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The implementation of the Memorandum of Understanding between the Council of Europe and the European Union

Report[1]
Committee on Political Affairs and Democracy
Rapporteur: Ms Kerstin LUNDGREN, Sweden, Alliance of Liberals and Democrats for Europe

Summary

The Committee on Political Affairs and Democracy supports the strengthening of the partnership between the Council of Europe and the European Union and welcomes the enhanced political dialogue, more sustainable joint co-operation programmes and increased legal co-operation between the two organisations, in a spirit of shared responsibility.

It urges all parties to act speedily and constructively to conclude the negotiations and complete the ratification process to ensure a rapid accession of the European Union to the European Convention on Human Rights.

Finally, the report addresses a number of recommendations to the European Union, as well as to the Committee of Ministers of the Council of Europe and the Parliamentary Assembly's leadership, with a view to pursuing further the building of a common space for human rights protection, ensuring complementarity and coherence of standards, and the monitoring of their implementation.

1. Reference to committee: Bureau decision, Reference 3887 of 29 June 2012.

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A. Draft resolution[2]

1. The Parliamentary Assembly strongly supports the strengthening of the partnership between the Council of Europe and the European Union, in line with the Memorandum of Understanding concluded in 2007, which highlights the role of the Council of Europe as "the benchmark for human rights, the rule of law and democracy in Europe" and states that the European Union "regards the Council of Europe as the Europe-wide reference source for human rights".

2. Referring to its Resolution 1836 (2011) and Recommendation 1982 (2011) on the impact of the Lisbon Treaty on the Council of Europe, the Assembly finds it positive that human rights, democracy and the rule of law have been placed at the forefront of European Union policies; this has opened up new opportunities for co-operation between the two organisations based on each other's acquis and comparative advantages.

3. Since the signature of the Memorandum of Understanding in 2007 and the entry into force of the Lisbon Treaty in 2009, the Assembly notes in particular, with satisfaction, that:

3.1. co-operation has become more structured, strategic and political;

3.2. contacts between the two organisations, both at the political level, including high-level political dialogue, and technical and working level, have been steadily increasing both quantitatively and qualitatively;

3.3. the European Union has increased its role in the traditional areas of activity of the Council of Europe, such as justice, freedom, security and the rule of law, and in the period 2010-2014, made extensive use of Council of Europe expertise in the implementation of the "Stockholm Programme – An open and secure Europe serving and protecting citizens";

3.4. the European Union has regularly requested input from the Council of Europe, notably in the context of the European Union Enlargement and Neighbourhood policies;

3.5. consultations take place at an early stage in the process of elaborating European Union legislation, including through written contributions and exchanges of views, and representatives of the European Union are regularly invited to Council of Europe standard-setting activities;

3.6. an increasing number of European Union documents refer explicitly to the standards and instruments of the Council of Europe;

3.7. mutual representation in Brussels and in Strasbourg has facilitated co-ordination, intensified relations and enhanced impact.

4. The Assembly welcomes the comprehensive programme agreement on the financing of European Union–Council of Europe Joint Programmes for the period 2014-2020, which has strengthened the co-ordination, impact and sustainability of the co-operation programmes, putting in place a new framework for co-operation in the European Union Enlargement region, in countries covered by the European Union's Eastern Partnership programme and also in countries in the Southern Mediterranean region, in a spirit of shared responsibilities.

5. While welcoming these positive steps, the Assembly points out that the Memorandum of Understanding is a contract with an obligation of results on both sides, and refers to Resolution 2027 (2013) on the European Union and Council of Europe human rights agendas: synergies not duplication, which, while welcoming higher levels of human rights protection, warned against the setting up of parallel mechanisms which could lead to double standards, "forum shopping" and the lowering of Council of Europe standards.

