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The impact of the Lisbon Treaty on the Council of Europe

Report¹

Committee on Political Affairs and Democracy

Rapporteur: Ms Kerstin LUNDGREN, Sweden, Alliance of Liberals and Democrats for Europe

Summary

The post-Lisbon reinforced partnership between the Council of Europe and the European Union should:

- aim at ensuring coherence between the pan-European project promoted by the Council of Europe and the integration process initiated by the European Union;
- ultimately lead to a common space for human rights protection across the continent in the interest of all people in Europe, through the European Union's accession to the European Convention on Human Rights but also to other key Council of Europe conventions and monitoring mechanisms. Duplication and monitoring fatigue will thus be avoided, especially at a time of economic crisis.

The Council of Europe's role as "the benchmark for human rights, rule of law and democracy in Europe" should be further enhanced and fully recognised by all EU institutions, including in the context of its neighbourhood policy with countries which are members of the Council of Europe or belong to its neighbourhood, such as those in the Southern Mediterranean.

Concrete measures are proposed for improved co-operation between the Parliamentary Assembly and the European Parliament. The Assembly, as a body bringing together members of all national parliaments of the European Union's member states, can also contribute to the strengthening of relations between the European Parliament and these parliaments.

Finally, the entry into force of the Lisbon Treaty and the ongoing reshaping of the European architecture give fresh topicality to the perspective of EU accession to the Council of Europe Statute. The report thus invites both the Assembly and the Committee of Ministers to further consider this question.

1. Reference to committee: [Doc. 12114](#), Reference 3640 of 29 January 2010.



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A. Draft resolution ²

1. The Parliamentary Assembly welcomes the fact that, with the entry into force of the Lisbon Treaty, on 1 December 2009, the values on which the Council of Europe is based and which are commonly shared with the European Union, namely respect for human rights, democracy and the rule of law, are put to the forefront of EU policies. The Treaty aims to bring Europe closer to its people and create an open and secure space for all and, for this purpose, has in particular:

1.1. provided an obligation for the European Union to accede to the European Convention on Human Rights (ETS No. 5, “the Convention”); allowed for EU accession to other international human rights legal instruments, such as the United Nations Convention on Persons with Disabilities which the European Union joined already in 2010; given the European Union a legally binding bill of rights of its own, namely the Charter of Fundamental Rights;

1.2. introduced the European Citizens’ Initiative; extended the mandate of the European Ombudsman; substantially strengthened the role and powers of the European Parliament; enhanced the role of the national parliaments in the EU decision-making process.

2. Having acquired legal personality, the European Union has also acquired a new status and voice within international and regional organisations, including in the United Nations. The Union’s role has, moreover, been increased in the traditional areas of activity of the Council of Europe such as justice, freedom and security. This has, *inter alia*, affected the interaction between the European Union and its member states when participating in Council of Europe steering committees and when negotiating new Council of Europe conventions on matters falling within these areas.

3. The Assembly welcomes the fact that, in line with the Lisbon Treaty, “The Stockholm Programme – An open and secure Europe serving and protecting the citizen”, while emphasising the need for evaluation of the implementation of Union policies in these areas, provided that “duplication with other evaluation mechanisms should be avoided, but synergies and co-operation should be sought, in particular with the work of the Council of Europe”.

4. The Assembly therefore notes that the entry into force of the Lisbon Treaty has opened up new opportunities for a reinforced partnership between the Council of Europe and the European Union, based on each other’s *acquis* and comparative advantages. In the Assembly’s view, such a partnership should aim to ensure coherence between, on the one hand, the pan-European project promoted by the Council of Europe and, on the other, the integration process initiated by the European Union. It should ultimately lead to a common space for human rights protection across the continent in the interest of all people in Europe.

5. While welcoming the steps already taken in the right direction, the Assembly expects that the role of the Council of Europe as “the benchmark for human rights, rule of law and democracy in Europe” will be further enhanced, fully reaffirmed and effectively recognised by all EU institutions. Building on the 2007 Memorandum of Understanding between the two Organisations, the Lisbon Treaty and the perspectives opened up by the ongoing reform of the Council of Europe, the recently reinforced partnership between the two organisations should be further consolidated and regular policy co-ordination should be further developed at all levels.

6. Referring to its previous resolutions and recommendations, which for some 30 years have called for EU accession to the European Convention on Human Rights, in particular [Resolution 1610 \(2008\)](#) and [Recommendation 1834 \(2008\)](#), the Assembly:

6.1. reiterates that accession will not only offer a unique opportunity to achieve a coherent system of human rights protection across Europe, but also afford its people protection against the Union’s action similar to the one they already enjoy against action by all its member states, in particular now that the Lisbon Treaty has led to a substantial transfer of powers from the EU member states to the Union;

6.2. welcomes the Resolution of the European Parliament of 19 May 2010 on the institutional aspects of the accession of the European Union to the European Convention on Human Rights, which advocated European Union accession to the Convention as “an essential first step”, to be completed by EU accession to other Council of Europe conventions;

2. Draft resolution adopted unanimously by the committee on 6 September 2011.

6.3. notes with satisfaction that, at expert level, informal negotiations on an Agreement on Accession of the European Union to the European Convention on Human Rights, opened in July 2010, were conducted smoothly and led to the elaboration of a Draft Accession Agreement at the end of June 2011; they were facilitated by a Joint Communication, issued in January 2011, by the Presidents of the European Court of Human Rights and the Court of Justice of the European Union;

6.4. welcomes the constructive spirit in which its representatives and those of the European Parliament reached agreement within a Joint Informal Body, in June 2011, on arrangements related to the participation of European Parliament representatives in the sittings of the Assembly and its relevant bodies when the latter exercise their functions related to the election of judges to the European Court of Human Rights; these will have to be approved by the Assembly and the European Parliament in due course;

6.5. welcomes the fact that representatives of civil society have been consulted throughout the informal accession negotiations and invites them to ensure public awareness and actively promote European Union accession to the European Convention on Human Rights in their dealings with national parliaments and governments, as well as with European Union institutions.

7. In order to complete the process, there is now a need for the active support of all European governments and parliaments, which will have to renew the political commitment they undertook when ratifying the Lisbon Treaty and/or Protocol No. 14 to the European Convention on Human Rights. Therefore, the Assembly urges the parliaments and governments of member states of the Council of Europe, as well as all European Union institutions, to:

7.1. take all measures within their areas of competence to enable rapid conclusion of the Agreement on the Accession of the European Union to the Convention, its endorsement and its entry into force, guided by the principle that such accession aims to increase human rights protection;

7.2. ensure that accession modalities be kept as simple as possible and that the Convention system be preserved as it stands with a minimum of adjustments necessary to take into account the specificities of the European Union as a non-state party with a particular legal and institutional system;

7.3. ensure that civil society will be consulted also in the context of negotiation of the relevant European Union internal rules;

7.4. raise awareness among people about the enhanced protection of their rights following European Union accession to the Convention and relevant procedures.

8. With a view to further pursuing the building of a common space for human rights protection at pan-European level and ensuring coherence of standards and also of monitoring of their implementation in areas falling within the remit of both organisations, thus avoiding duplication and monitoring fatigue, in particular at a time of economic crisis, the Assembly invites the European Union to:

8.1. accede to key Council of Europe conventions tackling major challenges of today's European society, such as: the Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126); the Convention on Action against Trafficking in Human Beings (CETS No. 197); the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201); the Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210); the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (ETS No. 108); the Convention on the Prevention of Terrorism (CETS No. 196); the Criminal Law Convention on Corruption (ETS No. 173); the Civil Law Convention on Corruption (ETS No. 174); the Convention on Cybercrime (ETS No. 185), as well as to the revised European Social Charter (ETS No. 163);

8.2. join Council of Europe monitoring mechanisms and bodies, irrespective of whether or not they are convention-based, such as the Group of States against Corruption (GRECO), the Group of Experts on Action against Trafficking in Human Beings (GRETA), the European Commission against Racism and Intolerance (ECRI), the European Commission for the Efficiency of Justice (CEPEJ) or the European Commission for Democracy through Law (Venice Commission) and, pending that, enhance its participation in their work;

8.3. co-ordinate action with the Council of Europe in the areas of migration and asylum and ensure appropriate follow-up to the high level conference on Roma issues organised by the Council of Europe in October 2010;

- 8.4. promote accession to key Council of Europe conventions and monitoring mechanisms and bodies among its member states and in the context of its enlargement and neighbourhood policies, as appropriate;
- 8.5. ensure systematic and open consultations with the relevant bodies of the Council of Europe, throughout the European Union legislative process, so as to allow for an adequate assessment of European Union activities against the human rights benchmarks set by the Council of Europe;
- 8.6. enhance consultations with the Council of Europe Commissioner for Human Rights, especially as regards the implementation of human rights standards by European Union member states.

9. Moreover, the Assembly:

- 9.1. calls for coherence of the normative activities within the two organisations, which should be ensured in particular through prior consultations at an early a stage as possible and at high political level, in addition to inter-secretariat information sharing at operational level;
- 9.2. urges the creation of appropriate synergies between Council of Europe monitoring mechanisms and any new evaluation mechanisms to be set up by the European Union;
- 9.3. welcomes the fact that, pending full European Union accession to GRECO and evaluation of European Union institutions by the latter, negotiations will soon start on an enhanced European Union participation in GRECO which should allow for synergies to be developed with the proposed European Union Anti-Corruption report; negotiations should soon start also on European Union accession to the Council of Europe data protection convention, and European Union accession to the cybercrime convention is also being considered;
- 9.4. supports the ongoing convention review within the Council of Europe, which should identify ways of facilitating European Union accession to key Council of Europe conventions, while ensuring that each convention system is preserved as it stands with only minor adjustments;
- 9.5. notes that arrangements agreed in the context of European Union accession to the European Convention on Human Rights regarding the participation of the European Union and its voting rights within the Council of Europe Committee of Ministers might serve as a precedent for future European Union accession to other Council of Europe conventions;
- 9.6. invites the Secretary General of the Council of Europe to present a list of concrete implications and advantages of European Union accession to relevant Council of Europe conventions or monitoring mechanisms, thus helping the European Union to form a long-term vision on synergies with the Council of Europe, building also on the position already taken in this respect by the European Parliament.

10. The Assembly further notes that the Lisbon Treaty has put emphasis on issues related to human rights, the rule of law and democracy in the Union's co-operation with neighbouring countries, thus allowing for enhanced co-operation with the Council of Europe also in this respect. Recent events throughout the Southern Mediterranean have created new opportunities for co-operation in the context of a revised European Union European Neighbourhood Policy and a new Council of Europe policy towards neighbouring regions, of which an important element is the Partnership for Democracy status created by the Assembly for parliaments in these regions. The Assembly therefore calls on the European Union to:

- 10.1. make better use of the Council of Europe's benchmarking and advisory role and expertise in the context of its enlargement and neighbourhood policies, in particular to the extent that these policies apply to countries which are either full Council of Europe member states, and thus benefit from the Organisation's monitoring procedures, or belong to its neighbourhood and have thus joined or may join open Council of Europe conventions or partial agreements, such as the Venice Commission and the European Centre for Global Interdependence and Solidarity (North-South Centre), and whose parliaments have been or may be granted Partnership for Democracy status with the Assembly;
- 10.2. further develop joint actions and joint programmes with the Council of Europe in the latter's member states or in countries in its neighbouring regions, with a view to supporting the reform agenda in these countries, including through a more stable financial partnership with the Council of Europe, which would allow for increased strategic co-operation and joint long-term planning.

11. As regards relations between the European Ombudsman and the Council of Europe Commissioner for Human Rights, the Assembly welcomes their ongoing informal co-operation, including for the purpose of co-ordinating activities among European Ombudspersons, and calls for this co-operation to be further developed on all matters related to individuals' rights.

12. For its part, the Assembly welcomes improved co-operation with the European Parliament following the entry into force of the Lisbon Treaty, under which the latter has become co-legislator, together with the European Union Council, in a number of key policy areas falling within the Council of Europe's remit. Building on the Agreement on the strengthening of co-operation between the Parliamentary Assembly of the Council of Europe and the European Parliament of 28 November 2007, the Assembly resolves to further enhance its relations with the European Parliament, in particular by:

12.1. reinforcing the practice of regular meetings between, on the one hand, the respective Presidents and, on the other hand, between its Presidential Committee and the Conference of Presidents of the European Parliament on an agenda-driven basis;

12.2. pursuing the work of their Joint Informal Body, created upon the initiative of the European Parliament to improve information sharing between the two bodies and which initially met within the context of European Union accession to the European Convention on Human Rights, with a view to discussing other topical issues of common interest, in a variable composition, as appropriate;

12.3. further pursuing exchanges of views, joint activities and information exchange between members of the Assembly and of the European Parliament at committee level, and establishing regular meetings of chairpersons of relevant committees from the two bodies;

12.4. considering ways to contribute to the effective strengthening of relations between the European Parliament and the national parliaments of European Union member states, as a body bringing together members of all these parliaments;

12.5. organising jointly with the European Parliament inter-parliamentary conferences on specific topics of common interest;

12.6. enhancing co-operation in joint electoral observation missions.

13. The Assembly calls on the governments and parliaments of Council of Europe member states, as well as the European Union, to promote the visibility of the reinforced partnership between the two Organisations, in the present post-Lisbon era and raise public awareness about the need to further consolidate such a partnership in the interest of all people in Europe. It particularly calls upon parliaments of European Union member states to do so through regular debates on issues related to the relations between the two organisations, including those between the Assembly and the European Parliament, as well as through parliamentary questions to governments.

14. The Assembly believes that the entry into force of the Lisbon Treaty, with all its legal and political consequences and the ensuing reshaping of the European architecture, gives fresh topicality to the perspective of European Union accession to the Council of Europe Statute and considers that the time is now ripe to give serious consideration to this perspective.

