenta Rządu w postępowaniach przed Europejskim Trybunałem Praw Człowieka' in *Reprezentacja Rzeczypospolitej Polskiej przed Europejskim Trybunałem Praw Człowieka – ponad dwie dekady doświadczeń Ministerstwa Spraw Zagranicznych* (Warsaw: Ministry of Foreign Affairs 2017); Anna Mężykowska, 'Rola agenta rządowego

It will also demonstrate areas where future relations of the EU Member States may face challenges in connection with the accession to the ECHR, particularly in the context of cooperation between the Government Agents.

## II. THE ROLE AND POSITION OF GOVERNMENT AGENTS IN THE COUNCIL OF EUROPE STATES

At the outset, it should be noted that the institution of the Government Agent was established in Rule 35 of the Rules of Court of the European Court of Human Rights (hereinafter: ECtHR Rules or Rules), entitled: Representation of Contracting Parties.<sup>4</sup> It reads: ‘The Contracting Parties shall be represented by Agents, who may have the assistance of advocates or advisers’.<sup>5</sup>

For the sake of clarity, it is worth analysing the linguistic aspects of this provision. The official versions of the ECtHR Rules – just as of the Convention itself – are those drafted in English and French.<sup>6</sup> In both these official scripts, the term ‘agent’ is used in Rule 35. However, as recognized by Bogdan Aurescu, the Court and legal commentators use the term Government Agent instead of State Agent.<sup>7</sup> The consistency of terminology used across the different States-parties to the European Convention on Human Rights remains a challenge. In Poland, for instance, it is rendered as: the Agent of the Minister of Foreign Affairs for Proceedings before the European Court of Human Rights (*Pełnomocnik Ministra Spraw Zagranicznych do spraw postępowań przed Europejskim Trybunałem*

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w postępowaniach przed Europejskim Trybunałem Praw Człowieka – kilka uwag z perspektywy polskiej’ (2011) 1 Themis Polska Nova <<https://doi.org/10.15804/tpn2011.1>> accessed 30 September 2023; Anna Mężykowska, ‘The Role of a State Agent in the Proceedings before the European Court of Human Rights – Changes in the Existing Practice and New Challenges Following Entry into Force of the Protocol No 14’ in *5th Warsaw Seminar on Human Rights* (Warsaw: Ministry of Foreign Affairs 2012); Iwona Wrońska, ‘Pozycja ustrojowa władzy wykonawczej w Polsce w aspekcie wykonywania wyroków Europejskiego Trybunału Praw Człowieka – wybrane zagadnienia’ (2016) 20B Białostockie Studia Prawnicze 203.

<sup>4</sup> European Court of Human Rights, *Rules of Court* (15 September 2025) <[https://www.echr.coe.int/documents/d/echr/rules\\_court\\_eng](https://www.echr.coe.int/documents/d/echr/rules_court_eng)> accessed 24 October 2025.

<sup>5</sup> *Ibid.*

<sup>6</sup> Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, opened for signature on 4 November 1950, entered into force on 3 September 1953) 213 UNTS 221, as amended, Art 59.

<sup>7</sup> Bogdan Aurescu, ‘Organizational and Procedural Aspects of the Institution of State Agent before the ECHR and ICJ: Some Romanian Perspectives’ (2007) 6(2) Chinese Journal of International Law 363.

*Praw Człowieka*).<sup>8</sup> In Italy, it is the Government Agent in defence of the Italian State before the European Court (*Agente di Governo a difesa dello Stato italiano dinanzi alla Corte europea*).<sup>9</sup>

Government Agents play an essential role in proceedings before the European Court of Human Rights because they act as the State's principal representatives and coordinators within the system established by the European Convention on Human Rights. In practice, they manage the State's defence in Strasbourg proceedings, maintain official communication with the Court, and coordinate the position of domestic authorities involved in a case. Their responsibilities also extend to negotiating friendly settlements with applicants under Article 39 of the European Convention on Human Rights and proposing unilateral declarations when a settlement cannot be reached. These tasks require not only legal expertise but also diplomatic skills, as Agents often engage in complex negotiations aimed at resolving disputes while ensuring compliance with Convention standards. Importantly, their role is not limited to defending State interests: when negotiating settlements or formulating unilateral declarations, they must also ensure that the proposed solutions adequately protect the applicant's rights under the Convention, a process supervised by the Court itself. For these reasons, Government Agents occupy a crucial position at the intersection of national legal systems, international adjudication, and diplomatic practice, contributing both to the effective functioning of the Strasbourg system and to the protection of individual human rights.