6. The Assembly is convinced that only the accession of the European Union to the European Convention on Human Rights (ETS No. 5, "the Convention") can ensure in-depth legal co-operation, enhance coherence of legal standards and provide a unique framework for human rights, democracy and the rule of law in Europe. The Assembly welcomes the agreement reached at the negotiators' level in April 2013 on the draft Accession Agreement, and urges the parliaments and governments of the member States of the Council of Europe, as well as all European Union institutions, to:

6.1. act speedily and constructively to conclude the negotiations and complete the ratification process, once the Court of Justice of the European Union delivers its opinion on the compatibility of the draft Accession Agreement with European Union law;

2. Draft resolution adopted unanimously by the committee on 8 December 2014.

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

7. The Assembly welcomes stronger European Union action in the field of justice and home affairs, and the rule of law, if that means that democracy, the rule of law and respect for human rights are better upheld in the 28 member States of the European Union. With a view to pursuing further the building of a common space for human rights protection, ensuring complementarity and coherence of standards and of the monitoring of their implementation, the Assembly invites the European Union to:

7.1. take into account the Council of Europe's role as the benchmark for human rights, the rule of law and democracy in Europe while preparing new initiatives in this field;

7.2. examine with the Council of Europe the possibility for the European Union to accede to key Council of Europe conventions tackling major challenges of today's European society, including the European Social Charter (revised) (ETS No. 163);

7.3. pursue full accession to the Group of States against Corruption (GRECO) as soon as possible, and respect the principle of equal treatment among members of GRECO, which involves the evaluation of European Union institutions by GRECO's mechanisms, taking into account its specificity as a non-State entity;

7.4. carry on discussions concerning the terms of participation of the European Union in Council of Europe non-convention-based monitoring mechanisms and bodies such as 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);

7.5. make full use of reports by Council of Europe monitoring bodies and mechanisms, such as those of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and of the Group of Action against Trafficking in Human Beings (GRETA), and co-operate with the Council of Europe in the relevant fields;

7.6. strengthen the channels of regular and structured consultation, at least once per European Union Presidency, especially on normative developments in the fields of human rights, justice, the rule of law and home affairs, and consistently consult the Council of Europe on relevant European Union draft legislation;

7.7. follow up on existing Council of Europe monitoring procedures and recommendations issued to member States by the Council of Europe, enforce their implementation in European Union member States and facilitate the implementation of the decisions of the European Court of Human Rights;

7.8. ensure that human rights standards upheld by the European Union do not fall short of those upheld by the Council of Europe in order to avoid double and lower standards and subsequent "forum shopping";

7.9. implement the new European Union "Framework to strengthen the rule of law" in a way which builds on and complements the instruments and expertise of the Council of Europe;

7.10. intensify co-operation with the Council of Europe in the context of the new European Union "Strategic Guidelines for Legislative and Operational Planning within the European Union's Area of Freedom, Security and Justice" for the period 2015-2020;

7.11. co-ordinate the European Union annual colloquium on the state of human rights in Europe with the work of the Council of Europe;

7.12. continue promoting accession to key Council of Europe conventions and monitoring mechanisms and bodies among European Union member States and in the context of the European Union Enlargement and Neighbourhood policies, as appropriate;

7.13. ensure complementarity in the context of the European Union "Strategic Framework and Action Plan on Human Rights and Democracy" focusing on European Union external actions.

8. The Assembly calls on parliaments of the European Union member States to continue promoting the visibility of the reinforced partnership between the two organisations, including those between the Assembly and the European Parliament.

9. For its part, the Assembly welcomes the recently intensified contacts between its President and the leadership of both the European Parliament and the European Commission and invites its President and/or its Presidential Committee to:

9.1. further reinforce the practice of regular meetings and informal exchanges with the European Union leadership on current political challenges;

9.2. explore ways of expanding co-ordination and co-operation between the two parliamentary bodies of the European Union and the Council of Europe and their political groups.

9.3. consider updating 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, with a view to taking into account the most recent developments since the entry into force of the Lisbon Treaty.

10. In conclusion, the Assembly believes that, while the Memorandum of Understanding remains a sound basis to continue guiding and structuring relations between the Council of Europe and the European Union, only genuine, continuous and substantial co-operation between the two organisations can help create a truly secure and just European Union where human rights and the rule of law are fully protected and promoted. This should ultimately lead to the accession of the European Union to the Statute of the Council of Europe (ETS No.1) in line with the recommendation included in the 2006 Juncker report “Council of Europe – European Union: ‘A sole ambition for the European continent’”.