B. Draft recommendation ³

1. The Parliamentary Assembly, referring to its Resolution ... (2011) on the impact of the Lisbon Treaty on the Council of Europe, notes that the entry into force of the Lisbon Treaty has opened up new opportunities for a reinforced partnership between the Council of Europe and the European Union, based on their respective *acquis* and comparative advantages.
2. In the Assembly's view, such a partnership should aim to ensure coherence between, on the one hand, the pan-European project promoted by the Council of Europe and, on the other, the integration process initiated by the European Union, and ultimately lead to a common space for human rights protection across the continent in the interest of all people in Europe.
3. While welcoming the steps already taken in the right direction, the Assembly recommends that the Committee of Ministers:
 - 3.1. further consolidate the recently reinforced partnership between the two organisations, building on the 2007 Memorandum of Understanding, on the opportunities opened up by the Lisbon Treaty and on the perspectives opened up by the ongoing reform of the Council of Europe;
 - 3.2. ensure that regular policy co-ordination between the Council of Europe and the European Union is further developed at all levels, including through the Council of Europe Liaison Office in Brussels and the European Union delegation to the Council of Europe in Strasbourg;
 - 3.3. strengthen the role of the Council of Europe as "the benchmark for human rights, rule of law and democracy in Europe" and, in so doing, ensure that this role is fully reaffirmed and effectively recognised by all European Union institutions in the present post-Lisbon era.
4. For the purpose of pursuing the building of a common space for human rights protection at pan-European level and ensuring coherence of standards and of monitoring of their implementation throughout the continent, the Assembly asks the Committee of Ministers to:
 - 4.1. take all measures necessary to ensure the rapid conclusion of the Accession Agreement of the European Union to the European Convention of Human Rights (ETS No. 5), its endorsement and entry into force;
 - 4.2. promote and facilitate European Union accession to other key Council of Europe conventions, monitoring mechanisms and bodies, *inter alia* through the ongoing review of Council of Europe conventions, while preserving the essence of each convention system and without prejudicing the effective functioning of each mechanism and body;
 - 4.3. co-ordinate action with the European Union in the areas of migration and asylum and jointly ensure appropriate follow-up to the high-level conference on Roma issues organised by the Council of Europe in October 2010;
 - 4.4. promote coherence of normative activities within the two organisations, in particular through prior consultations at as early a stage as possible and at a high political level, in addition to inter-secretariat information sharing at operational level;
 - 4.5. develop appropriate synergies between Council of Europe monitoring mechanisms and bodies and any new evaluation mechanisms to be set up by the European Union.
5. The Assembly further notes that the Lisbon Treaty, as well as recent events throughout the Southern Mediterranean, have created new opportunities for co-operation between the two organisations in the context of a revised European Union European Neighbourhood Policy and a new Council of Europe policy towards neighbouring regions proposing a demand-driven co-operation with the countries concerned, of which an important element is the Partnership for Democracy status created by the Assembly for parliaments in these regions.
6. Building, *inter alia*, on these opportunities, the Assembly asks the Committee of Ministers to enhance the Council of Europe's expertise and benchmarking and advisory role in the context of the European Union neighbourhood policy, in particular to the extent that this policy applies to countries which are either full Council of Europe member states or belong to its neighbourhood.

3. Draft recommendation adopted unanimously by the committee on 6 September 2011.

7. Welcoming recent positive examples, the Assembly recommends that the Committee of Ministers further develop joint actions and joint programmes with the European Union and seek, in this context, a broader and more stable financial partnership with the European Union which would allow for increased strategic co-operation and joint long-term planning.
8. The Assembly asks the Committee of Ministers to promote a better understanding and visibility of the reinforced partnership between the Council of Europe and the European Union in the present post-Lisbon era and raise public awareness about the need to further consolidate such a partnership in the interest of all people in Europe.
9. The Assembly believes that the entry into force of the Lisbon Treaty and the ongoing reshaping of the European architecture give fresh topicality to the perspective of European Union accession to the Council of Europe Statute, already recommended in 2006 by the Juncker report on “Council of Europe – European Union: ‘A sole ambition for the European continent’”, and thus invites the Committee of Ministers to give further consideration to this question.

C. Explanatory memorandum by Ms Lundgren, rapporteur

1. Introduction and scope of the report

1. In my capacity as rapporteur of the Political Affairs Committee on the impact of the Lisbon Treaty on the Council of Europe, I initially visited Brussels on 9-10 June 2010 and presented to the committee a few days later an information note on this visit which was made public by decision of the committee.⁴ The visit enabled me to meet representatives of all institutions of the European Union based in Brussels, namely the Commission, the Council and the European Parliament. It was efficiently organised by the Liaison Office of the Council of Europe with the European Union (Brussels Office) and I particularly thank Ambassador Frøysnes, Director of the Office and Special Representative of the Secretary General of the Council of Europe, as well as Mr Humbert de Biolley, Deputy Director, who also accompanied me to the various meetings.

2. Since June 2010, I have held a number of additional high-level meetings with representatives of EU institutions in Strasbourg, Brussels and Luxembourg, but also with representatives of the Council of Europe, to discuss aspects of my report. I have been regularly reporting orally to the committee on my contacts and important developments linked to the preparation of my report. On 23 June 2011, I presented to the Committee an introductory memorandum offering a preliminary written account of main developments as well as some concluding remarks. A week later, on 30 June 2011, I held a meeting with the Executive Secretary General of the new European External Action Service (EEAS), Mr Vimont, which was organised very efficiently by the Head of the EU Delegation to the Council of Europe, Ambassador Pavan-Woolfe.

3. According to the terms of the motion for a resolution for which I was appointed rapporteur, the report covers several aspects with regard to the relations between the European Union and the Council of Europe in the post-Lisbon era, such as the impact of the Lisbon treaty on:

- the democratic functioning of the decision-making process of the reformed European Union and, in particular, the impact of the treaty on:
- the role and powers of the European Parliament;
- the role of national parliaments in the EU decision-making process;
- the role and powers of EU citizens (European Citizens' Initiative as the first tool of direct and transnational democracy in Europe);
- the participation of the European Union in Council of Europe work, in particular in the areas of standard-setting and monitoring, including:
- EU accession to Council of Europe instruments, the most important one (but not the only one) being the European Convention of Human Rights (ETS No. 5, "the Convention");
- the implementation of the Stockholm Programme⁵ of the European Union and the Council of Europe's contribution in this context, in particular through its monitoring bodies and mechanisms;
- the interaction between the European Union and its member states in the negotiation of Council of Europe conventions and participation in Council of Europe steering committees;
- the representation of the European Union in the Council of Europe's statutory organs and bodies;
- the overall co-operation between the Council of Europe and the European Union.

4. Although EU accession to the European Convention on Human Rights is only one of the matters with which I deal in my report, it was by far the main issue of my discussions with all members of the European Parliament and other EU and Council of Europe representatives I met. In particular, I have discussed thoroughly the issue of EU accession to the Convention, on the EU side, with the President of the Court of Justice of the European Union, Mr Vassilios Skouris; prominent members of the European Parliament, and in particular members of its Foreign Affairs Committee, such as Ms Heidi Hautala (then Chair of the Subcommittee on Human Rights), Mr Helmar Brock and Mr Roberto Gualtieri; the Legal Adviser to Viviane Reding (Vice-President of the European Commission and the EU Commissioner for Justice, Fundamental Rights and Citizenship), Mr Michael Shotter; the European Ombudsman, Mr Nikiforos Diamandouros; the

4. See document AS/Pol (2010) 27 rev.

5. The "Stockholm Programme", adopted on 11 December 2009, presents priority actions of the European Union in the fields of justice and home affairs for the period 2010-2014.

Chair of the Informal Working Group on the Accession of the European Union to the European Convention of Human Rights (CDDH-UE), Ms Tonje Meinich, as well as representatives of civil society, including Amnesty International, the Advice on Individual Rights in Europe Centre (AIRE) and the International Commission of Jurists. I have also discussed the issue of EU accession to the Convention with the President of the European Court of Human Rights, Mr Jean Paul Costa, the President of our Assembly, Mr Mevlüt Cavuşoğlu, the outgoing Chairman of the Ministers' Deputies, Ambassador of Turkey, Mr Daryal Batibay, as well as the Secretary General of the Organisation, Mr Thorbjørn Jagland, and the Commissioner for Human Rights, Mr Thomas Hammarberg.

5. The second most discussed subject during my meetings with European Union and Council of Europe officials was the need to ensure a common space for human rights protection in Europe, beyond EU accession to the Convention, and more generally a stronger Council of Europe-European Union partnership, in which the Council of Europe plays fully its role of benchmark for human rights, rule of law and democracy in Europe. In particular, I raised the issue of EU accession to other key Council of Europe conventions, as well as the need to strengthen synergies in the monitoring of implementation of standards, especially in the context of the implementation of the Stockholm Programme of the European Union. I have also raised the need for the European Union to promote, in its external relations, key Council of Europe instruments (such as the conventions on data protection and on cybercrime) towards non-EU member states and beyond the European borders, as this would contribute to the construction of a coherent and solid European model on the continent and on the global scene.

6. In particular, I discussed at length the latter issues during my meeting with EU Commissioner for Home Affairs, Ms Cecilia Malmström, partly responsible (together with Ms Reding) for the implementation of the Stockholm Programme, including in the areas of the fight against corruption, migration and asylum, as well as with the Executive Secretary General of the European External Action Service (EEAS), Mr Pierre Vimont.

7. As the Lisbon Treaty has put emphasis on issues related to human rights, the rule of law and democracy in the Union's co-operation with neighbouring countries, and prompted also by recent events throughout the Southern Mediterranean, I also discussed, with interlocutors from the European Parliament, as well as with Mr Vimont, the new opportunities opened up for the Council of Europe to enhance its partnership with the European Union with respect to the countries participating in the EU enlargement and neighbourhood policies, in particular ⁶ as regards the Southern Mediterranean. ⁷

8. In the context of the preparation of my report, the committee held two hearings, one on 18 November 2010 with Ms Heidi Hautala, then Chair of the Subcommittee on Human Rights of the Foreign Affairs Committee of the European Parliament, and one on 23 June 2011, organised jointly with the Committee on Legal Affairs and Human Rights and the Committee on Migration, Refugees and Population, with the participation of the Chair of the Informal Working Group on the Accession of the European Union to the European Convention of Human Rights (CDDH-UE), Ms Tonje Meinich, and the Director of the EU Fundamental Rights Agency, Mr Morten Kjaerum.

9. Last but not least, in my capacity as rapporteur on the impact of the Lisbon Treaty on the Council of Europe, I was appointed member of the Parliamentary Assembly/European Parliament (PACE/EP) Joint Informal Body, established early 2011 upon the initiative of the European Parliament "in order to co-ordinate information sharing", which initially met in the context of the EU accession to the Convention, and had the chance to participate in the two meetings it held on 14 March and 15 June 2011, in Brussels and in Paris respectively.

6. As regards the Eastern Partnership, I refer here to the report being prepared by my colleague Mr Dariusz Lipiński (Poland, EPP/CD) on the Council of Europe and the Eastern Partnership of the European Union. In his draft memorandum dated 23 April 2010 (document AS/Pol (2010) 17), the rapporteur stresses the need for co-ordination between new initiatives and existing co-operation and raises a number of concerns with respect to the establishment of a Euro-NEST Assembly.

7. See also the report prepared for the attention of the Prime Minister of France, upon his request, by Senator Denis Badré, "Pour une France mieux impliquée au Conseil de l'Europe", March 2011, available only in French.

2. Main changes introduced by the Lisbon Treaty

2.1. In general

10. Following ratification by the Czech Republic (the last EU member state to do so) on 3 November 2009, the Lisbon Treaty entered into force on 1 December 2009. The Treaty abolishes the former three-pillar structure set up by the Maastricht Treaty, by merging the Community pillar with the two intergovernmental pillars into a single European Union. It should, however, be noted that, despite the fact that the Lisbon Treaty merges the three former pillars into a single legal framework, the distribution of competences in the different policy areas is divided into the categories of exclusive (mostly in fields not of direct relevance to the Council of Europe), shared (for example in the field of social policy and in the area of freedom, security and justice) and supporting (for example in the field of culture, education, youth and sport) competences. The Lisbon Treaty has clearly enhanced the European Union's role in the traditional areas of activity of the Council of Europe, namely freedom, security and justice.

11. The general aim of the Lisbon Treaty is to provide the European Union with modern institutions and optimised working methods so as to enhance the efficiency and the democratic legitimacy and accountability of the Union, as well as to improve the coherence of its action. The Treaty puts the values on which the European Union is based and which are commonly shared with the Council of Europe, namely respect for human rights, democracy and the rule of law, to the forefront of EU policies. It also aims to bring Europe closer to its people and create an open and secure space for all. The main changes which the Lisbon Treaty brought about to fulfil these objectives include:

- the granting of legal personality to the European Union;
- the creation of two new key posts of President of the European Council and High Representative for Foreign Affairs and Security Policy;
- the creation of a European External Action Service (EEAS);
- the creation of an EU Public Prosecutor;
- greater use of qualified majority voting in the Council of Ministers and an 18-month rotating presidency of the Council of Ministers shared by a troika of member states;
- the extension of the mandate of the European Ombudsman;
- an increase in the legislative powers of the European Parliament;
- a greater role for national parliaments in the legislative processes;
- the introduction of the European Citizens' Initiative giving the right to one million European citizens to propose legislation⁸;
- an obligation for the European Union to accede to the Convention;
- the possibility for the European Union to accede to other international human rights legal instruments, such as the United Nations Convention on Persons with Disabilities which the European Union already joined in 2010;
- a legally binding force for the European Union's own bill of rights, namely the Charter of Fundamental Rights;
- the introduction of an emergency procedure at the Court of Justice of the European Union, which will allow the Court to act with a minimum delay when a case involves an individual in custody;
- the provision for mutual solidarity if a member state is the object of a terrorist attack or man-made disasters;
- new possibilities to deal with cross-border effects of energy policy, civil protection and combating serious cross-border threats to health;
- common action on dealing with criminal gangs who smuggle people across frontiers;
- common rules to avoid "asylum shopping" where multiple applications are made to different member countries;

8. See in this respect the report by Mr Andreas Gross on democracy in Europe: crisis and perspectives, [Doc. 12279](#).

- tackling terrorism through the freezing of assets, while full judicial review is guaranteed by the European Union Court of Justice.