Apart from the said Rule 35, the ECtHR Rules do not establish any detailed standards concerning Government Agents, leaving it to the discretion of the States Parties to the ECHR to design their procedural representation and activities of their Government Agents. However, the institutions of these agents are referred to in relation to several specific provisions in the ECtHR Rules, including, notably, Rule 28(2)(b), which orders that a judge who has previously acted as a Government Agent in proceedings be removed from the panel. With regard to correspondence

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<sup>8</sup> Article 35 of the Rules of Court, which is annexed to the commentary entitled *The Convention for the Protection of Human Rights and Fundamental Freedoms. Volume II: Commentary on Articles 19–59 and Additional Protocols*, translated by Renata Degener, uses the term 'przedstawiciel'. MA Nowicki, in his translation of the same provision of the Rules of Court, uses the term 'pełnomocnik'. In both legal literature and practice, the terms 'zastępca procesowy Rządu' and 'Pełnomocnik Rządu' are also used. The term was used by a person holding the position of *Pełnomocnik in the publication Reprezentacja Rzeczypospolitej Polskiej przed Europejskim Trybunałem Praw Człowieka – ponad dwie dekady doświadczeń Ministerstwa Spraw Zagranicznych*. It also appears in Zarządzenie nr 7 Ministra Spraw Zagranicznych w sprawie ustanowienia i zadań Pełnomocnika Ministra Spraw Zagranicznych do spraw postępowań przed Europejskim Trybunałem Praw Człowieka.

<sup>9</sup> Presidency of the Council of Ministers, 'Sistema CEDU' <[https://presidenza.governo.it/CONTENZIOSO/contenzioso\\_europeo/sistema\\_cedu\\_3.html#3](https://presidenza.governo.it/CONTENZIOSO/contenzioso_europeo/sistema_cedu_3.html#3)> accessed 23 September 2025.

sent by the ECtHR, Rule 77 names the Government Agent as the person to be informed of the date of the hearing during which the Chamber will issue the judgment. Moreover, Article 37<sup>2</sup> of the Rules states that communications or notifications addressed to the Agents shall be deemed to have been addressed to the parties. These examples, except for Rule 28, indicate that these are procedural provisions. Therefore, the ECtHR Rules are not a source of detailed regulations concerning the role of the Government Agent, and his competencies should be viewed in light of the powers and obligations imposed on the States Parties by the Convention and the Rules.

In this context, it should be noted that by performing their activities, Government Agents exercise diplomatic functions.<sup>10</sup> The latter are defined in Article 3 of the 1961 Vienna Convention on Diplomatic Relations.<sup>11</sup> The key functions of Government Agents are as follows: protection of the interests of the State, negotiation, and observation.<sup>12</sup> Referring to Julian Sutor's statement that '(in) connection with (...) the development of new forms, methods, and means of diplomacy – there is a visible evolution of the functions of modern diplomacy', it should be pointed out that these functions, in the context of activities of Government Agents, have been reformulated and given a new, specific significance.<sup>13</sup>

Since there are no pre-defined procedures for appointing Government Agents and since their place within internal State structures has not been prescribed, multiple different models have been allowed to operate next to each other. This in itself also reflects the discretion States enjoy in deciding on how diplomatic functions are to be regulated and implemented.

Within the system of the Council of Europe, States have adopted various regulations on the appointment of Government Agents. Some structurally place them as part of the activities of the ministry responsible for foreign policy, while others place them within the division responsible for the justice system.

In Poland, from the moment the Court's jurisdiction was recognized, the Government Agent has been structurally attached to the Ministry of Foreign Affairs. The process of establishing this position was difficult due to disputes on where to place

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<sup>10</sup> As understood by Julian Sutor, *Prawo dyplomatyczne i konsularne* (Wolters Kluwer 2019) 39.

<sup>11</sup> Vienna Convention on Diplomatic Relations (adopted on 18 April 1961, entered into force on 24 April 1964) 500 UNTS 95.