B. Draft recommendation[3]

1. The Parliamentary Assembly, referring to its Resolution … (2015) on the implementation of the Memorandum of Understanding between the Council of Europe and the European Union, notes with satisfaction that co-operation has been strengthened and has become more structured, strategic and political over the past seven years.

2. The Assembly strongly welcomes the comprehensive programme agreement on the financing of European Union–Council of Europe Joint Programmes for the period 2014-2020, which has strengthened the co-ordination, impact and sustainability and of the co-operation programmes, in a spirit of shared responsibilities.

3. The Assembly stresses that the ultimate goal of the partnership between the two organisations, based on each other's acquis and comparative advantages, is to pursue further the building of a common space for human rights protection and to ensure coherence of standards and the monitoring of their implementation in Europe. While welcoming the steps already taken in the right direction, the Assembly recommends that the Committee of Ministers:

3.1. enhance the role of the Council of Europe as "the Europe-wide reference source for human rights" by further strengthening its monitoring bodies in the context of the ongoing reform of the Council of Europe;

3.2. strengthen regular, institutionalised dialogue with European Union institutions, at all levels, especially on normative developments in the fields of human rights, justice, the rule of law and home affairs, and promote coherence of normative activities through consultations at an early stage.

4. With a view to ensuring in-depth legal co-operation, enhancing complementarity and coherence of legal standards and providing a unique framework for human rights, democracy and the rule of law in Europe, the Assembly asks the Committee of Ministers to:

4.1. act speedily and constructively to conclude the negotiations on the accession of the European Union to the European Convention on Human Rights (ETS No. 5), once the Court of Justice of the European Union delivers its opinion on the compatibility of the draft Accession Agreement with European Union law;

4.2. promote and facilitate European Union accession to other key Council of Europe conventions, monitoring mechanisms and bodies;

4.3. further enhance coherence and complementarity with the European Union in the areas of freedom, security and justice, in line with the new European Union "Strategic Guidelines for Legislative and Operational Planning within the European Union's Area of Freedom, Security and Justice" for the period 2015-2020;

4.4. ensure active co-operation with the European Union in the implementation of the new "Framework to strengthen the rule of law" in European Union member States;

4.5. continue developing appropriate synergies between Council of Europe monitoring mechanisms and bodies and any new evaluation mechanisms to be set up by the European Union;

4.6. actively contribute to future European Union colloquia on the state of human rights in Europe and bring in the perspective and expertise of the Council of Europe.

5. The Assembly asks the Committee of Ministers to raise public awareness about the partnership and synergies being developed by the two organisations in Europe, especially in the context of European Union accession to the European Convention on Human Rights.

6. The Assembly, while agreeing with the Committee of Ministers that the Memorandum of Understanding remains a sound basis to continue guiding and structuring relations between the Council of Europe and the European Union, wishes to reiterate that the current focus of the European Union on human rights, democracy and the rule of law should ultimately lead to the accession of the European Union to the Statute of the Council of Europe (ETS No. 1), as also recommended in 2006 by the Juncker report, "Council of Europe – European Union: 'A sole ambition for the European continent'".

3. Draft recommendation adopted unanimously by the committee on 8 December 2014.

C. Explanatory memorandum by Ms Lundgren, rapporteur

1. Introduction

1. In June 2012, the Parliamentary Assembly held a current affairs debate on "The European institutions and human rights in Europe", prompted by the decision of the European Union to appoint a Special Representative for Human Rights and fears of duplication with the Council of Europe's activities. On 29 June 2012, the Bureau of the Assembly decided to refer the topic to the Committee on Legal Affairs and Human Rights for report and asked the Committee on Political Affairs and Democracy to prepare the report on "The Memorandum of Understanding between the Council of Europe and the European Union – evaluation 5 years after", as well as a report on "Challenges of a federal Europe".[4]

2. A report prepared by Mr Andreas Gross (Switzerland, Socialist Group) entitled "Towards a better European democracy: facing the challenges of a federal Europe" led to the adoption of Resolution 2003 (2014) in June 2014. While Mr Michael McNamara, rapporteur for the Legal Affairs Committee, is preparing a report on European institutions and human rights in Europe, I would like to focus, for my part, on the political and technical aspects of the co-operation between the Council of Europe and the European Union and explore ways to create further synergy. Upon my proposal, the committee agreed, on 28 January 2014, to change the title of my report to "The implementation of the Memorandum of Understanding between the Council of Europe and the European Union". In fact, the new title better reflects the purpose of my report, which aims precisely at evaluating, not the Memorandm of Understanding (MoU) as such, but its implementation by both the Council of Europe and the European Union.