12. As an amending treaty, the Lisbon Treaty is not intended to replace the existing treaties. It consists of a number of amendments to the Treaty on the European Union (TEU) and the Treaty establishing the European Community, the latter being renamed Treaty on the Functioning of the European Union (TFEU).

13. The Belgian Prime Minister, Mr van Rompuy, was appointed, on 19 November 2009, as President by the European Council for two and a half years. The mandate is renewable once. His role is to promote cohesion and consensus within the European Council that he is presiding. He has also the power to call a European Council meeting if international events require it.

14. The current High Representative for Foreign Affairs and Security Policy, Baroness Ashton, was also appointed on 19 November 2009 by the European Council. She is also Vice-President of the Commission and therefore her appointment has been approved by the Commission's President and the European Parliament. She also chairs the Foreign Affairs Council. The creation of this post is, in fact, the result of the merger of the functions of the Commissioner for External Relations and the European Neighbourhood Policy and the High Representative for the Common Foreign and Security Policy. The High Representative is assisted by the EEAS, a functionally autonomous body of the European Union, separate from the Commission and the General Secretariat of the Council. The EEAS, which has been composed of officials from the Commission, the General Secretariat of the Council and diplomats of EU member states, is intended to help build a common diplomatic culture and ensure the consistency of the EU's external action.

15. Critics argue that the new system is too heavy and, instead of making the European Union more efficient, has created unnecessarily complicated procedures and made relations between the various EU institutions more difficult. Mr Vimont, referring to these critics, told me that, following difficult negotiations with the European Commission and the European Parliament, the EEAS had only become fully operational as of January 2011. It is thus too early to assess its impact and efficiency. Time is also needed to achieve the necessary balances between the various EU institutions, whether new or old.

16. That said, as Mr Vimont also underlined, the fact is that, with the Lisbon Treaty, the European Union, having acquired legal personality, has also acquired a new status and voice within international and regional organisations, including in the United Nations. Former European Commission delegations (some 130 all over the world) have become EU delegations under the authority of High Representative Catherine Ashton. Recently, the European Union made a very important step in terms of its participation at the United Nations General Assembly, with the adoption, on 3 May 2011, of a resolution which allows the European Union to speak early on in the General Assembly among major groups and to be invited to the General Debate of the General Assembly. The new system has also the advantage that the European Union is more frequently represented by the same political representatives – the President of the European Council, the President of the Commission, the High Representative for Foreign Affairs and Security Policy, and not by rotating member state presidencies – a fact that has facilitated relations with third countries and major partners such as the United States, China or Brazil.

17. As regards international agreements, in the context of the Common Foreign and Security Policy (CFSP), it is the role of the EU Council to: decide upon the opening of negotiations on the basis of a recommendation of either the High Representative, if the agreement concerns exclusively or principally the CFSP, or the Commission in the other cases; designate the negotiator (no longer the presidency); set up the negotiating guidelines; authorise the signature and adopt the decision to conclude the agreement. Throughout the procedure, the Council shall act by qualified majority. However, it shall act unanimously for agreements covering a field for which unanimity is required, for association agreements, for agreements concerning economic, financial and technical co-operation with the states which are candidates for accession and for the accession of the European Union to the European Convention on Human Rights.

18. Except where agreements relate exclusively to CFSP, the consent of the European Parliament will be necessary (introduced by the Lisbon Treaty). This will notably be the case for the agreement on accession to the Convention. In other cases, consultation of the Parliament is sufficient. If the agreement contains CFSP and non-CFSP elements, it will be treated according to the procedure linked to the principal object of the agreement.

19. A member state, the European Parliament, the Council or the Commission can ask the Court of Justice of the European Union for an opinion on the compatibility of the agreement with the existing treaties.

2.2. Institutional aspects of Council of Europe–European Union relations

20. As with all international organisations, relations with the Council of Europe are now under the overall authority of High Representative Catherine Ashton. Ambassador Pavan-Woolfe (former European Commission representative) has become Head of the EU Delegation to the Council of Europe. High Representative Ashton opened the EU Delegation to the Council of Europe on 19 January 2011. On that occasion, she stressed the need for the two organisations to “continue to back one-another up, to improve shared values. As Europe is changing, our co-operation is changing. Our goal is more democracy, peace, and prosperity”, she said.

21. As the Lisbon Treaty has extended EU competences in the traditional fields of activities of the Council of Europe, such as freedom, justice and security, it has also enhanced the role the European Union plays within the Organisation.

22. The participation of the European Commission in the meetings of the Council of Europe Committee of Ministers and of its rapporteur groups, without the right to vote, has been authorised by decision of the Committee of Ministers since December 1996. This participation has, however, been much more active since Ambassador Pavan-Woolfe took up her functions. With the entry into force of the Lisbon Treaty, it is now she who takes the floor on behalf of the European Union in the Committee of Ministers’ meetings in her capacity of Head of the EU Delegation to the Council of Europe and no longer – as was the case in the past – the country representing the Presidency of the European Union.

23. As regards the EU presence in Council of Europe steering committees, the European Commission was participating in all of them already before the Lisbon Treaty, by virtue of decisions taken by the Committee of Ministers,⁹ with equal status as that enjoyed by Council of Europe observer states, that is with the right to speak but without the right to vote. What has changed with the Lisbon Treaty concerns mainly the scope of such participation. More specifically, the exact role played by the European Union in a steering committee depends on whether the matter discussed falls within EU exclusive, shared or supporting competencies. In the former case, it is the European Union that speaks on behalf of its member states. Equally, when a new Council of Europe convention is being elaborated within a steering committee, if the subject matter of the new convention falls within EU exclusive competence, it is the latter that will negotiate the new convention within the Council of Europe on behalf of the EU member states, if a negotiating mandate has been sought, and obtained, from the EU Council. To quote a recent example, a convention on neighbouring rights of broadcasting corporations is currently being elaborated within the Council of Europe. As the subject matter falls within EU exclusive competence, the European Commission has asked from the EU Council such a negotiating mandate. Equally, the European Commission intends to ask shortly for a negotiating mandate to represent the EU member states in the negotiations on the revision of the Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (ETS No. 108) as the matters covered by this convention fall almost entirely within exclusive EU competence.

24. As of the entry into force of the Lisbon Treaty and by virtue of its first article, the European Union has succeeded the European Community as a contracting party to international agreements, treaties or conventions, including 11 Council of Europe treaties.

25. For the rest, the Lisbon Treaty should not affect the overall goal of the 2007 Memorandum of Understanding, currently guiding and structuring relations between the two organisations and confirming the Council of Europe’s role as “the benchmark for human rights, rule of law and democracy in Europe”¹⁰. The modalities of co-operation may, however, be adapted, as deemed necessary. The EU officials that I met in Brussels as well as Council of Europe representatives told me that they consider that the 2007 Memorandum of Understanding offers a valuable basis for co-operation between the two organisations and that they were very satisfied with how it works in practice. Its revision was therefore not on the agenda, at least for the moment. It is recalled, in this respect, that the Memorandum of Understanding foresees that both organisations “will regularly evaluate the implementation of the Memorandum of Understanding. In the light of this evaluation, it will be decided by common agreement, not later than 2013, to revise, if necessary, the Memorandum of Understanding with a view to including new priorities for their co-operation”.

9. See the Committee of Ministers Resolution CM/Res(2005)47. Following accession of the European Union to the Convention, the European Union will have the right to vote within the Steering Committee of Human Rights (CDDH) when it comes to the negotiation of future protocols to the Convention, as a High Contracting Party to the latter.

10. For more details, see the report of the 120th Ministerial Session (11 May 2010) on Co-operation between the Council of Europe and the European Union, document CM(2010)52final.

2.3. Increased democratic accountability

26. The entry into force of the Lisbon Treaty has significantly increased the legislative, budgetary and appointment powers of the European Parliament.

27. A considerable number of new fields have been brought within the "ordinary legislative procedure" (the former "co-decision" procedure), under which the European Parliament has become co-legislator, together with the EU Council. They include a number of key policy areas, which fall within the Council of Europe's remit, such as freedom, security, justice.

28. As mentioned above, except where agreements relate exclusively to the Common Foreign and Security Policy, the consent of the European Parliament on international agreements to be concluded by the European Union, including on accession to the Convention, is necessary. In the CFSP context, the European Parliament has the right to be informed and to be consulted by the High Representative, but it has no role in the decision-making process. It can formulate recommendations and hold a debate twice yearly on progress achieved in the CFSP and the Common Security and Defence Policy (CSDP).

29. According to the Declaration on Political Accountability, made by the High Representative when seeking the European Parliament's approval on the proposal for a Council decision establishing the organisation and functioning of the EEAS in July 2010,¹¹ in her relationship with the European Parliament, the High Representative "will build on the consultation, information and reporting engagements undertaken during the last legislature by the former Commissioner for external relations, the former High Representative for the Common Foreign and Security Policy, as well as by the rotating Council Presidency." In particular, on CFSP, the High Representative "will seek the views of the European Parliament on the main aspects and basic choices of this policy in conformity with Article 36 TEU".

30. In budgetary terms, the Lisbon Treaty has given the Parliament full parity with the EU Council in approving all expenditures related to the annual budget.

31. As regards appointment powers, in accordance with the Lisbon Treaty, the Parliament elects the Commission's President on the basis of a candidate proposed by the European Council taking into consideration the outcome of the European Parliament elections.

32. In my discussions with MEPs, in particular Mr Brock and Mr Gualtieri, they expressed their satisfaction about the increase of European Parliament's powers by the Lisbon Treaty and about the way the relevant provisions have so far been implemented in practice, as well as about their strengthened position vis-à-vis the newly created post of the High Representative in the light also of the above-mentioned Declaration on Political Accountability, which they considered a considerable success. As regards the relations of the post-Lisbon European Parliament with our Assembly, I will deal with this matter and proposals for the future in a subsequent chapter when dealing in general with the reinforced partnership between the post-Lisbon European Union and the Council of Europe.

33. Protocol No. 1 to the Lisbon Treaty on the role of national parliaments of member states in the European Union aims to encourage greater involvement of national parliaments in the activities of the European Union and to enhance their ability to express their views on draft legislative acts of the Union as well as on other matters which may be of particular interest to them. For this purpose, draft legislative acts sent to the European Parliament and the Council are also forwarded to national parliaments. National parliaments may send to the Presidents of the European Parliament, the Council and the Commission, a reasoned opinion on whether a draft legislative act complies with the principle of subsidiarity, in accordance with the procedure laid down in the Protocol on the application of the principles of subsidiarity and proportionality. With the exception of urgent cases (for which due reasons are stated in the act or position of the Council), no agreement may be reached on a draft legislative act for eight weeks as of the date when this draft is made available to national parliaments in the official languages of the Union.

34. Protocol No. 1 to the Lisbon Treaty also provides that the European Parliament and national parliaments shall together determine the organisation and promotion of effective and regular inter-parliamentary co-operation within the Union. A conference of Parliamentary Committees for Union Affairs may submit any contribution it deems appropriate for the attention of the European Parliament, the Council and the Commission. That conference shall, in addition, promote the exchange of information and best practices between national parliaments and the European Parliament, including their special committees. It may also

11. See the Annex to the European Parliament legislative resolution of 8 July 2010.

organise inter-parliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy, including common security and defence policy. Contributions from the conference shall not bind national parliaments and shall not prejudice their positions.

35. In its legislative resolution of 8 July 2010 on the proposal for a Council decision establishing the organisation and functioning of the EEAS, the European Parliament expressed its determination to reinforce its co-operation with national parliaments of member states as required by the Treaty.

36. During discussions with MEPs, they did not seem to be fully satisfied with the way that the relevant provisions of the Treaty concerning the role of national parliaments and their relations with the European Parliament are being implemented in practice. I believe that our Assembly, as a body bringing together members of national parliaments of all EU member states, should consider ways of facilitating the implementation of the above-mentioned provisions, for instance during a future European Conference of Presidents of Parliament. The Assembly could also organise, jointly with the European Parliament, inter-parliamentary conferences on issues of common interest.

2.4. Increased commitment to fundamental rights

37. The entry into force of the Lisbon Treaty, as of the end of 2009, not only paved the way for EU accession to the Convention, but also offered the European Union a legally binding bill of rights of its own, namely the Charter of Fundamental Rights of the European Union. The Treaty of Lisbon thus forms the new “legal backbone of the EU”¹² which should over time provide for increased access to justice and greater democratic participation of the EU citizens.

38. Under Article 6 of the TEU, the Charter of Fundamental Rights of the European Union is granted the same legal value as the EU Treaties. It should be noted that this same article stipulates that the Charter may “not extend in any way the competences of the Union as defined in the Treaties”.¹³ The provisions of the Charter are addressed to the institutions and bodies of the Union and the member states only when they are implementing Union law.¹⁴

39. Accordingly, the Luxembourg Court can rule on the compatibility of the laws of a member state or the acts of an EU institution with the Charter with respect to the implementation of EU law. The legally binding nature of the Charter implies judicial oversight of EU institutions’ and members states’ compliance with the Charter when acting in the field of EU law, as well as increased monitoring within the European Union of respect for fundamental rights throughout the Union’s legislative and decision-making work.