<sup>12</sup> Eileen Denza, 'Functions of a Diplomatic Mission' in *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations* (4<sup>th</sup> edn, Oxford Commentaries on International Law, OUP 2016, online edn, Oxford Law Pro) <<https://doi.org/10.1093/law/9780198703969.003.0005>> accessed 24 September 2025

<sup>13</sup> Sutor (n 10) 128.

it in the government and administration. These long-unresolved discussions meant that the first appointment was delayed by two years.<sup>14</sup> Ultimately, the placement of the Agent within the Ministry of Foreign Affairs (MFA) received support from many government representatives, including the distinguished Polish diplomat Janusz Stańczyk.<sup>15</sup> He argued his support for such a model by pointing to the neutrality and impartiality of the government's procedural representatives who, in their positions, present information and comments on the actions of various entities, including independent ones, such as courts.<sup>16</sup> Moreover, as Stańczyk noted, it is not insignificant that Strasbourg proceedings largely influence the country's image on the international arena; hence, the role and responsibility of diplomacy are vital.<sup>17</sup> Justyna Chrzanowska, who served as the Government Agent for many years, agreed with what Stańczyk was arguing. She pointed out that procedural representation in cases that do not directly concern the MFA allows for a balanced stance that takes into account both the international context, including the case law of the European Court of Human Rights, and important determinants of domestic policy.<sup>18</sup>

According to Adam Bodnar, Poland's set-up is similar to the Dutch model<sup>19</sup> and, at the same time, the most popular one. Such a solution is now in place in, for example, Sweden<sup>20</sup> or Ireland.<sup>21</sup>

Bodnar also refers to the German model, in which the Government Agent has a status equivalent to that of the Deputy Minister of Foreign Affairs.<sup>22</sup> The assign-

<sup>14</sup> Krzysztof Drzewicki, 'Doświadczenia pierwszej dekady obowiązywania EKPCz w Polsce' in *Europejska Konwencja Praw Człowieka – 25 lat zmian oblicza polskiego prawa i praktyki* (Warsaw 2019) 30.

<sup>15</sup> 'Dział kadr' *Polityka* <<https://www.polityka.pl/archiwumpolityki/1848554,1,dzial-kadr.read>> accessed 30 September 2023.

<sup>16</sup> Janusz Stańczyk, 'Perspektywa historyczna postępowania przeciwko Polsce przed Europejskim Trybunałem Praw Człowieka' in *Reprezentacja Rzeczypospolitej Polskiej przed Europejskim Trybunałem Praw Człowieka – ponad dwie dekady doświadczeń Ministerstwa Spraw Zagranicznych* (Warsaw: Ministry of Foreign Affairs 2017).

<sup>17</sup> *Ibid* 20.

<sup>18</sup> Justyna Chrzanowska, 'Rola Agenta Rządu w postępowaniach przed Europejskim Trybunałem Praw Człowieka' in *Reprezentacja Rzeczypospolitej Polskiej przed Europejskim Trybunałem Praw Człowieka – ponad dwie dekady doświadczeń Ministerstwa Spraw Zagranicznych* (Warsaw: Ministry of Foreign Affairs 2017) 29.

<sup>19</sup> Adam Bodnar, 'Instytucjonalne aspekty wykonywania wyroków Europejskiego Trybunału Praw Człowieka w sferze stanowienia prawa' in Andrzej Wróbel (ed), *Zapewnienie efektywności orzeczeń sądów międzynarodowych w polskim porządku prawnym* (Warsaw: Wolters Kluwer 2011) 265.

<sup>20</sup> *Ibid*.

<sup>21</sup> Government of Ireland, 'European Court of Human Rights' <<https://www.dfa.ie/our-role-policies/international-priorities/international-law/courts-tribunals-dispute-mechanisms/european-court-of-human-rights/>> accessed 24 September 2025.

<sup>22</sup> Bodnar (19) 265.

ment of such a high rank to the Government Agent within the hierarchy of State authorities in the Federal Republic of Germany should be appreciated. However, it should be emphasized that his role is limited solely to supervising the execution of judgments and does not extend to procedural representation, which, from the perspective of regulations found in Polish legislation, is one of the Agent's key tasks. Consequently, the German Government Agent's functions concerning relations with the European Court of Human Rights are carried out by individuals who are structurally linked to the Ministry of Justice.<sup>23</sup> Although placing this position entirely under this ministry may be controversial and has been the subject of many discussions, in Poland too, according to Government Agent Hans-Jörg Behrens, his placement within the public administration structure of the German Minister of Justice does not hinder the performance of his duties.<sup>24</sup> Similar solutions have been applied in the Slovak Republic, the Czech Republic, the Republic of North Macedonia, and the Kingdom of Belgium.<sup>25</sup>

### **III. THE CO-RESPONDENT MECHANISM AND JOINT RESPONSIBILITY OF THE RESPONDENT AND THE CO-RESPONDENT**

The process of inclusion of the co-respondent mechanism is not as long as the entire process of accession. The concept of a co-respondent was introduced in the first draft of the accession agreement of 2013.<sup>26</sup> The mechanism, as such, provided an acceptable solution to solving the problem of the EU's participation in the ECHR system.