3. The MoU which currently governs co-operation between the two organisations was concluded on 23 May 2007. This document highlights the role of the Council of Europe as "the benchmark for human rights, the rule of law and democracy in Europe". It also states that the European Union "regards the Council of Europe as the Europe-wide reference source for human rights" and that "while preparing new initiatives in this field, the Council of Europe and the European Union institutions will draw on their respective expertise as appropriate through consultations".

4. Over the past seven years, co-operation has been strengthened on the basis of the existing MoU, which remains a sound basis to guide and structure relations, as stressed by the Committee of Ministers on 16 May 2013. The 47 Ministers also reaffirmed that the Council of Europe remains the "reference point in matters of human rights, democracy and the rule of law in Europe".[5]

5. Avoiding duplication and improving synergies and complementarities remains a major concern for our Assembly, as repeatedly stressed in a number of resolutions and recommendations, including Resolution 1836 (2011) and Recommendation 1982 (2011) on the impact of the Lisbon Treaty on the Council of Europe, adopted in October 2011 on the basis of a report which I prepared.[6]

6. In October 2013, following an urgent debate prompted by the proposal within the European Union to set up a mechanism to verify EU member States' compliance with fundamental rights, democracy and rule of law standards, the Assembly adopted Resolution 2027 (2013) "The European Union and Council of Europe human rights agendas: synergies not duplication". While welcoming higher levels of human rights protection, the Assembly was concerned that the setting up of parallel mechanisms could lead to double standards, "forum shopping" and the lowering of Council of Europe standards. It stressed that any initiative in this respect should take into account the Council of Europe's role as the benchmark for human rights, rule of law and democracy in Europe. It also reiterated that full coherence of standards could only be ensured by the accession of the European Union to the European Convention on Human Rights (ETS No. 5, "the Convention"), which has been under discussion for more than thirty years and is now an obligation under Article 6 of the Treaty of Lisbon.

7. In its reply in February 2014, the Committee of Ministers shared some of the Assembly's concerns and at the same time welcomed the "European Union's efforts to strengthen its capacity to contribute to the protection of human rights and the rule of law, whilst stressing the need to avoid duplication and ensure coherence and complementarity between its protection system and that of the Council of Europe".[7]

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4. Reference 3886 of 29 June 2012.
5. Document CM(2013)43, Co-operation with the European Union – Summary Report, 123rd Session of the Committee of Ministers, Strasbourg, 16 May 2013.
6. Doc. 12713.
7. Reply adopted by the Committee of Ministers on 19 February 2014 at the 1192nd meeting of the Ministers' Deputies, Doc. 13432.

8. I would like to thank the Secretary General of the Council of Europe, Mr Thorbjørn Jagland, and the former EU Ambassador to the Council of Europe, Ms Luisella Pavan-Woolfe, for addressing our committee during the January 2014 part-session and presenting the state of play of co-operation between the two organisations. I am also grateful to Ms Gabriella Battaini-Dragoni, Deputy Secretary General of the Council of Europe, for providing up-dated information during the committee meeting on 5 September 2014 in Paris.

9. In the framework of the preparation of my report, I held a series of consultations with several Council of Europe officials and I paid a visit to Brussels on 20 and 21 March 2014 to meet with the European Parliament Rapporteur on the evaluation of justice in relation to criminal justice and the rule of law, the Chairperson of the European Parliament Committee on Civil Liberties, Justice and Home Affairs, European Commission officials responsible for Multilateral Relations at the European External Action Service, as well as the private offices of the former Commissioner for Home Affairs and of the former Vice-President of the European Commission in charge of Justice, Fundamental Rights and Citizenship. I also had an exchange of views with civil society representatives in Brussels, including Amnesty International.