40. I discussed the extended jurisdiction of the EU Court of Justice when I met its President, Mr Vassilios Skouris, who referred to the fact that, after the entry into force of the Lisbon Treaty, which extended the competence of the European Union in the area of justice and home affairs, the Court had started dealing with civil and criminal cases, including terrorist cases. However, he recalled that the Court had no jurisdiction over issues of foreign and security policy and this should not be modified by a future EU accession to the Convention.

41. Since the date the Lisbon Treaty conferred on the Charter of Fundamental Rights the status of primary law (1 December 2009), it has been cited in some 30 judgments of the Luxembourg Court. Therefore, as the Presidents of the two Courts, President Costa of the Strasbourg Court and President Skouris of the Luxembourg Court, underlined in their Joint Communication after their meeting on 17 January 2011, it is important to ensure that there is the greatest coherence between the Convention and the Charter insofar as the Charter contains rights which correspond to those guaranteed by the Convention. As the Charter provides that, in that case, the meaning and scope of the rights under the Convention are to be the same, a “parallel interpretation” of the two instruments could prove indispensable.

42. As of the entry into force of the Lisbon Treaty, all EU institutions underlined and refreshed their commitment to fundamental rights in their respective areas of competence.

12. See the summary of the annual report of the EU Agency for Fundamental Rights “Fundamental rights: challenges and achievements in 2010”, published on 15 June 2011 in: www.fra.europa.eu/fraWebsite/attachments/annual-report-2011-summary_EN.pdf.

13. See the document explaining the Charter: www.europarl.europa.eu/charter/pdf/04473_en.pdf.

14. A Protocol was agreed in relation to the Czech Republic, Poland and the United Kingdom which restates this limitation in express terms.

43. In its Resolution of 15 December 2010 on the situation and effective implementation of fundamental rights in the European Union (2009) – effective implementation after the entry into force of the Treaty of Lisbon, the European Parliament emphasised the need to take the Charter into account in decision-making processes as well as in the implementation of legislation.

44. The European Commission, for its part, concluded in its Communication on the strategy of fundamental rights implementation in the autumn of 2010 that “all the components of an ambitious fundamental rights policy are therefore present”.¹⁵ The Commission also stated that the Union’s work in the area of fundamental rights extends beyond its internal policies and that the Charter applies also to its external action. Representatives of civil society whom I met both in Strasbourg and in Brussels insisted on the need that, after joining the Convention, and in order to ensure coherence with both the Charter and the Convention, the European Union should look into ways to ensure it is accountable for human rights in its external action.¹⁶

45. Moreover, since December 2009, the European Union Council has a new permanent Working Party on Fundamental Rights, Citizens’ Rights and Free Movement of Persons (FREMP). The role of this new group is to deal with matters relating to fundamental rights and citizens’ rights including negotiations on accession of the European Union to the Convention, follow-up of reports from the Fundamental Rights Agency and free movement of persons.

46. The Lisbon Treaty has also enhanced the role of the European Ombudsman. It has, in particular, extended his mandate to cover all EU institutions and bodies, including the Court of Justice in its non-judicial functions, as well as complaints about maladministration in the areas of foreign and security policy. Thus, the European Ombudsman can, for instance, receive complaints from a member of European Union military troops operating upon a decision of the Council. Moreover, Article 41 of the Charter of Fundamental Rights includes a legally binding right to good administration requiring that the EU citizens’ affairs be dealt with “fairly”. The European Ombudsman, Mr Diamandouros, told me that, even before the Charter became legally binding, he had always taken into account its provisions as well as those of the Convention and the relevant case law in his own decisions, including when specifying rules and principles to define what “good administration” or “maladministration” means.

47. With respect to relations between the European Ombudsman and the Council of Europe Commissioner for Human Rights, both Mr Diamandouros and Mr Hammarberg told me that they were very satisfied with their co-operation, including in the context of co-ordinating European Ombudspersons, as the former is co-ordinator for EU member states Ombudspersons and the latter co-ordinator for Council of Europe, non-EU, member states ombudspersons. They had developed excellent, although informal, working relations. For instance, they had successfully carried out a joint project supporting Ombudspersons institutions in the Balkans. They both seemed to want to see their co-operation further developed, in particular on all matters related to individuals’ rights.

48. As regards the Fundamental Rights Agency and its relations with the Council of Europe, the hearing organised by our committee, jointly with the Committee on Legal Affairs and Human Rights and the Committee on Migration, Refugees and Population, in June 2011, with the participation of its Director, Mr Kjaerum, revealed that the Lisbon Treaty had not really affected the work of the Agency or its relations with the Council of Europe. I therefore prefer to refer in this respect to the relevant work carried out by the Committee on Legal Affairs and Human Rights, which regularly follows the issue of relations between the Council of Europe and the Fundamental Rights Agency and, in particular, last year’s report by Mr Boriss Cilevics which covers all relevant aspects.¹⁷

2.5. Increased citizens’ participation in the European Union

49. With the European Citizens’ Initiative, the Lisbon Treaty introduced a new form of public participation in the European Union.¹⁸ Article 11(4) of the Treaty on the European Union (TEU) provides that “not less than one million citizens who are nationals of a significant number of member states may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on

15. See COM(2010)573 final.

16. See in this respect also paragraph 40 above.

17. See [Resolution 1756 \(2010\)](#), [Recommendation 1935 \(2010\)](#), report in [Doc. 12272](#) and Reply of the Committee of Ministers in [Doc. 12535](#). See also the speech Mr Kjaerum delivered at the joint hearing in the Appendix to the minutes of the meeting of the committee during the June 2011 part-session, document AS/Pol (2011) PV 05.

18. See in this respect the report by Mr Andreas Gross on Democracy in Europe: crisis and perspectives, [Doc. 12279](#).

matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties". The Citizens' Initiative should help make EU citizens more aware of the important issues of European integration.

50. The details for operating this new direct and transnational democracy instrument are outlined in a regulation of the European Parliament, to which the EU Council agreed at the end of 2010. The regulation was officially adopted on 14 February 2011. It stipulates that the required one million signatures should come from at least one quarter of all member states (that is seven member states).

51. With the regulation in place, EU member states need to organise structures and procedures at national level to facilitate the gathering of one million signatures needed to launch the Citizens' Initiative.

52. The European Ombudsman, Mr Diamandouros, told me that he intervened in the process of elaboration of the relevant regulation to ensure that complaints regarding the process surrounding the initiative (for instance the collection of signatures) can be lodged with the EU Court of Justice and his own office. He expressed the hope that the national structures and procedures to be set up will be as flexible as possible. Only when the first initiative is actually launched, will the efficiency and flexibility of the new system be actually tested. For the European Ombudsman, it is, for instance, important that, even if a citizens' initiative does not fall "within the powers of the Commission" and is thus inadmissible, the Commission replies with "citizen-friendly" letters, and not formalistic ones, so as to encourage the dialogue with citizens, which is one of the main objectives of the Lisbon Treaty.

3. Towards a common space for human rights protection across Europe

3.1. European Union accession to the European Convention of Human Rights

3.1.1. A long-standing objective for increased protection of individuals

53. It is worth noting that the almost simultaneous entry into force of the Lisbon Treaty and of Protocol No. 14 to the European Convention on Human Rights, which paved the way for EU accession to the Convention, marked a new and important stage in the building of the Europe of Human Rights.

54. Accession of the European Union to the Convention has been discussed for well over thirty years and our Assembly has adopted numerous resolutions and recommendations calling for this accession, the most recent ones being [Resolution 1610 \(2008\)](#) and [Recommendation 1834 \(2008\)](#).

55. On the EU side, the Resolution adopted by the European Parliament, on 19 May 2010, on the institutional aspects of the accession of the European Union to the Convention¹⁹, expressed strong support for rapid EU accession to the Convention and the overall human rights protection system of the Council of Europe (see also below). The European Parliament's resolution is a comprehensive report, in which all the main issues are thoroughly analysed.²⁰ As accession to the Convention affects not only the EU institutions, but also the Union's citizens, the European Parliament also insisted that it should be consulted and involved throughout the negotiation process, and associated and immediately be fully informed at all stages of the negotiations, in accordance with the Lisbon Treaty. It also suggested that, in order to raise awareness of the added value of the accession to citizens, the Council of Europe and the European Union should develop guidelines with clear explanations of all the implications and effects of accession. Finally, it stressed that it is important to have an informal body in order to co-ordinate information sharing between the European Parliament and the Parliamentary Assembly of the Council of Europe.

19. The main report was prepared by the Committee on Constitutional Affairs (rapporteur: Mr Ramón Jáuregui Atondo, S&D, Spain) and opinions were submitted by the Foreign Affairs Committee (rapporteur: Mr Cristian Dan Preda, EPP, Romania) and the Committee on Civil Liberties, Justice and Home Affairs (rapporteur: Ms Kinga Gál, EPP, Hungary).

20. The Council of Europe was involved in hearings and events in the preparation of this report. It was invited to a first meeting of the European Parliament Subcommittee on Human Rights, on 22 February 2010, in which Ambassador Frøysnes participated. On 2 March 2010, the Secretary General had a working lunch with MEPs directly involved in the accession by the European Union to the European Convention on Human Rights, including rapporteur Jáuregui Atondo, the Chair of the LIBE Committee and former Spanish Minister of Justice, Mr López Aguilar, and the rapporteurs on the opinions from the two Committees consulted. On 18 March 2010, the European Parliament Constitutional Affairs Committee organised a hearing on the accession with several experts, an Assembly representative (Mr Serhiy Holovaty), a judge from the Strasbourg Court (Judge Tulkens) and a judge from the Luxembourg Court (Judge Timmermans).

56. In our talks in Brussels, in June 2010, the members of the European Parliament that I met, including Mr Jáuregui Atondo, rapporteur, and Mr López Aguilar, Chairperson of the Committee of Civil Liberties, Justice and Home Affairs, who presented an opinion to the report and organised several hearings on the matter, as well as Ms Heidi Hautala, then Chairperson of the Subcommittee on Human Rights of the Foreign Affairs Committee, told me that the report was warmly received by a large majority of MEPs, who generally supported EU accession to the Convention as well as by the Commissioner for Justice, Freedom and Security, Ms Reding, who stressed the historical importance of the process of EU accession to the Convention and of this debate.²¹ During the debate, some MEPs underlined that a number of issues had to be further analysed, such as the relations between the two European courts. Only a few MEPs questioned the added value of accession.

57. On 11 May 2011, the European Parliament adopted a new resolution on “the EU as a global actor: its role in multilateral organisations”, in which it referred, *inter alia*, to EU relations with the Council of Europe and reiterated its support for EU accession to the Convention as well as to Council of Europe mechanisms and bodies, namely the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the European Commission against Racism and Intolerance (ECRI) and the European Commission for the Efficiency of Justice (CEPEJ).²²

58. In summarising today the arguments in favour of EU accession to the European Convention on Human Rights, let me underline that EU accession to the Convention offers a unique opportunity to achieve a coherent system of human rights’ protection across Europe, in which 47 governments and the institutions of the European Union will be bound by the same set of human rights standards and scrutinised by the same human rights court.²³ In fact, while the European Union is founded on the respect for fundamental rights – the observance of which is ensured by the Court of Justice of the European Union, as well as by the domestic courts of the EU member states – accession of the European Union to the Convention will enhance the coherence of the judicial protection of human rights in Europe. It will thus afford citizens protection against the action of the Union similar to the one they already enjoy against action by all its member states. This is all the more relevant at present since, following the entry into force of the Lisbon Treaty, the EU member states have transferred substantial powers to the Union. It is also crucial in cases where the protection granted by the European Union is inferior to that provided by the Convention.

59. Accession will also allow for external control over the EU’s legal order and, consequently, enhance the credibility of the EU’s commitment – internally and externally – to fundamental rights. In a situation in which the European Union Charter of Fundamental Rights becomes an internal “Bill of Rights” which sets limitations on the EU institutions’ powers, the Convention mechanism will offer an external control and check on EU activities. Accession will further contribute to the harmonious development of the case law of the two European courts, the European Court of Justice in Luxembourg and the European Court of Human Rights in Strasbourg, particularly because of the increased need for dialogue and co-operation, and thus will create an integral system in which the two courts will function in harmony.²⁴

60. While all these arguments in favour of EU accession to the European Convention on Human Rights were also valid before the entry into force of the Lisbon Treaty, what has changed now is that the Lisbon Treaty has not only provided the legal basis to initiate negotiations with a view to such accession, but has also made this accession an obligation of result (see Article 6 of the Lisbon Treaty). Further to this, the EU Stockholm Programme called for a “rapid” accession to the Convention.

21. Commissioner Reding also stressed that the Commission shared the views expressed in the report, in particular: EU accession to the Convention Protocols was desirable and the negotiating mandate should cover accession to any Protocol; a co-defendant mechanism should be set-up, and the EU judge should be on equal footing with the other judges on the Court (no ad hoc judge). At the end of the debate, Commissioner Reding added that the EU Charter of Fundamental Rights and the European Convention on Human Rights were much too important to give ground to political disputes. With respect to the election of judges, Commissioner Reding indicated that this should be left “in the hands of parliamentarians” (that is, to be dealt with by the European Parliament and the Parliamentary Assembly), adding that the Commission was ready to assist, if need be. See also Commissioner Reding’s speech at the High Level Conference on the Future of the European Court of Human Rights held in Interlaken on 18-19 February 2010.