It was deemed necessary to reflect the EU's unique status as a non-State entity with an autonomous legal order and that it was joining the Convention alongside its Member States.

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<sup>23</sup> Hans-Jörg Behrens, 'Voice in the Discussion, Theme III: The Contribution of the Government Agent to the Execution of Judgments of the European Court of Human Rights' in *The Role of Government Agents in Ensuring Effective Human Rights Protection* (Council of Europe 2008) 93 <<https://rm.coe.int/16806f151b>> accessed 30 September 2023.

<sup>24</sup> Ibid 93.

<sup>25</sup> Vit Schorm, 'Theme I: The Role of the Government Agent in Representing the Member State before the European Court of Human Rights' in *The Role of Government Agents in Ensuring Effective Human Rights Protection* (Council of Europe 2008) 28.

<sup>26</sup> CDDH, *Fifth Negotiation Meeting between the CDDH Ad Hoc Group and the European Commission on the Accession of the European Union to the European Convention on Human Rights, Final Report to the CDDH* (47+1(2013)008, 10 June 2013).

Given that the EU acts may be implemented by Member States while treaty provisions may be implemented by the EU institutions, accession could create a peculiar situation where a legal act is adopted by one Contracting Party but implemented by another. The creation of the co-respondent status stems from the fact that third-party intervention, in line with Article 36 of the Convention, is insufficient, as it does not allow for sharing responsibility for a potential violation of the ECHR. The first attempt was done in the 2013 Draft Accession Agreement,<sup>27</sup> which was then critiqued in the CJEU Opinion 2/13 on EU accession to the ECHR.<sup>28</sup> A detailed analysis of the co-respondent mechanism was carried out by Tina Korošec,<sup>29</sup> Paul Gragl<sup>30</sup> and Przemysław Tacik.<sup>31</sup> This publication does not aim to repeat it. Similarly, it does not aspire to assess the compliance of the current 2023 Draft Accession Agreement or the correspondent mechanism with the position of the CJEU.<sup>32</sup>

What is important for the perspective of this research is that the co-respondent mechanism is kept in the 2023 Draft through the addition of paragraph 4 to Article 36 of the Convention, which reads as follows: ‘The European Union or a Member State of the European Union may become a co-respondent to proceedings by decision of the Court in the circumstances set out in the Agreement on the Accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms. A co-respondent is a party to the case. The admissibility of an application shall be assessed without regard to the participation of a co-respondent in the proceedings’.<sup>33</sup> The second provision important from the perspective we have taken to look into the consequences of these amendments is the special Article 3(8) of the Draft Accession Agreement of 2023 which states:

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<sup>27</sup> Ibid.

<sup>28</sup> Opinion 2/13 (Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms) ECLI:EU:C:2014:2454, [2014] OJ C64/2 <[https://curia.europa.eu/juris/document/document.jsf?docid=160882&doclang=en&utm\\_source=chatgpt.com](https://curia.europa.eu/juris/document/document.jsf?docid=160882&doclang=en&utm_source=chatgpt.com)>.

<sup>29</sup> Tina Korošec, ‘The Co-Respondent Mechanism before the European Court of Human Rights: An Adequate Procedural Solution or a Flawed Mechanism?’ (2014) 14 Human Rights Law Review 351; Paul Gragl, *The Accession of the European Union to the European Convention on Human Rights* (Modern Studies in European Law, Hart Publishing 2013) 138–171.

<sup>30</sup> Paul Gragl, *The Accession of the European Union to the European Convention on Human Rights* (Modern Studies in European Law, Hart Publishing 2013) 138–171.

<sup>31</sup> Przemysław Tacik, *Przystąpienie Unii Europejskiej do Europejskiej Konwencji Praw Człowieka* (Instytut Wydawniczy EuroPrawo 2017) 429–536.