10. I do not intend to delve into the relations between the Council of Europe and other EU human rights institutions such as the European Union Special Representative for Human Rights and the Fundamental Rights Agency of the European Union, as this will be the focus of Mr McNamara's report. My idea is not only to provide an objective and simplified overview of the state of play of co-operation between the two organisations based on the MoU, but also to discuss current EU initiatives aimed at strengthening human rights, democracy and the rule of law within the European Union, and to assess whether the terms of the MoU and subsequent declarations of intent by both sides are being put into practice.

2. Overview of the main co-operation activities

11. Besides the Committee of Ministers, the Secretary General of the Council of Europe has primary responsibility for political dialogue with the European Union. The Directorate of External Relations, together with the Liaison Office in Brussels, has an overall responsibility for co-operation, assisting and advising the Secretary General and the Organisation's bodies on specific political matters affecting relations with the European Union. Within the European Union, the High Representative of the Union for Foreign Affairs and Security Policy, heading the European External Action Service, is responsible for relations with the Council of Europe.

12. The Council of Europe and the European Union are represented in Brussels and Strasbourg respectively. The Head of Delegation of the European Union to the Council of Europe in Strasbourg also regularly participates in meetings of the Ministers' Deputies and its rapporteur groups.

13. The Council of Europe Committee of Ministers conducts yearly reviews on co-operation between the Council of Europe and the European Union. The latest report, approved by the Ministers on 5-6 May 2014, stressed that "since the signing of the Memorandum of Understanding, there has been an unprecedented qualitative change in mutual relations, which have been transformed into a true, strategic partnership in the areas of political dialogue, legal co-operation and concrete co-operation activities, as illustrated by the continuous high-level consultations with EU representatives". This document also highlights that the "strategic partnership has also resulted in increased policy co-ordination and a further reinforcement of the benchmarking role of the Council of Europe in EU policies, with respect to its member States and in the context of EU Enlargement and Neighbourhood Policies, in particular through close consultations and joint initiatives with Commissioner Füle".[8]

14. On 18 November 2013, the Foreign Affairs Council of the European Union also adopted the EU Priorities for co-operation with the Council of Europe for 2014-2015, identifying a number of geographic and thematic priorities and including political dialogue as a main feature of the co-operation, together with its legal and assistance dimensions.

2.1. Political dialogue

15. The MoU states that the Council of Europe and the European Union will consult regularly and closely both at the political and the technical levels on matters within shared priority areas. High-level political dialogue between the two organisations has considerably improved following the entry into force of the Lisbon Treaty in 2009 and a comprehensive reform of the Council of Europe launched in 2010.

8. 124th Session of the Committee of Ministers (Vienna, 5-6 May 2014), Co-operation with the European Union – Summary report.

16. High-level political dialogue meetings take place between the Chairmanship of the Council of Europe Committee of Ministers, the Secretary General of the Council of Europe and the High Representative of the Union for Foreign Affairs and Security Policy, focusing on topical issues of mutual interest. These meetings are complemented by ad hoc meetings between the Secretary General and/or the Deputy Secretary General and leaders of the European Union. Over the past few years, a routine of high-level meetings has also taken place regularly with former EU leaders, including President José Manuel Barroso, High-Representative/Vice-President Catherine Ashton, Vice-President Viviane Reding, Commissioners Štefan Füle, Cecilia Malmström and László Andor, President of the European Parliament Martin Schulz, as well as European Parliament members. Regular exchanges also take place between the EU Presidency and the Council of Europe Secretariat on normative developments in the field of justice, the rule of law, human rights and home affairs.

17. In the political discourse, public statements and policy papers, it seems that the Council of Europe's unique mandate and areas of specialisation are being increasingly recognised by the European Union at all levels. This is also shown by the closer co-operation between the two organisations in facing recent political challenges, such as the crisis in Ukraine, as well as by the joint statements by Secretary General Jagland and former European Commission President Barroso, former High Representative Ashton and former EU Enlargement Commissioner Füle, in areas such as the death penalty as well as the political situation in individual member States.

