

Opinion 262 (2007)¹

Memorandum of understanding between the Council of Europe and the European Union

Parliamentary Assembly

1. Enhanced co-operation between European institutions and organisations as well as the co-ordination of their action are necessary conditions for the success of European construction. This requires a clear division of competences, the avoidance of duplication and the establishment of constructive dialogue on policy issues aimed at identifying joint priorities and elaborating common strategies whenever possible.
2. The relations between the Council of Europe and the European Union, given their shared fields of interest and partly overlapping membership, are, in this regard, of particular importance.
3. The Parliamentary Assembly has expressed its views on these relations on several occasions and in this context, it refers to its Recommendations 1693 (2005) on the Parliamentary Assembly's contribution to the 3rd Summit of Heads of State and Government of the Council of Europe, 1712 (2005) on the follow-up to the 3rd Summit, 1743 (2006) on the memorandum of understanding between the Council of Europe and the European Union, and 1744 (2006) on the follow-up to the 3rd Summit: the Council of Europe and the Fundamental Rights Agency of the European Union.
4. The Assembly recalls that, at the 3rd Summit of the Council of Europe held in Warsaw on 16 and 17 May 2005, the heads of state and government committed themselves "to ensuring complementarity of the Council of Europe and the other organisations involved in building a democratic and secure Europe, and to creating a new framework for enhanced co-operation and interaction between the Council of Europe and the European Union in areas of common concern, in particular, human rights, democracy and the rule of law". To this end, it was decided to draft a memorandum of understanding between the two institutions in order "to create a new framework for enhanced co-operation and political dialogue".
5. Moreover, the heads of state and government entrusted Mr Jean-Claude Juncker, Prime Minister of Luxembourg, with the task of preparing, in his personal capacity, a report on the relationship between the Council of Europe and the European Union, on the basis of decisions taken at the 3rd Summit, and taking into account the importance of the human dimension of European construction. This report was presented to the Assembly on 11 April 2006.
6. The Assembly acknowledges that the Committee of Ministers has spent much time discussing and preparing the draft memorandum of understanding but regrets that it was only submitted on 10 April, thereby leaving little opportunity for members of the Parliamentary Assembly to consider it.
7. The Assembly appreciates the readiness of the Committee of Ministers to associate the Assembly with its work but regrets that the Committee of Ministers has not submitted any reason for rejecting so many of the key recommendations of the Juncker report and the views of the Assembly upon it.
8. It expects that the draft memorandum which was transmitted to it for opinion will not undergo any further modifications, except for those which may result from the Assembly's proposals.

1. Assembly debate on 19 April 2007 (17th Sitting) (see [Doc. 11244](#), report of the Political Affairs Committee, rapporteur: Mr Ateş). Text adopted by the Assembly on 19 April 2007 (17th Sitting).



9. Should, however, the Committee of Ministers not accept the essential amendments proposed herein, the Assembly considers that the memorandum would not be in line with the commitments of the Warsaw Summit and the Juncker report and would not give any added value.

10. The draft memorandum is an important document and its elaboration is welcomed by the Assembly. It contains a number of provisions which could improve the present state of relations between the two institutions.

11. At the same time, however, the Assembly is disappointed by the overall content of the draft memorandum. It does not contain precise and concrete commitments requiring the parties to make substantial additional efforts to enhance co-operation. It does not provide an innovative or ambitious approach to challenges faced by European construction. Neither does it reflect a genuine political determination to advance the process of co-operation. Consequently, it will not pave the way for more extensive and intensive co-operation between the two institutions.

12. Furthermore, the draft text does not sufficiently reflect either the proposals and recommendations contained in the Juncker report or the proposals made by the Assembly and reiterated by its President and representatives on several occasions in the drafting process.

13. In this context, the Assembly observes that the co-operation between the Assembly and the Committee of Ministers on this issue cannot be limited to the participation of the Assembly's representatives in meetings of the Follow-up Committee on the 3rd Summit. If the co-operation is to be meaningful, the Assembly's position must also be taken into account when finalising the document.

14. The Assembly notes that the co-operation between the two institutions at the parliamentary level (the Parliamentary Assembly and the European Parliament) is the subject of a separate document to be signed by the respective presidents.

15. The Assembly considers that the draft memorandum, as currently formulated, must be improved and supplemented so as to take into account recommendations contained in the report prepared by Mr Juncker, as well as opinions previously expressed by the Parliamentary Assembly and its President. Consequently, the Assembly recommends that the Committee of Ministers introduce the following amendments into the draft memorandum of understanding:

As regards the Preamble

15.1. In paragraph 1, first line, replace the word "unity" with the word "co-operation".

15.2. In paragraph 1, first line, after the words "between the", insert the word "sovereign".

15.3. In paragraph 1, first line, replace the word "states" with the word "countries".

15.4. After paragraph 2, insert a new paragraph, which reads as follows: "Recognising the Council of Europe's unique role and achievements in its core areas of excellence, notably the protection of human rights, democracy and the rule of law;"

15.5. After paragraph 4, insert a new paragraph, which reads as follows: "Seeking to intensify co-operation and ensure co-ordination of action on questions of mutual interest;" As regards purposes and principles of co-operation

15.6. In paragraph 8, delete the words "In doing so, they will follow the guidelines adopted by the 3rd Summit in Warsaw which called for the building of a Europe without dividing lines".