<sup>32</sup> See Jörg Polakiewicz and Irene Suominen-Picht, ‘Now or Never – One Year After the Closure of the Second Negotiation Round for the EU’s Accession to the ECHR: Will the Agreement Reached Suffice to Make Accession (Finally) a Reality?’ (2025) 6 European Convention on Human Rights Law Review 102–129.

<sup>33</sup> CDDH Ad Hoc Negotiation Group (“46+1”), *Final Consolidated Version of the Draft Accession Instruments* (46+1) (2023) 36, 17 March 2023.

‘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’.<sup>34</sup> This is called a ‘joint responsibility’ principle,<sup>35</sup> in which closer cooperation between the respondent and the co-respondent is necessary.

This issue has been examined in detail by Przemysław Tacik in his monograph, where he distinguishes between different models of ‘joint responsibility’ arising from the various modes of the creation and implementation of EU law.<sup>36</sup> Irrespective of these distinctions, the mechanism as designed is intended to preserve the autonomy of EU law and to ensure that the European Court of Human Rights refrains from independently determining the separate attribution of responsibility between the Member States and the European Union. This, in turn, suggests that, from the perspective of the Council of Europe framework, cooperation between the Agents of the Governments of both the respondent and the co-respondent should focus on aspects other than the shifting of responsibility between them.

It is worth stressing, as Tobias Lock notes, that the co-respondent mechanism entails joint responsibility of the EU and its Member States, which greatly improves enforcement prospects.<sup>37</sup> This follows not only from the Committee of Ministers’ supervision of both parties but also from the duty of loyal cooperation under Article 4(3) TEU, which binds the EU and Member States to ensure compliance, including through enforcement mechanisms of the EU law.<sup>38</sup> From a research perspective, what is particularly important is the duty of cooperation that arises between the EU and its Member States in such circumstances.

#### IV. GOVERNMENT AGENTS IN MEMBER STATES OF THE EUROPEAN UNION

As previously noted, the Contracting Parties of the ECHR have considerable freedom in deciding how to establish and organise the position of their Government

<sup>34</sup> Ibid.

<sup>35</sup> Christos Giakoumopoulos and David Milner, ‘Accession of the European Union to the European Convention on Human Rights: A View From Inside the Council of Europe’ (2025) 6 *European Convention on Human Rights Law Review* 15, 23.

<sup>36</sup> Przemysław Tacik, *Przystąpienie Unii Europejskiej do Europejskiej Konwencji Praw Człowieka* (Instytut Wydawniczy EuroPrawo 2017) 429–536.

<sup>37</sup> Tobias Lock, ‘Implications of the Revised Draft EU Accession Agreement for the ECHR’ (2025) 6 *European Convention on Human Rights Law Review* 65, 81.

<sup>38</sup> Ibid.

Agents within their national systems. This applies equally to EU Member States. The EU's accession to the ECHR will not directly limit this discretion, but it may nonetheless affect the position of Government Agents in EU Member States.

The issue of the participation of Government Agents in proceedings before the Court of Justice of the European Union within the framework of the prior involvement mechanism provided for in Article 3(7) of the Draft Accession Agreement has not yet been resolved. This mechanism introduces a procedural step allowing the Court of Justice to assess elements of EU law before the European Court of Human Rights rules on the merits of a case, while preserving the latter's ultimate authority to determine whether a violation of the Convention has occurred. It is also functional in nature, as it is intended to operate without causing undue delay in the proceedings before the Strasbourg Court.

So far, the literature has not provided a clear answer as to who should represent the Member States in such proceedings before the Court of Justice. Nor does the Draft Accession Agreement offer explicit institutional solutions in this regard. It would seem, however, that in order to ensure coherence of procedural action and to effectively pursue the overarching objective of human rights protection, Government Agents of the respondent State or States should, in some form, also be involved in these proceedings. Their participation could contribute to better coordination between the national and EU levels and help maintain a balance between the interests of the Member States and the obligations arising from the EU law and the Convention.

The EU's accession may also affect the way official relations are conducted with the Court and among States themselves. An example illustrating this potential impact is the conduct of negotiation processes, where the deployment of appropriate skills and strategies in managing these relations has become particularly important. These negotiations concern, in particular, reaching settlements with the applicant under Article 39 of the Convention, or, in cases where the applicant does not accept the terms of a settlement, adoption of a unilateral declaration.