18. Following the appointment of the new European Commission on 1 November 2014, Secretary General Jagland went to Brussels on 12 November 2014 for meetings with high-level representatives of the European Union, including the First Vice-President of the European Commission, Frans Timmermans, and the EU Commissioner for neighbourhood and enlargement, Johannes Hahn. Mr Jagland also had a trilateral meeting with Belgian Foreign Minister Didier Reynders and the European Union's High Representative for Foreign Affairs and Security Policy, Federica Mogherini. They agreed to intensify their co-operation on issues of common concern, in particular the crisis in Ukraine.[9]

19. Technical working-level dialogue has also been intensified at the level of Senior Officials' meetings designed for planning, co-ordinating co-operation and making proposals for further action. Generally speaking, there is a certain level of satisfaction with this consultation exercise and both sides have acknowledged the usefulness of the exchanges and have called for more regular interaction.

2.2. Assistance co-operation and joint programmes

20. In line with the MoU, co-operation has been reinforced in the framework of joint programmes (JPs). In 2013, the global financial volume of contracts amounted to €95.1 million, with the European Union and the Council of Europe contributing €81.9 million (86%) and €13.2 million (14%) respectively. JPs focused on EU enlargement countries, the Facility for the countries of the EU Eastern Partnership in 2011-2014, and on supporting reform processes in countries of the Southern Mediterranean and Central Asia.

21. A more strategic, structured and predictable form of co-operation has been shaped in the European Union 2014-2020 financial perspective, in line also with my proposal back in 2011 and Assembly Recommendation 1982 (2011). A "Statement of Intent" was signed by the two organisations on 1 April 2014, putting in place a new framework through joint programmes for co-operation in the EU Enlargement Region (Turkey and the Western Balkans), countries covered by the European Union's Eastern Partnership programme (Armenia, Azerbaijan, Belarus, Georgia, Republic of Moldova and Ukraine) and also countries in the Southern Mediterranean region (initially Morocco and Tunisia). This co-operation will focus on the areas of the Council of Europe's comparative advantage as also recommended by an EU-mandated evaluation report for the 2000-2010 period.[10]

22. The volume and quality of European Union–Council of Europe co-operation on JPs has deepened over time and project cycle management has significantly improved following a recommendation of the above mentioned evaluation. A "Scoreboard" meeting on JPs is also organised annually and working contacts take place in the field.[11]

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9. For similar high-level political contacts between the President of the Assembly and the EU leadership, see below chapter 3.

10. Evaluation of Commission's cooperation with the Council of Europe – An assessment focused on EU funding of Joint Programmes, Final report, September 2012.

11. ODGProg/Inf(2014)1, Joint Programmes between the Council of Europe and the European Union in 2013, 25 February 2014.

23. The process of decentralisation and the creation of Council of Europe field offices, which are implementing JPs on the basis of action plans agreed with the country concerned, have also contributed to improving the overall management of assistance co-operation and joint programmes.

2.3. Legal co-operation

24. The Council of Europe's human rights standards are often reflected and referred to in EU legislation and most of the time consultations take place at an early stage in the process of elaborating standards, including through written contributions and exchange of views. The European Union is invited to Council of Europe standard-setting activities.

25. Significant improvements have taken place since the establishment of the Council of Europe Liaison office in Brussels, which closely follows EU normative developments and makes sure that the work of the Council of Europe is taken into account.

26. The Lisbon Treaty has increased the scope for EU action in many areas where the Council of Europe already has significant experience and expertise. This has led to increased co-operation on issues such as anti-discrimination, gender equality and the fight against violence, children's rights, the Roma, the independence and efficiency of the judiciary, the fight against corruption and money laundering, cybercrime, Internet governance and the protection of minorities.