22. See also below.

23. See document CM (2010)52final.

24. See also the intervention by Mr Holovaty at the hearing on the institutional aspects of the EU accession to the Convention organised on 18 March 2010 by the European Parliament Committee on Constitutional Affairs http://assembly.Council of Europe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=5379.

61. On the Council of Europe side, the entry into force of Protocol No. 14, on 1 June 2010, has provided the legal basis for the accession (see Article 59 of the Convention as amended by Protocol No. 14). At the Ministerial Session of 11 May 2010, the Council of Europe Ministers welcomed the commitment of the European Union to accede to the Convention and called for the early completion of negotiations and a rapid accession. One year later, in their declaration adopted at the Ministerial Session of 11 May 2011, in Istanbul, Mr Ahmet Davutoğlu, outgoing Chair of the Committee of Ministers, and Mr Kostyantyn Gryshchenko, incoming Chair of the Committee of Ministers, reiterated their commitment “to the rapid conclusion of the negotiations on accession by the European Union to the Convention, thus completing the construction of a coherent area of protection of human rights across Europe” and called on all parties “to conclude as soon as possible the work on the draft accession agreement”.

3.1.2. Accession negotiations

62. To negotiate an Accession Agreement with the Council of Europe, the EU Council provided a negotiating mandate to the European Commission in June 2010 and negotiations in summer 2010.

63. The adoption of a negotiating mandate (negotiating directives) by the EU Council was a priority of the Spanish Presidency. In the EU Council, a large majority of countries were in favour of rapid negotiations. Some (for example the United Kingdom and Poland), however, have warned that negotiations might take time and argued that the need for quality in the preparations should take priority over urgency. The fact is that the EU Council adopted the negotiating directives authorising the Commission to negotiate the Accession Agreement on 4 June 2010, that is even earlier than initially expected at the end of June.

64. By so doing, the EU Council gave a strong political signal of its commitment to a rapid accession. Although the content of the negotiating directives is confidential, I was told that, in order to rapidly reach a positive decision, the EU Council left some difficult legal issues unsolved by formulating the directives in a manner that allows for flexibility in making the final choices during negotiations.

65. On the Council of Europe side, the Ministers' Deputies, on 26 May 2010, entrusted the Steering Committee for Human Rights (CDDH) with the task of elaborating, by 30 June 2011 at the latest, a legal instrument setting out the modalities of accession of the European Union to the Convention, including its participation in the Convention system, and in this context to examine any related issue. They invited the Secretary General to ensure that this activity is carried out effectively with a view to its swift completion. The CDDH elected 14 members (7 coming from EU member states and 7 coming from non-member states of the EU) to participate in an informal working group on the accession of the European Union to the Convention (CDDH-UE) with the European Commission, with a view to implementing the above ad hoc terms of reference.

66. The CDDH-UE informal working group, under the Chairmanship of Ms Tonje Meinich (Norway), held in total eight working meetings with the European Commission, reporting regularly to the CDDH on the progress and on the outstanding issues. The group also held two exchanges of views with representatives of civil society, who regularly submitted comments on the working documents. During its eighth and final meeting, on 20-24 June 2011, the group finalised a draft Accession Agreement and its draft explanatory report, as well as a new draft Rule to be added to the Rules of the Committee of Ministers for the supervision of the execution of judgments and the terms of friendly settlements. Participants were sitting in the working group in their capacity as experts, and not as representatives of their respective member states of the Council of Europe. Similarly, the draft instruments prepared by the group do not commit the respective governments and the conclusions of the group are without prejudice to the discussion in the CDDH.

67. Upon a request by the latter, the Committee of Ministers' deputies, on 25 May 2011, agreed to extend the deadline for the submission of the draft Accession Agreement to 31 December 2011 at the latest, since delegations in the CDDH, and in the Committee of Ministers, considered that given the importance of this issue, it was preferable to give delegations sufficient time, i.e. over the summer break, to examine the draft Agreement and its explanatory report. It was agreed that the CDDH should discuss the final version of these documents, with a view to their adoption, at an extraordinary meeting to be held from 11 to 14 October 2011.

68. I had a working lunch with Ms Meinich at the beginning of the year and have since been following, on a regular basis, the progress of negotiations within the informal working group whose work is confidential but whose working documents are put on the website and allow for a wide public consultation. The whole committee had the chance to hear from Ms Meinich an account of the progress achieved in the negotiations within the Group on 23 June 2011.

69. As Ms Meinich also told the committee, negotiations within the working group were conducted smoothly and, to use the words of the Secretary General, “have been marked by a very promising spirit of mutual understanding and constructive outlook”.²⁵ However, many complex legal issues are still at stake and all decisions will ultimately have to be taken by governments and parliaments.

3.1.3. Main issues under negotiation

3.1.3.1. The scope of EU accession to the Convention system

70. In this respect, the European Parliament, in its resolution of 19 May 2010, had expressed itself in favour of accession to all Convention protocols “concerning rights corresponding to the Charter of Fundamental Rights, regardless of whether they have been ratified by all member states of the EU”. A second option was the accession of the European Union to all Convention protocols, regardless of whether they have been ratified by all member states of the European Union and of whether they concern “rights corresponding to the Charter of Fundamental Rights”, a criterion which some of my interlocutors told me was difficult to apply. A third option, and the most restrictive one, was the accession of the European Union to the Convention and only to those of its protocols which all EU member states have ratified.

71. Finally, the draft Accession Agreement proposes that, as a first stage, the European Union will accede to the European Convention on Human Rights and to Protocols Nos. 1 and 6. The entry into force of the Accession Agreement will have the simultaneous effect of amending the Convention and including the European Union among its parties, without the need for a further deposit of an instrument of accession to the Convention by the European Union. The same applies for the EU's accession to Protocols Nos. 1 and 6. Accession of the European Union to all other Protocols to the Convention will be possible in the future, but will require the deposit of separate accession instruments.

3.1.3.2. Institutional issues: the participation of the European Union in Council of Europe bodies which exercise functions related to the Convention

72. Two main issues have been dealt with under this heading, namely that of the election of judges to the European Court of Human Rights following EU accession to the European Convention on Human Rights and the participation of the European Union in the Committee of Ministers of the Council of Europe.

73. In accordance with the principle of ensuring the accession of the European Union on an “equal footing” with the other High Contracting Parties to the Convention, the judge elected with respect to the European Union should participate equally with the other judges in the work of the European Court of Human Rights and have the same status and duties.

74. As regards details related to the election of judges following EU accession to the Convention, this issue will be the object of a specific report to be prepared by my colleague, Mr Serhiy Holovaty (Ukraine, ALDE), for the Committee on Legal Affairs and Human Rights. In the meantime, the Parliamentary Assembly/European Parliament EP joint informal body, after two meetings held on 14 March and on 15 June, with Mr Christos Pourgourides (Cyprus, EPP/CD), Chairperson of the Assembly's Committee on Legal Affairs and Human Rights, and Mr Carlo Casini (Italy, EPP), Chairperson of the European Parliament's Committee on Constitutional Affairs, in the chair, reached agreement that, following EU accession to the Convention, the European Parliament would be entitled to participate in the sittings of the Parliamentary Assembly of the Council of Europe and its relevant bodies when the latter exercises their functions related to the election of judges to the European Court of Human Rights under Article 22 of the Convention.²⁶

75. In particular, it was agreed that, when the Parliamentary Assembly elects judges, the European Parliament delegation would be entitled to participate in the Parliamentary Assembly with the same number of representatives as states entitled to the highest number of representatives (at present 18 members). This principle has also been incorporated in the draft Accession Agreement which, for the rest, provides that the modalities of the participation of representatives of the European Parliament in the sittings of the Parliamentary Assembly and its relevant bodies “shall be defined by the Parliamentary Assembly of the Council of Europe, in co-operation with the European Parliament”.

25. See document SG/Inf(2011)13 of 5 May 2011, “Council of Europe: a strategy for values in action – Activity Report by the Secretary General Thorbjørn Jagland”, presented at the 121st Session of the Committee of Ministers, Istanbul, 11 May 2011.

26. See the synopsis of the last meeting in: Parliamentary Assembly reference: AS/Bur/AH EP PACE (2011) 04 and European Parliament reference: 467.248 v01-00 – CM 871223 EN:

<http://assembly.coe.int/committee/BUR/2011/BURJointInformalBodyE.pdf>.

76. In the latter respect, the joint informal body has further reached agreement as to the manner in which representatives of the European Parliament will take part and vote within the Assembly's different bodies in the election process. More specifically, the European Parliament would be entitled to four titular and four alternate seats when participating in the Assembly's 84-member Committee on Legal Affairs and Human Rights, whenever need for this was to arise; whenever the election of judges is on the agenda of the Assembly's Bureau, one representative of the European Parliament would take part, with a right to vote on the matter; one representative of the European Parliament (with an alternate) would be entitled to sit *ex officio*, with a right to vote, on the Assembly's Sub-Committee on the Election of Judges to the European Court of Human Rights (of the Committee on Legal Affairs and Human Rights).

77. These arrangements must be approved by the Parliamentary Assembly and the European Parliament, in accordance with their respective procedures, in due time. I find it, however, of utmost importance that, in only two meetings, we managed to solve a difficult and technically complicated matter with our colleagues from the European Parliament in a spirit of good faith and constructive dialogue.

78. As regards the question of the participation of the European Union – and of its right to vote – in the Committee of Ministers, in particular when the latter exercises its function of supervision of the execution of judgments of the Strasbourg Court, this has proved to be one of the most difficult issues on the negotiations' agenda, from both a technical and also political point of view. While the principle that the European Union should participate in the supervision of the execution of judgments (see Article 46 of the Convention) seemed to be understood by all members of the negotiating group, what seemed to raise problems was to grant voting rights in the Committee of Ministers to an entity which is not a member of the Council of Europe. Although it is commonly known that voting in the Committee of Ministers in the supervision of the execution of judgments is rather the exception than the rule, as decisions are regularly adopted by consensus, some Council of Europe member states fear that the European Union and its member states (in total amounting to 28 out of 48 parties after accession) could take co-ordinated positions in the event of a vote ("block voting"). The need to find appropriate guarantees to safeguard the effective functioning of the system of supervision of the execution of judgments in all cases has generally been recognised in the CDDH-UE group.

79. After lengthy discussions, the draft Accession Agreement recognises the EU's right to participate, with the right to vote, in the Committee of Ministers when the latter exercises functions by virtue of the Convention. This is the case when the Committee of Ministers takes decisions in the exercise of functions explicitly conferred upon it by the Convention itself, such as, in particular, the supervision of the execution of the Court's judgments (under Article 46) and of the terms of friendly settlements (under Article 39),²⁷ but also when the Committee of Ministers deals with a number of questions directly linked with the functioning of the Convention system and its implementation which, however, are not explicitly dealt with in the Convention itself, namely: when the Committee of Ministers takes decisions regarding the adoption of protocols to the Convention, as well as the adoption or implementation of any other instrument or text addressed to the Court or to all High Contracting Parties to the Convention, or related to the functions exercised by virtue of the Convention by the Committee of Ministers or the Assembly.²⁸

80. A combination of provisions included in the draft Accession Agreement itself and in a draft Rule to be added to the relevant rules of the Committee of Ministers regulate voting when the Committee of Ministers supervises the execution of judgments or of friendly settlements in cases to which the European Union is a party to ensure that the applicable EU rules as regards co-ordination of the position of the European Union and its member states (including possible "block voting") do not jeopardise the effective exercise by the Committee of Ministers of its supervisory functions under Articles 39 and 46 of the Convention. Moreover, the draft Accession Agreement clearly states that, when the Committee of Ministers exercises its supervisory functions with respect to cases against an EU member state, the European Union is precluded – for reasons pertaining to its internal legal order – from expressing a position or exercising its right to vote. In such cases, the EU member states have no obligation under the EU treaties to express positions or to vote in a co-ordinated manner. Similarly, the EU member states have no such obligation in cases against a non-member state of the European Union, even if, in the latter cases, the European Union expresses its position or exercises its right to vote.²⁹

27. The Committee of Ministers is also entitled under the Convention to request advisory opinions from the Court on certain legal questions concerning the interpretation of the Convention and its Protocols (Article 47) and to reduce the number of judges of the Chambers of the Court, at the request of the latter (Article 28, paragraph 2).

28. See Doc CDDH-UE(2011)16prov.

29. Ibid.

81. Although these provisions add complexity to a procedure which in reality rarely makes use of votes (decisions on the execution of judgments are normally taken by consensus within the Committee of Ministers), they limit the alteration to exceptional cases, and seem to constitute the only proposal currently under consideration by the capitals which is at the same time politically acceptable and technically feasible.

3.1.3.3. Legal issues: the co-respondent mechanism and relations between the Court in Luxembourg and the Court in Strasbourg

82. It is a special feature of the EU legal system that acts adopted by its institutions may be implemented by organs of its member states and, conversely, that provisions of the EU founding treaties agreed upon by its member States may be implemented by organs of the European Union. With the accession of the EU to the European Convention on Human Rights, there arises thus the unique situation in the Convention system in which the High Contracting Party enacting a legal act and the High Contracting Party implementing that act may not be one and the same.

83. In order to accommodate the specific situation of the European Union – as a non-state entity with an autonomous legal system – becoming a party to the Convention alongside the EU member states, a new mechanism is being introduced to allow the European Union to become a co-respondent in proceedings instituted against one or more of its member states and, conversely, to allow one or more EU member state(s) to become co-respondent(s) in proceedings instituted against the European Union.