15.7. After paragraph 8, insert a new paragraph, which reads as follows: "The Council of Europe will remain the benchmark for human rights, the rule of law and democracy in Europe." 15.8. In paragraph 10, first line, after "will take", insert the word "systematic".

15.9. In paragraph 10, replace the word "unnecessary" with the word "all".

15.10. In paragraph 10, second line, after the words "avoiding unnecessary duplication", add "in particular, when considering the setting up of European agencies and developing new policies".

As regards shared priorities and focal areas for co-operation

15.11. In paragraph 15, first line, replace the words "base themselves on" with the word "accept."

15.12. In paragraph 16, at the end of the last sentence, replace the words “will be taken into account by the European Union institutions” by “will be systematically taken on board by the European institutions”.

15.13. Paragraph 19, at the end, insert the sentence: “The two institutions and their member states undertake to complete the preparatory work necessary to achieve this objective without delay.”

15.14. After paragraph 19, insert a new paragraph, which reads as follows: “The European Union recognises that the Commissioner for Human Rights will become the European institution to which the European Union, like all of the Council of Europe member states, will refer all human rights problems not covered by existing monitoring and supervisory mechanisms.”

15.15. Replace paragraph 23 with the following new paragraph: “Bearing this in mind, a coherent legal order should be developed by incorporating the main Council of Europe standard-setting instruments into the European Union legal system or by the European Union acceding to major Council of Europe legal instruments.”

15.16. After paragraph 24, insert a new paragraph, which reads as follows: “The European Union and the Council of Europe will replace the use of the ‘disconnection clause’ in new Council of Europe legal instruments by the use of a ‘modulation clause’, making clear that European Union member states are to abide by Council of Europe conventions, partly through the exercise of European Community competence. In the case of inconsistencies, the normal mechanism of reservations should be used.”

15.17. Replace paragraph 29 with the following new paragraph: “With regard to their common aim of promoting democratic stability in Europe, the Council of Europe and the European Union will increase their co-operation in the countries covered by the European Union’s Neighbourhood Policy or by the Stabilisation and Association process, with due regard to the specific competences of both institutions and taking into account Council of Europe member states’ observance of their obligations and commitments.”

15.18. In paragraph 30, first line, replace the word “states” by the word “countries”.

As regards arrangements for co-operation

15.19. After paragraph 42, insert a new paragraph, which reads as follows: “With a view to ensuring the parliamentary dimension of the quadripartite meetings, the Parliamentary Assembly and the European Parliament will be systematically invited to participate therein.”

15.20. In paragraph 44, after the words “More frequent consultations”, insert the words “aimed at the reinforcement of political dialogue”.

15.21. After paragraph 49, insert a new paragraph, which reads as follows: “In the framework of the European Neighbourhood Policy, the two institutions will have regular exchanges and joint programmes will be planned, implemented and assessed. Consultations involving the European Commission, the Secretariat of the Council of Europe and national policy makers of the countries concerned could be organised to discuss the priorities of co-operation under joint programmes.”

15.22. Immediately after the above insertion, add a new paragraph, which reads as follows: “The Council of Europe and the European Union will work jointly in order to strengthen co-operation with the countries covered by the Stabilisation and Association process. They will regularly exchange information and co-ordinate their activities in order to help further development of democratic capabilities in these countries where appropriate. The possibility to carry out thematic (“horizontal”) programmes in co-operation with the Council of Europe will be considered by the European Union.”

15.23. Immediately after the above insertion, add a new subtitle “Institutional presence” and insert a new paragraph, which reads as follows: “The European Union will take further steps to co-ordinate its activities with and strengthen its presence in the Council of Europe, which will include the establishment of permanent European Commission and Council Secretariat offices in Strasbourg as soon as possible. The Council of Europe liaison office in Brussels will become a fully-fledged representation of the Council of Europe to the European Union.”

16. The Assembly calls on the Committee of Ministers to elaborate a codex of main conventions which would subsequently be proposed for European Union accession.

17. The Assembly expresses the expectation that the memorandum of understanding, despite its shortcomings, once adopted and signed, will be used as a tool for the development of co-operation and improvement of relations between the two organisations. It considers it imperative that the implementation of the memorandum be evaluated within the framework of a high-level group and that it be reviewed within five years at the most.