27. I discussed this matter with officials at the Council of Europe Human Rights Law and Policy Division, who co-ordinate contributions on new EU legislation which may have an impact on fundamental rights, whenever the Council of Europe is consulted on issues such as the EU data protection framework, the EU directive on access to lawyers or on human rights and business. References to Council of Europe instruments and standards also appear in EU agreements with third countries. In the period 2010-2014, the European Union made extensive use of Council of Europe expertise in the implementation of the "Stockholm Programme – An open and secure Europe serving and protecting citizens".[12]

28. However, EU consultation of the Council of Europe on EU draft legislation is not always consistent; the Council of Europe is consulted at varying stages of the development of EU legislation and by differing EU institutions. The Council of Europe is interested in being consulted with regard to the latest legislative developments. In addition, despite these positive developments, the two main European systems of fundamental rights protection, operated respectively by the European Convention on Human Rights and EU law, remain separate and there is a potential risk that they may drift apart. This may occur if the Court of Justice of the European Union (CJEU) adapts its interpretation of fundamental rights to the specific needs of the EU system, with a view to preserving the efficiency of the mechanisms operating in the area of freedom, security and justice (for example, in the mutual recognition of judicial decisions of other EU member States, the presumption that they satisfactorily respect fundamental rights).[13]

29. The Lisbon Treaty has created an obligation for the European Union to accede to the Convention, and opened the way for the European Union to become a Party to other Council of Europe agreements. In the meantime, further to the reform of the system of the European Court of Human Rights launched by the Secretary General and carried out over recent years, the whole Convention system has become more efficient. The accession of the European Union to the Convention is of utmost importance to ensure in-depth legal co-operation, enhance coherence of legal standards and to provide a unique framework of human rights, democracy and the rule of law in Europe, as was stressed by the EU Foreign Affairs Council on 18 November 2013.

30. On 18 December 2014, the CJEU will issue an opinion on the compatibility of the draft Accession Agreement with EU law, a text on which agreement was reached – at the negotiators' level – in April 2013.[14] This text will necessitate ratification by the 47 States Parties to the Convention and a non-State entity, the European Union.[15] The Italian outgoing Presidency of the European Union (1 July to 31 December 2014) has provided strong support for this process.[16]

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12. For more details on the "Stockholm Programme", see my report of 2011, Doc. 12713.
13. Johan Callewaert, To accede or not to accede: European protection of fundamental rights at the crossroads, *European journal of Human Rights*, 2014/4, pp. 496-513.
14. Council of Europe, Draft revised agreement on the accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms, 3-5 April 2013, 47+1(2013)008rev2.
15. For further details, see Andrew Drzemczewski, EU Accession to the ECHR: The Negotiation Process, in *The EU Accession to the ECHR*, Hart Publishing Ltd, Oxford, United Kingdom, July 2014, chapter 2, pp. 17-28.

31. Promotion by the European Union of other Council of Europe conventions is also increasing. The European Union itself has signed and/or ratified a number of treaties (including in the rule of law area, although none of them in the human rights area strictly speaking[17]) and encourages individual States within and outside the European Union to sign them. The European Union has also actively supported the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108), the Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, "Istanbul Convention"), the Convention on Action against Trafficking in Human Beings (CETS No. 197), the Convention for the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201), the Council of Europe Guidelines on child-friendly justice and the Convention on Cybercrime (ETS No. 185).

32. The European Union takes part in the European Audio-visual Observatory, the European Pharmacopoeia and the Pompidou Group. It has a special status in the European Commission for Democracy through Law (Venice Commission) and has been increasingly making use of its expertise by requesting several legal opinions over the past years. Active co-operation also exists in the areas of the media, education, intercultural dialogue, youth and sport.

33. Furthermore, the European Union may send representatives, with no right to vote, to the meetings of a large number of Council of Europe intergovernmental committees.

34. Regular consultations take place at the secretariat level in the framework of the EU neighbourhood policy and with respect to countries participating in the Eastern Partnership.