84. Discussions regarding the precise modalities of the co-respondent mechanism have been quite lengthy and complex.

85. For my part, I have discussed the issue with several interlocutors on the European Union and Council of Europe side and also with representatives of non-governmental organisations. I was happy to see that the CDDH-UE heard the views of representatives of civil society organisations and human rights groups who were officially invited for consultation at its meetings in January and June 2011. I hope that this constructive dialogue with representatives of civil society will continue throughout the negotiation process and that the consultation will extend to the discussions in the working party in Brussels (FREMP) on the necessary adjustments of the EU legal order.

86. Both in their written and oral contributions to the CDDH-UE, NGOs have insisted on the need to avoid undue burdens on the individual applicant, who may have to face multiple defendants, in particular the European Union, in order to preserve the right of individual petition and the equality of arms. Therefore, the co-respondent mechanism should only be used in limited circumstances. This is a concern I fully share and have raised in my various meetings with EU and Council of Europe representatives.

87. A wording that has been proposed during the informal negotiations within the CDDH-UE was taking care of the concern to limit the scope of application of the co-respondent mechanism as it provided that this mechanism would only apply to cases “if the act or omission underlying the alleged violation would only have been avoided by the respondent party by disregarding an obligation under the EU law”.³⁰ However, discussions in the CDDH-UE led to the provision of wider criteria for triggering the mechanism. More specifically, the draft Accession Agreement currently provides that the mechanism is triggered and the European Union may become a co-respondent in the proceedings in the case of applications notified to one or more EU member states if it appears that the alleged violation “calls into question the compatibility with the Convention rights at issue of a provision of EU law, notably when that violation could have been avoided only by disregarding an obligation under EU law”.³¹ That said, the draft explanatory report to the draft Accession Agreement refers to the fact that, on the basis of the relevant case law of the Court, it can be expected that such mechanism may be applied only in a limited number of cases.

88. Representatives of civil society have proposed that, when the co-respondent mechanism is activated, deadlines for third party interventions should be extended to allow sufficient time and flexibility for third parties to intervene in cases of increased complexity. It will also be essential to ensure, in such cases, adequate legal aid for applicants.

30. See document CDDH-UE(2011)6.

31. Similarly, in the case of applications notified to the European Union, the EU member states may become co-respondents if it appears that the alleged violation as notified by the Court calls into question the compatibility of a provision of the primary EU law with the Convention rights at issue, notably when that violation could have been avoided only by disregarding an obligation under primary EU law.

89. Issues related to the articulation of the relations between the Court of Justice of the European Union in Luxembourg and the European Court of Human Rights in Strasbourg, following EU accession to the Convention, including the need to preserve the monopoly of the Court of Justice of the European Union in the interpretation of EU law, have also been complex. However, the situation became much clearer from the moment that the Presidents of the Courts, Mr Costa and Mr Skouris, issued a joint communication in January 2011 in which they gave their own views on how the matter should be handled.³²

90. It is clear that, in cases where the Strasbourg Court will have to review the consistency with the Convention of measures adopted by EU institutions, the condition relating to the exhaustion of domestic remedies will oblige applicants wishing to apply to the Strasbourg Court to refer the matter first to the EU courts. It is thus guaranteed that the review exercised by the Strasbourg Court will be preceded by the internal review carried out by the Luxembourg Court and that subsidiarity will be respected.

91. Where applications to the Strasbourg Court are directed against acts adopted by the authorities of EU member states in implementing EU law, the situation is, however, more complex: the applicant will have, first, to refer the matter to the courts of the member state concerned which, in turn, may or, in certain cases, must refer a question to the Luxembourg Court for a preliminary ruling on the interpretation and/or validity of the provisions of EU law at issue. However, if, for whatever reason, such a reference for a preliminary ruling were not made, the Strasbourg Court would be required to decide on an application calling into question provisions of EU law without the Luxembourg Court having had the opportunity to review the consistency of that law with the fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union.

92. In their joint communication, the two Presidents take the view that, in order that the principle of subsidiarity may be respected also in the latter cases – which should be relatively rare – a procedure should be put into place which is flexible and would ensure that the Luxembourg Court may carry out an internal review before the Strasbourg Court carries out an external review. In order to prevent proceedings before the Strasbourg Court from being unduly delayed, the Luxembourg Court could give a ruling under an accelerated procedure.

93. The draft Accession Agreement explicitly provides that the European Union shall ensure that the assessment by the Luxembourg Court is made “quickly” and that the prior involvement of the Luxembourg Court will not affect the powers of the Strasbourg Court. The draft explanatory report further explains that the assessment by the former will not bind the latter and that the Court of Justice will not assess the act or omission complained of by the applicant, but only the EU legal basis for it. It also specifies that the parties involved – including the applicant, who will be given the possibility to obtain legal aid – will have the opportunity to make observations in the procedure before the Luxembourg Court. According to the report, the examination of the merits of the application by the Strasbourg Court should not resume before the parties and any third parties have had the opportunity to assess properly the consequences of the ruling of the Luxembourg Court. As regards timing, the report notes that an accelerated procedure before the Court of Justice already exists under which the latter has been able to give rulings within 6 or 8 months.

94. When discussing the issues related to the prior involvement of the Luxembourg Court in cases involving the European Union as co-respondent with the Presidents of the two Courts, both were pleased with the fact that negotiations within the CDDH-UE have been based on their position as expressed in their joint communication of January 2011.

95. President Costa also told me that, according to a study of the case law of the Strasbourg Court over the last fifteen years, carried out by lawyers from both the European Union and the Council of Europe, in only three cases would there have been a need to apply the co-respondent mechanism and in no case would there have been a need for the prior involvement of the Luxembourg Court during the proceedings before the Strasbourg Court.³³

3.1.4. Procedure for the adoption of the Accession Agreement

96. Once the draft Accession Agreement and its explanatory report are approved by the CDDH in October 2011, the procedure for its adoption will be put into motion. This procedure, according to the Lisbon Treaty, is quite complex and demanding on the EU side: unanimity in the EU Council; consent by the European Parliament; ratification by all EU member states.

32. See the joint communication in: www.echr.Council of Europe.int/NR/rdonlyres/02164A4C-0B63-44C3-80C7-FC594EE16297/0/2011Communication_CEDHCJUE_EN.pdf.

33. See also footnote 19 in the draft explanatory report, document CDDH-UE(2011)16prov.

97. On the basis of what I heard from my interlocutors on the EU side, including the President of the Court of Justice and the Legal Advisor of Ms Reding, the EU Court of Justice will also be seized by the European Commission for an opinion on the draft Accession Agreement before the latter submits it to the EU Council. More specifically, the Luxembourg Court will be requested to assess the issues of competence, legal basis and compatibility of the Accession Agreement with EU primary law. In the past, the Luxembourg Court had rejected the idea of EU accession to the Convention arguing that there was no legal basis for such an accession.

98. It is clear that, following the entry into force of the Lisbon Treaty, the European Union has competence to accede to the Convention and there is a legal basis for such an accession. The main issue, therefore, for the Court of Justice to assess will be the compatibility of the Agreement with EU primary law. President Skouris referred in particular to the need to ensure compatibility with Protocol 8 to the TEU, which refers to Article 6(2) of the Treaty on EU accession to the Convention.

99. On the Council of Europe side, the draft Accession Agreement will have to be endorsed by the Committee of Ministers after the Parliamentary Assembly and the European Court of Human Rights have given their Opinions on it. It will ultimately have to be ratified by all the member states of the Council of Europe.

100. It is clear that, if the ratification of the Lisbon Treaty and of Protocol No. 14 to the Convention have marked the member states of both Organisations' political will for EU accession to the Convention, there will be need for renewed commitment and the active support of both our governments and our parliaments to ensure the necessary ratification process of the Accession Agreement in the near future, and this in the interest – I repeat it once more – of the people in Europe.

3.2. Coherence of Council of Europe standards and EU law and of evaluation of implementation by European states: the Stockholm Programme

101. European society is today facing major challenges, including transnational threats, such as international terrorism, threats to privacy and cybercrime, trafficking in human beings etc. Old plagues, such as torture, violence against women, exploitation of children or corruption, also acquire transnational dimensions and call for action at pan-European level. In many of these areas, traditionally within the remits of the Council of Europe, the post-Lisbon European Union has acquired new or enlarged powers and competences. Therefore, there is an increased need for the two Organisations to join efforts to provide adequate replies to such challenges and ensure a common space for human rights protection across the continent, on the basis of common values and comparative advantages, beyond EU accession to the Convention.

102. In particular, the Lisbon Treaty has increased the need to ensure coherence between the standards of the Council of Europe and EU law, as well as a coherent evaluation or monitoring of implementation of these standards by European states, while avoiding duplication and monitoring fatigue, in particular at a time when an unprecedented economic crisis is plaguing our continent.

103. On the Council of Europe side, the reform process launched by the Secretary General, aims at "enhancing (the Organisation's) political relevance and impact in European affairs, *inter alia*, through a reinforced partnership with the European Union, building on the 2007 Memorandum of Understanding between the two Organisations".³⁴ This reform process is meant to fully enable the Council of Europe to play a major role, in particular by ensuring democratic – "soft"/"deep" – security at pan-European level and by reaffirming itself as "the benchmark for human rights, the rule of law and democracy in Europe".³⁵

3.2.1. Coherence of standards

104. During my meetings in Brussels, I raised the need to ensure coherence of standards of the Council of Europe and the EU law, including through EU accession to key Council of Europe conventions other than the European Convention on Human Rights, which tackle such major challenges to European society as the ones mentioned above. In particular, I urged my interlocutors to consider EU accession to the following Council of

34. See document SG/Inf(2011)13 of 5 May 2011, "Council of Europe : a strategy for values in action – Activity Report by the Secretary General Thorbjørn Jagland", presented at the 121st Session of the Committee of Ministers, Istanbul, 11 May 2011. On the basis of the Secretary General's report, the Ministers welcomed the enhancement of co-operation between the Council of Europe and other international organisations, in particular of the partnership with the European Union, as part of this process.

35. Ibid. See also the report prepared for the attention of the Prime Minister of France, upon his request, by Senator Denis Badré, "Pour une France mieux impliquée au Conseil de l'Europe", March 2011, available only in French.

Europe conventions: the Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126); the Convention on Action against Trafficking in Human Beings (CETS No. 197); the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201); the Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210); the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (ETS No. 108); the Convention on the Prevention of Terrorism (CETS No. 196); the Criminal Law Convention on Corruption (ETS No. 173); the Civil Law Convention on Corruption (ETS No. 174); the Convention on Cybercrime (ETS No. 185), as well as to the revised European Social Charter (ETS No. 163). I insisted on the fact that accession to Council of Europe conventions would ensure that common minimum standards would apply at pan-European level, thus contributing to the creation of a common European legal space for the benefit first and foremost of the people in Europe. This should not prevent the European Union from going further and ensuring higher standards for its members, as actually any Council of Europe member state, in its domestic legislation, can provide for higher standards than those guaranteed by Council of Europe conventions. But both duplication and lowering of standards should clearly be avoided.

105. The European Parliament, for its part, has already taken a clear position on this matter by stating in its Resolution of 19 May 2010 that accession to the Convention constitutes an essential first step which should be completed by EU accession to other Council of Europe conventions, such as the revised European Social Charter.

106. Officials from the Commission argued that accession to other Council of Europe conventions should be considered only after accession of the European Union to the Convention has been completed. A step-by-step approach was chosen since otherwise there was a risk of jeopardising accession to the Convention. The Executive Secretary General of the EEAS, Mr Vimont, referred to a “pragmatic approach” and the consideration of EU accession to other Council of Europe conventions “on a case-by-case basis”. Accession to each convention should be considered on its own merits after balancing arguments in favour or against, with the help of the European Commission. As for my interlocutors from the EU Council, they seemed to agree that accession to other Council of Europe conventions could be considered before the completion of the EU accession to the Convention.

107. I was particularly pleased in this respect with my meeting with Commissioner Malmström, who told me that EU accession to other Council of Europe conventions was under consideration and specifically referred to the Convention on Cybercrime (ETS No. 185). Also, I was happy to learn that negotiations will soon start on accession of the European Union to the Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data.

108. For my part, I believe that the Council of Europe itself can help the European Union form a long-term and more strategic vision on synergies with the Council of Europe and possible accession to Council of Europe instruments – beyond a case-by-case or pragmatic approach – building also on the favourable position already taken by the European Parliament in this respect. I see two practical ways to achieve this. First of all, the currently ongoing review of Council of Europe conventions, initiated by the Secretary General, explicitly aims, *inter alia*, to identify ways of facilitating EU accession to Council of Europe conventions.³⁶ I hope that this process will soon be successfully completed while ensuring that each convention system is preserved as it stands with only minor adjustments. Secondly, I would suggest that the Council of Europe Secretariat prepare a list of concrete implications and advantages of EU accession to key Council of Europe conventions which the Secretary General could then present to EU officials at the highest political level and thus promote a wider debate on closer Council of Europe/European Union synergies in the interest of all the people in Europe.

109. Let me also underline that arrangements agreed in the context of EU accession to the Convention regarding the participation of the European Union and its voting rights within the Council of Europe Committee of Ministers might serve as a precedent for future EU accession to other Council of Europe conventions.

110. Beyond the issue of EU accession to Council of Europe conventions and in order to allow for an adequate overall assessment of EU activities against the human rights benchmarks set up by the Council of Europe, the European Union should moreover ensure systematic and open consultations with the relevant bodies of the Council of Europe, throughout the EU legislative processes. Thus, for instance, in the field of criminal justice, the EU Council has undertaken the commitment to ensure that all its legislative initiatives in

36. See SG/Inf(2011)2 Final, Outline of Convention Review.

the field of procedural rights of suspects in criminal proceedings are “Strasbourg-proof” and “ensure full implementation and respect of Convention standards”, as well as “where appropriate, expand existing standards or make their application more uniform”.³⁷

111. As regards future normative initiatives to be taken by the European Union or the Council of Europe, all my interlocutors insisted on the need for prior consultations between the two organisations, at as early a stage as possible and also at a higher political level. I confirmed that this is also the position of the Council of Europe. I underlined that it was essential that, prior to embarking on new normative initiatives, the European Union considers the full potential and advantages of Council of Europe conventions, promotes accession of its member states (and also of non-member states in the framework of its external relations) and, when applicable, accedes to them.