The conclusions of the Interlaken Conference strengthened the role of the Government Agents by encouraging Contracting Parties to make greater use of friendly settlements and, where applicants withheld their consent, to rely on unilateral declarations.<sup>39</sup> In this context, negotiation skills and the ability to reach a compromise became increasingly indispensable. As Justyna Chrzanowska has observed, the professional background of diplomats employed in Ministries of

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<sup>39</sup> High Level Conference on the Future of the European Court of Human Rights, *Interlaken Declaration* (19 February 2010) point D.7.a) i.

Foreign Affairs is invaluable.<sup>40</sup> Since their training in building compromises in international fora equips them well to conduct effective legal negotiations before the Court.<sup>41</sup> This highlights the overlap between diplomatic expertise and the specific functions entrusted to the Government Agents in Strasbourg proceedings.

It should also be emphasised that the Government Agent's role in reaching settlements or initiating unilateral declarations is twofold: it goes beyond simply defending State interests but also extends to the protection of individual rights. The European Court of Human Rights serves as a guarantor in this respect, ensuring that the use of friendly settlements or unilateral declarations does not undermine the applicant's position. In this way, the Court supervises whether the solutions put forward by the Government Agent sufficiently protect individual rights. These circumstances alone already represent a considerable responsibility on the Government Agent.

At the same time, points 69 and 70 of the Draft Explanatory Report to the Agreement on the Accession of the European Union to the Convention introduce the co-respondent mechanism also with regard to the conclusion of friendly settlements and the making of unilateral declarations.<sup>42</sup> Its effective operation will require close coordination between the Government Agent and the EU representative, as their cooperation will be necessary to reach an agreement with applicants on the form and content of such settlements.

So far, the doctrine has identified two contexts in which the principle set out in Article 4(3) TEU may become relevant in relation to the accession of the European Union to the system of the European Convention on Human Rights. The first was raised by Christina Eckes, who discussed the principle of sincere cooperation in relation to the obligation of the Member States of the European Union to ratify the EU Accession Agreement to the European Convention on Human Rights as part of fulfilling the obligations arising from this principle.<sup>43</sup> The second discussion has emerged in connection with more recent proposals analysed by Jörg Polakiewicz and Irene Suominen-Picht.<sup>44</sup> They point to potential difficulties in the execution phase of judgments before the Committee of Ministers of the Council of Europe, in particular, the possibility that coordinated voting obligations between the European Union and its Member States could affect decision-making concerning the

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<sup>40</sup> Chrzanowska (n19) 28.

<sup>41</sup> Ibid.

<sup>42</sup> CDDH Ad Hoc Negotiation Group ("46+1"), 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, points 69–70.

<sup>43</sup> Christina Eckes, 'EU Accession to the ECHR' (2013) 76 *Modern Law Review* 254–285.

<sup>44</sup> Jörg Polakiewicz and Irene Suominen-Picht (n 30) 126.

supervision of judgments. At the same time, the principle may also have practical relevance during proceedings before the European Court of Human Rights itself. It may influence both the presentation of legal arguments and, more specifically, the conduct of negotiations aimed at reaching friendly settlements or formulating unilateral declarations, where coordinated action between the European Union and the Member States may be required.

Although cooperation is a familiar aspect of the mandate of the Government Agents, as their role inherently involves maintaining relations with their counterparts in other States Parties to the Convention, it is of particular importance in the context of EU accession. A clear expression of such cooperation can already be found in the practice of third-party interventions under Article 36 of the Convention. This issue has been examined by Kanstantsin Dzehtsiarou.<sup>45</sup> He found that the Government Agents participate in proceedings that, for various reasons, are of special interest to their Contracting Parties. As demonstrated by Dzehtsiarou, such interventions are most often motivated by the Contracting Parties' own interests, as they concern provisions that are similar in their own legal systems.<sup>46</sup> He also highlights the practice whereby States may request other States to intervene in specific cases, as well as the lack of coherence across members of the Council of Europe concerning the decision-making process in this regard. In some States, the Government Agents may only act with the express approval of their supervising Minister, while in others they enjoy discretion in deciding whether to intervene.