112. In response to the need for prior consultations, regular contacts have been established, as of the end of 2009, at both political and operational level between the Council of Europe Secretary General and high officials, on the one hand, and Commissioners Reding and Malmström and their cabinets, on the other.

113. Following contacts between the Secretary General and these Commissioners in June-July 2010, regular consultations are taking place which cover, in particular, matters raised in the Stockholm Programme and the Memorandum of Understanding, such as: racism and xenophobia, the rights of the child, criminal justice and protection of personal data, fight against trafficking in human beings, terrorism, organised crime, cybercrime, money laundering, corruption and the protection of children against sexual abuse.

114. An example of recent successful mutual support between the two Organisations was provided in the field of children’s rights when the Council of Europe programme “Building a Europe for and with Children” supported the process leading to the development of an EU strategy on the Rights of the Child.

115. Another area calling for co-ordinated action between the European Union and the Council of Europe is nowadays that of migration and asylum. Referring to the *MSS judgment v. Greece and Belgium* and events in North Africa which led to the arrival of asylum seekers and migrants in South Europe, I raised the need for co-ordinated action in this area in my meeting with Commissioner Malmström.³⁸ I mentioned in particular that Council of Europe/European Union co-operation should focus on: developing common minimum standards on protection of the rights of migrants (for instance as regards detention conditions for irregular migrants and asylum seekers); assisting the member states (both EU member states and Council of Europe member states that are not EU member states) to increase their capacities to deal with this challenge adequately, efficiently and in full respect of European human rights standards; and putting in place a contribution from the Council of Europe monitoring bodies, such as ECRI, CPT and the European Committee of Social Rights, to the European Union’s efforts to improve the Dublin II Regulation. It is worth noting in this respect the lack of human rights monitoring at EU level as regards EU member states’ border control and Frontex operations.

116. Moreover, the follow-up to the Council of Europe High-Level Conference on Roma issues, held in Strasbourg in October 2010, at a time when such issues had raised serious concerns in some EU member states and had led to increased tensions between these states and EU institutions, has already provided a further opportunity to work closely with the European Union in this area, for example through joint action in the area of capacity-building at local level (Roma mediators, promotion and dissemination of good practice, etc.)

117. In order to deepen further priority matters for co-operation and facilitate a reciprocal flow of information, discussions between the Council of Europe secretariat and the respective European Commission Directorates General of Justice and Home Affairs resulted in an agreement to establish an informal Mutual Information Mechanism (MIM), consisting of European Union and Council of Europe officials. Regular meetings of the mechanism would provide information on the normative initiatives, which would in turn trigger bilateral expert consultations between the Council of Europe and the European Union, as appropriate.

3.2.2. Coherence of monitoring of implementation of standards

118. The Lisbon Treaty enables the European Union (the Council in collaboration with the Commission) to conduct objective and impartial evaluations of the implementation of the Union policies in the areas of freedom, security and justice by member states’ authorities, in particular in order to facilitate full application of the principle of mutual recognition.

37. See the introduction of the “Roadmap with a view to fostering protection of suspected and accused persons in criminal proceedings”, Council of the European Union, 1 July 2009, 11457/09, endorsed by the Stockholm Programme.

38. See also document AS/Mig/Inf (2011) 09.

119. In line with the Lisbon Treaty, “The Stockholm Programme – An open and secure Europe serving and protecting the citizen”, adopted by the European Union in December 2009 to set forth the EU’s agenda of priorities in these areas for the period 2010-2014, puts a new emphasis on evaluation of the implementation of the Union policies in these areas. In this respect, the European Council considers that “duplication with other evaluation mechanisms should be avoided, but synergies and co-operation should be sought, in particular with the work of the Council of Europe. The Union should take an active part in and should contribute to the work of the monitoring bodies of the Council of Europe.”

120. Against this background, in all my meetings since last year, I have raised the need for strengthening synergies between the European Union and the Council of Europe in the monitoring of implementation of standards in the context of the implementation of the Stockholm Programme of the European Union. The Council of Europe monitoring bodies, such as the European Committee for the Efficiency of Justice (CEPEJ), which is monitoring judicial systems in Council of Europe member states, and the Group of States against Corruption (GRECO), have an important experience in their respective fields of competence and represent an *acquis* for Europe as a whole. They can therefore make an effective contribution to the evaluation process that the European Union may set up in the framework of its Stockholm Programme ³⁹.

121. In addition to CEPEJ and GRECO, the Council of Europe has several other monitoring bodies coming into play on issues relating to justice and home affairs for which the European Union has now enlarged competences and with which stronger synergies should be encouraged, in particular: the European Committee of Social Rights (ECSR), whose findings concern, *inter alia*, minimum social and economic rights for migrants and asylum seekers and the situation of Roma; the Committee for the Prevention of Torture, whose findings cover conditions of detention of irregular migrants and foreigners under deportation orders; the European Commission against Racism and Intolerance (ECRI), whose findings cover integration policies, racism and hate speech; the Group of Experts on Action against Trafficking in Human Beings (GRETA), an independent body established under the Council of Europe Anti-trafficking Convention, whose findings cover specific needs and rights of victims of trafficking; MONEYVAL, as regards the fight against money laundering. I stressed that accession to existing Council of Europe monitoring mechanisms should be considered before embarking on creating new mechanisms in order to avoid duplication and thus the risk of incoherence, diverging results, “forum shopping” and low impact. Stronger synergies should also be encouraged of course with the Council of Europe Commissioner for Human Rights.

122. Here again, with the exception of GRECO, I found a strong partner in the European Parliament which, in its Resolution of 19 May 2010, clearly called for EU accession to Council of Europe bodies such as the CPT, the ECRI, the CEPEJ, the ECSR and for the strengthening of co-operation between the EU institutions and Council of Europe specialised bodies. MEPs I met in Brussels reiterated this position. In its more recent resolution of 11 May 2011, the European Parliament reaffirmed that, in order to increase its effectiveness in the field of human rights at pan-European level, the European Union should accede to Council of Europe bodies such as the CPT, the ECRI and the CEPEJ. The position of the European Parliament is to be most welcomed.

123. As regards more specifically GRECO and the fight against corruption, EU accession to GRECO is envisaged in the Stockholm Programme. This Programme invites the Commission “to develop indicators, on the basis of existing systems and common criteria, to measure efforts in the fight against corruption, in particular in the areas of the European Union *acquis* (public procurement, financial control etc.) and to develop a comprehensive anti-corruption policy, in close co-operation with GRECO”; it also invites the Commission to submit in 2010 “a report on the modalities for the Union to accede to GRECO”. Intensive consultations between the GRECO representatives and representatives from the Commission and the EU Council have taken place since last year.

124. When meeting Commissioner Malmström in April 2011, and after consulting Council of Europe officials assisting GRECO, I stressed that full accession of the European Union to GRECO and evaluation of EU institutions by GRECO should remain the ultimate objective of co-operation in this area and this should be visible in any participation agreement. Pending EU accession, enhanced EU participation in GRECO proceedings should be pursued as soon as possible, including participation by EU representatives in the evaluation of member states of GRECO. As a matter of reciprocity, GRECO should be able to participate in the anti-corruption reporting mechanism to be set up by the European Union.

39. See document CM(2010)52final.

125. I was particularly pleased to hear from Commissioner Malmström that there was strong political will within the European Union not to duplicate Council of Europe structures and use the latter's existing monitoring mechanisms, to the extent possible, including GRECO with respect to the fight against corruption.

126. Two months later, the Commission, having analysed the possible modalities for EU participation in GRECO and considering that GRECO is the most exclusive existing instrument relevant for the European Union, in as much as all EU member states are participating in it, has decided to ask for the authorisation of the EU Council to start negotiations in this regard. In its Communication of 6 June 2011 on Fighting Corruption in the European Union,⁴⁰ the Commission considers that, through GRECO, "the Council of Europe contributes to ensuring minimum standards in a pan-European legal area" and asks EU member states to support the Union's application to participate in GRECO within the Committee of Ministers of the Council of Europe.

127. The Commission proposed EU participation in GRECO alongside the creation of the mechanism of an EU Anti-Corruption Report. In its Communication, the Commission underlines that EU participation in GRECO would create synergies between the two mechanisms and that GRECO could provide input to the EU mechanism in the form of comparative analyses of the existing GRECO evaluation and compliance reports on the EU member states and indication of key outstanding recommendations requiring additional follow-up. Thus GRECO would contribute to the definition of common anti-corruption indicators and criteria, and its findings would be one of the elements on which the Commission should base its own evaluation of anti-corruption efforts by EU member states.

128. These positive developments will hopefully lead to a future full accession of the European Union to GRECO. They should also further facilitate the creation of appropriate synergies between other Council of Europe monitoring mechanisms and any new evaluation mechanisms to be set up by the European Union in other areas falling within the remit of both Organisations.

129. I also consider it important that the European Union enhance consultations with the Council of Europe Commissioner for Human Rights as regards the implementation of human rights standards, not only by non-EU member states – in the context of its enlargement and neighbourhood policies – but also by its own member states. The European Parliament expressed itself in favour of such an enhanced consultation and co-operation with the Council of Europe Commissioner for Human Rights in its resolution of 19 May 2010.

130. In conclusion, while welcoming the steps already taken in the right direction and the ongoing developments, I feel that the role of the Council of Europe as "the benchmark for human rights, rule of law and democracy in Europe" has still to be further enhanced and fully and effectively recognised by all EU institutions and this for the benefit of all the people in Europe. Building on the 2007 Memorandum of Understanding between the two Organisations, the Lisbon Treaty and the perspectives opened up by the ongoing reform of the Council of Europe, the recently reinforced partnership between the two Organisations should in particular be further consolidated and regular policy co-ordination should be further developed at all levels.

4. Towards a reinforced Council of Europe–European Union partnership

131. The Lisbon Treaty has also allowed the European Union to strengthen the delivery of its foreign policy: co-operation with neighbouring countries has now been broadened to cover the full range of issues in an integrated and more effective manner, including issues related to human rights, rule of law and democracy, thus opening up new opportunities for enhanced co-operation with the Council of Europe also in this respect. This is all the more the case to the extent that European Union enlargement and neighbourhood policies apply to countries which are either full Council of Europe member states, and thus benefit from the Organisation's advice and monitoring procedures, or belong to its neighbourhood and have thus joined or may join Council of Europe conventions open to non-member states or partial agreements, such as the Venice Commission and the North-South Centre, and whose parliaments have been or may be granted partner for democracy status with our Assembly.

132. Recent events throughout the Southern Mediterranean have indeed given additional topicality to the development of a new Council of Europe policy towards its neighbouring regions proposing a demand-driven co-operation with the countries concerned. The partner for democracy status created by the Assembly for parliaments in these regions is a key element of this policy. Our Assembly granted the status to the

40. See COM(2011)308 final. See also COM(2011)307 on the modalities of the EU participation in GRECO.

Parliament of Morocco on 21 June 2011, while a request from the Palestinian National Council is currently being examined and it is not to be excluded that other parliaments in the neighbouring regions may follow, for instance Tunisia once the necessary conditions are met.

133. The same events throughout the Southern Mediterranean have also given impetus to the review of the European Union Neighbourhood Policy (ENP), initiated since the entry into force of the Lisbon Treaty and in particular as of summer 2010, and have recently led to two Joint Communications from the European Commission and the High Representative of the European Union for Foreign Affairs and Security Policy.⁴¹ The latter propose “a new approach to the ENP”, which “must be based on mutual accountability and a shared commitment to the universal values of human rights, democracy and the rule of law”.⁴² In the terms of the Communication of 25 May 2011 entitled “A new response to a changing Neighbourhood”, “the EU needs to rise to the historical challenges in our neighbourhood”. The Communication also insists that “co-ordination between the EU, its member states and main international partners is essential and can be improved” and when referring to human rights commitments it mentions that “boosting co-operation with the Council of Europe could also help in promoting compliance”.⁴³ It is also worth noting that the European Commission and the EU High Representative for Foreign Affairs and Security Policy, in their Joint Communication of 8 March 2011, proposed a “Partnership for Democracy and Shared Prosperity with the Southern Mediterranean”⁴⁴ for those countries for the parliaments of which our own Assembly created the status of partner for democracy in 2009.

134. While regular consultations at operational level between the European Union and the Council of Europe with respect to candidate countries and potential candidates of EU accession is a long-standing practice, recently regular contacts have been established at a high political level, in particular between the Secretary General of the Council of Europe and the Commissioner responsible for Enlargement and European Neighbourhood Policy, Mr Stefan Füle. The latter also addressed the Council of Europe Committee of Ministers in July 2011.⁴⁵ Intensified high-level contacts have also been established with High Representative Catherine Ashton and senior officials of the new EEAS.

135. For my part, I discussed the opportunities for increased co-operation between the two Organisations in relation to a revised ENP in my discussions with MEPs, as well as more recently in the meeting I had with Mr Vimont. In my meetings, I stressed the need for the European Union to make better use of the Council of Europe's expertise and benchmarking and advisory role in the context of its enlargement and neighbourhood policies.

136. In presenting more specifically the added value offered by the new partner for democracy status, designed for parliaments in the Council of Europe neighbouring regions, I underlined, in particular, the fact that, as a parliamentary tool, the new status offers concrete benchmarks and also provides for a follow-up/evaluation mechanism (to be carried out by the Political Affairs Committee on behalf of the Assembly). It is thus seen as the beginning and not the end of the process.

137. Mr Vimont confirmed that the European Union is very much interested in the newly created partner for democracy status, precisely because it provides for concrete benchmarks and political monitoring and thus corresponds to the European Union “more for more” approach, that is the fact that the EU wants to link increased assistance to progress with respect to democratic transformation in the context of its co-operation with neighbouring countries, including in the Southern Mediterranean. For Mr Vimont, whereas one could hardly speak of a long-term EU vision or strategy for co-operation with the Council of Europe in the context of EU neighbourhood policy, there seemed to be a good ground for enhanced practical co-operation, again based on a pragmatic approach. He thus quoted the Eastern Partnership as a model also for developing co-operation in the Southern Mediterranean and referred, among relevant Council of Europe institutions, in particular to the important role of the Venice Commission in view of its experience in assisting countries in the context of constitutional reforms. Rather than duplicating or trying to reinvent the wheel, the European Union had significantly enhanced its co-operation with the Venice Commission in this respect and would continue to do so.

41. See COM(2011)200 of 8 March 2011 and COM(2011)303 of 25 May 2011.

42. See COM(2011)303.

43. Ibid. For the Secretary General's proposals for a Council of Europe Neighbourhood Policy see document SG/Inf(2011)13 of 5 May 2011, “Council of Europe: a strategy for values in action – Activity Report by the Secretary General Thorbjørn Jagland”, presented at the 121st Session of the Committee of Ministers, Istanbul, 11 May 2011.

44. See COM(2011)200.

45. In the context of the EU Eastern Partnership, in December 2010, a €4 million “facility” was agreed between the Council of Europe and the European Commission for the former to implement multilateral activities with all partner countries in the areas of electoral standards, support to the judiciary, cybercrime and the fight against corruption.

138. At the same time, joint programmes between the Council of Europe and the European Commission, financed largely by the European Union, remain a unique tool to support the reform agenda in Council of Europe member states or in countries in its neighbouring regions and promote democracy and respect for human rights and the rule of law in these countries. I believe that, in the present post-Lisbon era and in the context of the currently reinforced partnership between the two organisations, joint programmes, as well as, more generally, joint actions, should be further developed, including through a more stable financial partnership with the Council of Europe ("facility" financing), which would allow for increased strategic co-operation and joint long-term planning.

139. For its part, the Assembly has improved its co-operation with the European Parliament following the entry into force of the Lisbon Treaty, under which the latter has become co-legislator, together with the EU Council, in a number of key policy areas falling within the Council of Europe's remit.

140. For more details on the current state of relations, I refer to a document ⁴⁶ recently prepared for the attention of the Bureau of the Assembly. To quote here only a few recent examples, let me reiterate that the Parliamentary Assembly/European Parliament Joint Informal Body, established early 2011 upon the initiative of the European Parliament "in order to co-ordinate information sharing", succeeded in only two meetings in solving difficult and technically complicated matters related to the participation of the European Parliament in the election of judges after EU accession to the Convention, in a spirit of good faith and constructive dialogue. Increased contacts with the European Parliament led to a fruitful exchange of views of our Committee with the then Chair of the Subcommittee on Human Rights of the Committee of Foreign Affairs of the European Parliament, Ms Heidi Hautala, in November 2010, and the participation of several members of the Assembly in meetings or hearings organised by the Subcommittee. The Presidential Committee of the Assembly will meet with the Conference of Presidents of the European Parliament on 22 September 2011.

141. In my meetings with members of the European Parliament, in particular Mr Brock, Mr Gualtieri and Ms Hautala, I also discussed the opportunities for increased co-operation between our Assembly and the European Parliament with respect to countries participating in the ENP, as many issues of common interest appear on our agendas, including the situation in countries of the Eastern Partnership, such as for instance Belarus, or the Southern Mediterranean. Here again, MEPs expressed great interest in the partner for democracy status created by our Assembly for parliaments in Council of Europe neighbouring regions, as well as in the Assembly's monitoring or post-monitoring procedure for Council of Europe member states which are part of the EU enlargement or neighbourhood policies.

142. As a result also of my discussions with MEPs and colleagues in the Assembly, I propose that the Assembly further enhance its relations with the European Parliament, building on the "Agreement on the strengthening of co-operation between the Parliamentary Assembly of the Council of Europe and the European Parliament" of 28 November 2007, in particular through:

- reinforcing the practice of regular meetings between, on the one hand, the respective Presidents and, on the other hand, between its Presidential Committee and the Conference of Presidents of the European Parliament on an agenda-driven basis;
- pursuing the work of their Joint Informal Body, created upon the initiative of the European Parliament to improve information sharing between the two bodies and which initially met within the context of EU accession to the Convention, with a view to discussing other topical issues of common interest, in a variable composition, as appropriate;
- further pursuing exchanges of views, joint activities and information exchange between members of the Assembly and of the European Parliament at committee level, and establishing regular meetings of chairpersons of relevant committees from the two bodies;
- considering ways to contribute to the effective strengthening of relations between the European Parliament and the national parliaments of EU member states, as a body bringing together members of all these parliaments;
- organising jointly with the European Parliament inter-parliamentary conferences on specific topics of common interest;
- enhancing co-operation in joint electoral observation missions.

46. See document AS/Bur (2011) 12 rev on relations between the European Parliament and Parliamentary Assembly of the Council of Europe in 2011.

143. I also believe that, after EU accession to the European Convention on Human Rights, the participation of European Parliament representatives in the Assembly sittings and its subordinated bodies when the latter exercises their functions in relation to the election of judges to the Strasbourg Court, will create concrete opportunities for further contacts between members of the Assembly and MEPs. In this context, a special role can also be played by the Assembly's political groups, which could consider ways of facilitating contacts with MEPs from respective political groups.

144. Last but not least, I suggest that the governments and the parliaments of Council of Europe member states, as well as the European Union and civil society organisations promote visibility of the reinforced partnership between the Council of Europe and the European Union in the present post-Lisbon era and raise public awareness about the need to further consolidate such partnership in the interest of all people in Europe. The parliaments of EU member states could in particular do so through regular debates on issues related to the relations between the two organisations, including those between the Assembly and the European Parliament, as well as through parliamentary questions to the government.⁴⁷

145. The Council of Europe Liaison Office with the European Union (Brussels Office), for its part, is playing an increasing role for the purposes of promoting the visibility of Council of Europe-European Union relations, by providing regular reporting on co-operation between the two organisations, facilitating high-level and operational contacts, as well as regularly presenting the Council of Europe bodies and activities to EU institutions and to the press. I hope that the potential of the Brussels Office will be further developed in the near future.

5. Conclusions

146. It has been clearly demonstrated from my report that the entry into force of the Lisbon Treaty has opened up new opportunities for a reinforced partnership between the Council of Europe and the European Union, based on each other's *acquis* and comparative advantages. In my view, such a partnership should aim at ensuring coherence between, on the one hand, the pan-European project promoted by the Council of Europe and, on the other, the integration process initiated by the European Union. It should ultimately lead to a common space for human rights protection across the continent in the interest of all the people in Europe.

147. Many steps have recently been taken in the right direction. To quote some of them:

- Negotiations for EU accession to the Convention, a long standing objective which will eventually lead to the creation of a common space of human rights' protection across Europe, have progressed smoothly and led to a draft Accession Agreement.
- The Parliamentary Assembly/European Parliament Joint Informal Body, established early 2011 upon the initiative of the European Parliament "in order to co-ordinate information sharing", succeeded in only two meetings in solving difficult and technically complicated matters related to the participation of the European Parliament in the election of judges after EU accession to the Convention, in a spirit of good faith and constructive dialogue.
- Increased contacts with the European Parliament led to a fruitful exchange of views with the then Chair of the Subcommittee on Human Rights of the Committee of Foreign Affairs of the European Parliament, Ms Heidi Hautala, last November, and the participation of several Assembly members in meetings or hearings organised by the Subcommittee.
- Intensified high-level contacts between the Secretary General of the Council of Europe and EU Commissioners as well as the High Representative for Foreign Affairs and Security Policy have improved policy co-ordination.
- Recent events throughout the Southern Mediterranean have given rise to new opportunities for increased co-operation between the two organisations in the context of a revised European Neighbourhood policy, on the EU side, and a new policy towards neighbouring regions on the Council of Europe side, of which the partner for democracy status with our Assembly is an essential element. While the European Union proposed in March 2011 the status of "Partnership for Democracy and Shared Prosperity" for the countries of the Southern Mediterranean, our Assembly had already created the status of partner for democracy for the parliaments of the countries of the same region back in 2009. Our Assembly granted this status for the first time in June 2011 to the Parliament of Morocco, and a request from the Palestinian National Council is currently being examined.⁴⁸

47. A recent example in this respect is the report that Senator Denis Badré prepared on the relations between the Council of Europe and the European Union for the attention of the Prime Minister of France, upon his request, *op. cit.*

- As regards coherence of standards between the European Union and the Council of Europe, a Convention review has been initiated within our Organisation which should create conditions to facilitate EU accession to Council of Europe conventions other than the European Convention on Human Rights. EU accession to the Council of Europe conventions on data protection and on cybercrime seems for instance to be on the agenda.
- As regards the coherence of monitoring of standards and the implementation of the Stockholm Programme, negotiations for EU participation in GRECO should soon start and hopefully will pave the way for future accession. In a recent resolution, the European Parliament has reiterated its call for EU accession to other Council of Europe bodies or monitoring mechanisms, such as the CPT, ECRI and CEPEJ.

148. However, while welcoming these positive steps, I believe that the role of the Council of Europe as “the benchmark for human rights, rule of law and democracy in Europe” has to be further enhanced and fully and effectively recognised by all EU institutions in the present post-Lisbon era. A more long-term or strategic vision should be developed on the relations between the two organisations. Building on the 2007 Memorandum of Understanding between the two organisations, the Lisbon Treaty and the perspectives opened up by the ongoing reform of the Council of Europe, the recently reinforced partnership between the two organisations should be further consolidated and regular policy co-ordination should be further developed at all levels.

149. For the purpose of pursuing the building of a common space for human rights protection at pan-European level and ensuring coherence of standards and of monitoring of their implementation by member states throughout the continent, there is now a need for the active support of all European governments and parliaments, as well as of the European Union, which will have to:

- renew the political commitment they undertook when ratifying the Lisbon Treaty and/or Protocol No. 14 to the European Convention on Human Rights, in order to enable rapid conclusion of the Agreement on the Accession of the European Union to the Convention, its endorsement and its entry into force, guided by the principle that such accession aims to increase the human rights protection of individuals;
- promote and facilitate EU accession to other key Council of Europe conventions, monitoring mechanisms and bodies, *inter alia* through the ongoing review of Council of Europe conventions, while preserving the essence of each convention system and without prejudicing the effective functioning of each mechanism and body;
- co-ordinate action with the European Union in the areas of migration and asylum and jointly ensure appropriate follow-up to the high-level conference on Roma issues organised by the Council of Europe in October 2010;
- ensure coherence of normative activities within the two organisations, in particular through prior consultations at an early stage as possible and at a high political level, in addition to inter-secretariat information sharing at operational level;
- develop appropriate synergies between Council of Europe monitoring mechanisms and bodies and any new evaluation mechanisms to be set up by the European Union.

150. Building, *inter alia*, on the opportunities opened by the Lisbon Treaty and recent events throughout the Southern Mediterranean, the Council of Europe’s expertise and benchmarking and advisory role should further be enhanced in the context of the EU enlargement and neighbourhood policies, in particular to the extent that these policies apply to countries which are either full Council of Europe member states or belong to its neighbourhood.

151. A number of concrete proposals for further enhancing relations between the Assembly and the post-Lisbon reinforced European Parliament are put forward in the draft resolution. A number of more concrete recommendations to governments, national parliaments, and the European Union are included in the same text, whereas recommendations to the Council of Europe Committee of Ministers are addressed in the draft recommendation.

152. I reiterate that it is of particular importance that the governments and parliaments of Council of Europe member states, as well as the European Union, promote the visibility of the reinforced partnership between the Council of Europe and the European Union in the present post-Lisbon era and raise public awareness about the need to further consolidate such partnership, including through parliamentary debates and a better use of the potential of the Council of Europe.

48. See [Doc. 12711](#).

153. In closing my report, let me put on the table a proposal already formulated in 2006 by the Prime Minister of the Grand Duchy of Luxembourg, Mr Jean-Claude Juncker, in the report he prepared in his own name on relations between the Council of Europe and the European Union, at the request of Council of Europe Heads of State and Government at the Warsaw Council of Europe Summit. Mr Juncker, in concluding his report five years ago, wrote: “it follows logically from the complementary relationship between the Council of Europe and the EU ... and from the increased co-operation between the two bodies, which is necessary for the democratic security of people in our continent, that a further step in the relationship should be envisaged, once the EU has acquired legal personality – EU membership of the Council by 2010 ... This will allow it to speak directly for itself in all the Council bodies, on all issues which affect its interests and which fall within its area of competence – all within the context of a pan-European dynamic which it will help to push ahead in the general interest of the continent”.⁴⁹

154. Today, I believe that the entry into force of the Lisbon Treaty, with all its legal and political consequences and the ensuing reshaping of the European architecture, gives fresh topicality to the words of Mr Juncker when he referred to the Council of Europe and the European Union as “a sole ambition for the European continent” and to the perspective of EU accession to the Council of Europe Statute. The time is now ripe to give this perspective serious consideration.

49. See [Doc. 10897](#), Council of Europe – European Union: “A sole ambition for the European continent”.