Further examples of inter-State coordination can be found in the adoption of joint strategies, particularly in the sensitive area of migration – a matter of special importance to the European Union. As noted by Mónica Ávila Currás on the Strasbourg Observers blog,<sup>47</sup> third-party interventions may in practice exert similar forms of pressure on the Court as joint political letters from governments, such as the one signed by nine CoE States, widely regarded as a form of political pressure.<sup>48</sup> In one of the more prominent cases currently pending before the ECtHR, *RA v Poland*, concerning migration, 11 States have submitted third-party interventions.<sup>49</sup>

<sup>45</sup> Kanstantsin Dzehtsiarou, 'Conversations with Friends: "Friends of the Court" Interventions of the State Parties to the European Convention on Human Rights' (2023) 43 *Legal Studies* 355.

<sup>46</sup> *Ibid*

<sup>47</sup> Mónica Ávila Currás, 'From dialogue to strategy in migration cases: Third-party interventions by states as a risky patch to a systemic tension' *Strasbourg Observers* (19 August 2025) <<https://strasbourgobservers.com/2025/08/19/from-dialogue-to-strategy-in-migration-cases-third-party-interventions-by-states-as-a-risky-patch-to-a-systemic-tension/>> accessed 23 September 2025.

<sup>48</sup> Governo Italiano, *Lettera aperta 22/05/2025* <[https://www.governo.it/sites/governo.it/files/Lettera\\_aperta\\_22052025.pdf](https://www.governo.it/sites/governo.it/files/Lettera_aperta_22052025.pdf)> accessed 24 September 2025.

<sup>49</sup> European Court of Human Rights, 'Grand Chamber Hearing Concerning Alleged "Pushbacks" at the Polish–Belarusian Border' Press Release <[https://hudoc.echr.coe.int/eng-press#{%22item-id%22:\[%22003-8155927-11431988%22\]}>](https://hudoc.echr.coe.int/eng-press#{%22item-id%22:[%22003-8155927-11431988%22]}) accessed 24 September 2025.

An analysis of HUDOC shows that although some cases before the Court raise issues potentially relating to EU law, interventions by the European Union itself have remained relatively rare and have occurred only in a few instances, including *Bosphorus v Ireland*,<sup>50</sup> *Avotiņš v Latvia*,<sup>51</sup> and *Duarte Agostinho and Others v Portugal and 32 Other States*.<sup>52</sup>

This complexity underscores the need to reflect on the most appropriate and potentially institutionalised mechanisms of cooperation between the Government Agents and EU representatives. Such cooperation should not be an end in itself but should instead serve the fundamental purpose of safeguarding equality of arms in proceedings and ensuring that applicants – often individual persons – are afforded a fair opportunity to demonstrate that their human rights have been violated. In this perspective, the experience gained through the use of third-party interventions provides a useful model for shaping future collaboration, which will find its clearest and most structured expression in the operation of the co-respondent mechanism.

## V. THE EU AGENT AFTER THE EU ACCESSION

The current documentation does not indicate any direct reflection on the position of an EU equivalent of the Government Agent. Nevertheless, such a position will be established within the structure of the EU. This will, in turn, raise a question, similar to that encountered in domestic structures, as to where within the EU institutions it fits best – in the structure of the Commission or in the European External Action Service.

To look into this question, the case law of the ECtHR has been analysed for elements relevant to EU law. The table below, which demonstrates the results of the analysis, clearly shows that the current representation before the Court, if any, lies with the Commission's Legal Service.

It, therefore, seems that even if the EEAS officially maintains contacts with the CoE, the potential placement of the Government Agent would fall within the Legal Service in the EC.

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<sup>50</sup> *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v Ireland* App no 45036/98 (ECtHR, 30 June 2005).

<sup>51</sup> *Avotiņš v Latvia* App No 17502/07 (ECtHR, 23 May 2016).

<sup>52</sup> *Duarte Agostinho and Others v Portugal and 32 Other States* App No 39371/20 (ECtHR, Grand Chamber, 9 April 2024).

Case name	Application number	European Commission – third-party intervention	Representatives	Affiliation
<i>Duarte Agostinho and Others v Portugal and 32 Other States</i>	39371/20	Yes	D Calleja Crespo	Director-General of the Legal Service (since 2020)
<i>Bivolaru and Moldovan v France</i>	40324/16, 12623/17	No	–	–
<i>Romeo Castaño v Belgium</i>	8351/17	No	–	–
<i>Pirozzi v Belgium</i>	21055/11	No	–	–
<i>Baydar v the Netherlands</i>	55385/14	No	–	–
<i>Avotiņš v Latvia</i>	17502/07	Yes	H Krämer	Legal Service, European Commission
<i>Povse v Austria</i> (dec.)	3890/11	No	–	–
<i>Michaud v France</i>	12323/11	No	–	–
<i>MSS v Belgium and Greece</i>	30696/09	No	–	–
<i>Bosphorus v Ireland</i>	45036/98	Yes	G Marengo; S Fries; C Ladenburger	Legal Service, European Commission
<i>Matthews v United Kingdom</i>	24833/94	No		

Once the European Union accedes to the European Convention on Human Rights, the Agent of the EU before the European Court of Human Rights will be entrusted with a broad set of diplomatic and legal responsibilities. Building on the functions set out in Article 3 of the Vienna Convention, but adapted to the judicial context of the ECtHR, the EU Agent will assume a primarily representative role under Article 35 of the ECtHR Rules. This will include acting as the formal representative of the EU, engaging in all procedural activities, and ensuring that the Union's obligations as a party are fully respected. In a certain sense, many of these responsibilities may already be familiar to representatives of the Legal Service, given the EU's previous involvement as a third-party intervener before the Court.

A novelty, however, may be the EU Agent's involvement in negotiation tasks, such as concluding friendly settlements and drafting unilateral declarations, which, as previously noted, will demand advanced diplomatic skills and the ability to reconcile

legal reasoning with political considerations. The EU Agent's mandate may further encompass the safeguarding of the Union's financial interests, particularly in the context of compensation claims. From the EU's perspective, this responsibility will also involve establishing clear arrangements with partner EU Member States on how to allocate and implement joint or several liability between the Union and its Member States. To carry out these tasks effectively, the EU Agent will need the support of a multidisciplinary legal and diplomatic team with diverse competences.

In addition, the EU Agent's responsibilities will go beyond purely defensive litigation. The Agent will be expected to undertake protective and supportive functions, including intervening in cases to provide the Court with contextual or diplomatic insights. Such interventions may also serve to strengthen the position of EU citizens before the Court, in a manner similar to the intervention by Poland in the *Janowiec and Others v Russia* case, where the applicants' position was reinforced by the State acting in the role of intervener.<sup>53</sup> Through these functions, the EU Agent will contribute not only to defending the Union's interests but also to supporting broader access to justice for individuals under the Convention system.

Finally, a crucial area of the EU Agent's mandate will concern the implementation of ECtHR judgments. Once the EU becomes a party to the Convention, and if the EU Agent performs functions comparable to those of Government Agents in the Member States, the EU Agent will have to ensure that rulings against the EU are effectively executed and that judgments with systemic implications are given proper follow-up. This will require monitoring compliance, coordinating action between EU institutions and sometimes Member States, and promoting the adoption of general measures arising from the Court's findings. In this capacity, the EU Agent will act as a key intermediary, bridging Strasbourg jurisprudence with the EU's internal legal and political order. By facilitating the implementation of judgments, the EU Agent will play an essential role in embedding the Strasbourg *acquis* within the Union and reinforcing the EU's commitment to the European system of human rights protection.

## VI. CONCLUSIONS

It is difficult to disagree with Tobias Lock, who has observed that the EU's accession to the ECHR will significantly affect not only the Convention itself but also the broader Strasbourg system.<sup>54</sup> It will require amendments to the Convention,

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<sup>53</sup> *Janowiec and Others v Russia* (Grand Chamber, 21 October 2013) Application Nos 55508/07 and 29520/09, ECHR.

<sup>54</sup> Tobias Lock, 'Implications of the Revised Draft EU Accession Agreement for the ECHR' (2025) 6 *European Convention on Human Rights Law Review* 65, 66.

particularly through the introduction of new procedures tailored to the EU's unique status as a contracting party. I would add that this will also have clear practical consequences for the Government Agents of EU Member States and for the EU Agent as such. The complexity of proceedings before the ECtHR, combined with the Union's unique legal order, will require an unprecedented level of coordination between the EU institutions and the Member States. Such cooperation cannot be purely technical; it must be guided by the overarching principle of respect for the individual, which lies at the center of the Strasbourg system. This means that Agents will need to balance the defence of institutional and financial interests with the duty to safeguard the rights of individuals, ensuring that the EU's participation in the Convention system reinforces, rather than weakens, the protection of fundamental rights. In this sense, the effectiveness of the EU's engagement before the Court will depend not only on legal expertise and diplomacy but also on a genuine commitment to maintaining the applicant's position as a key actor in the Convention mechanism.

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