35. Synergies have also been intensified between the European Union and the Council of Europe monitoring bodies as the Council of Europe core business has become more central in the EU enlargement policy as well as in the European Neighbourhood Policy for Eastern countries. Under Article 49 of the Treaty of the European Union, respect for the rule of law is a precondition for EU membership. The 2012 and 2013 EU enlargement packages focused on rule of law issues and in particular on "Chapter 23" (judiciary and fundamental rights) and "Chapter 24" (justice, freedom and security) of the accession negotiations. Countries aspiring to join the European Union must demonstrate their ability and willingness to establish and promote, from an early stage of the process, the proper functioning of the core institutions necessary for democratic governance and the rule of law, from the national parliament through government and the judicial and law enforcement systems. They will have to adopt the necessary legislation and establish track records of implementation in the areas of the judiciary, public administration and the fight against organised crime and corruption. Ensuring freedom of expression in the media also continues to be of central importance[18]. The European Union relies on Council of Europe data and analyses to prepare its progress reports and the European External Action Service regularly visits Strasbourg and requests input from the Council of Europe.

36. The European Union also co-operates extensively with the European Commission for the Efficiency of Justice (CEPEJ) and the Committee of Legal Advisers on Public International Law (CAHDI).

37. Furthermore, the European Union has expressed interest in working more closely with the Group of States against Corruption (GRECO). GRECO has consistently held that EU participation in GRECO would contribute to more co-ordinated anti-corruption policies in Europe and strengthen their impact. It has also maintained the view that, in order to respect the principle of equal treatment among members, EU

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16. "Europe a fresh start" – Programme of the Italian Presidency of the Council of the European Union, 1 July-31 December 2014.

17. The European Union has signed and/or ratified the following treaties: European Agreement on the Exchange of Therapeutic Substances of Human Origin (ETS No. 26); Agreement on the Temporary Importation, free of duty, of Medical, Surgical and Laboratory Equipment for use on free loan in Hospitals and other Medical Institutions for purposes of Diagnosis or Treatment (ETS No. 33); European Agreement on the Exchanges of Blood-Grouping Reagents (ETS No. 39); Convention on the Elaboration of a European Pharmacopoeia (ETS No. 50); European Agreement on the Exchange of Tissue-Typing Reagents (ETS No. 84); European Convention for the Protection of Animals kept for Farming Purposes (ETS No. 87); Convention on the Conservation of European Wildlife and Natural Habitats (ETS No. 104); European Convention for the Protection of Vertebrate Animals used for Experimental and other Scientific Purposes (ETS No. 123); Protocol to the Convention on the Elaboration of a European Pharmacopoeia (ETS No. 134); European Convention relating to questions on Copyright Law and Neighbouring Rights in the Framework of Trans-frontier Broadcasting by Satellite (ETS No. 153); Protocol of Amendment to the European Convention for the Protection of Vertebrate Animals used for Experimental and other Scientific Purposes (ETS No. 170); Convention on Information and Legal Co-operation concerning "Information Society Services" (ETS No. 180); European Convention for the Protection of Animals during International Transport (Revised) (ETS No. 193), Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198).

18. European Commission, DG Enlargement Management Plan 2013.

participation should involve the evaluation of EU institutions by GRECO.[19] The European Commission has launched an impact assessment to analyse the feasibility and possible modalities of such accession. In the Council of the European Union Conclusions on the EU anti-corruption report, adopted on 5 and 6 June 2014, the Council "calls for the full accession of the European Union to GRECO as soon as possible and for the ensuing evaluation of the EU institutions under GRECO's evaluation mechanism while taking into account the different characteristics of the States and the EU institutions, and asks the Commission to speed up preparatory work to that effect". Following my internal discussions with both sides, it is clear that the principle of mutual recognition needs to be respected by the European Union if it is to become a full member of GRECO. This means that the EU institutions would undergo evaluation like all other members, taking into account its specificity as a non-State entity, especially at a time when there is heightened public concern about fraud in the disbursement of EU funds.

38. Discussions between the EU Special Representative for Human Rights, Mr Stavros Lambrinidis, and Council of Europe representatives, in particular the Commissioner for Human Rights, are ongoing with a view to ensuring complementarity in the context of the "Strategic Framework and Action Plan on Human Rights and Democracy" adopted in 2012, focusing on EU external actions. Almost 150 human rights country strategies were adopted in 2013. In 2013, the European Union also adopted guidelines to protect freedom of religion and belief, and guidelines to promote and protect the enjoyment of all human rights by lesbian, gay, bisexual, transgender and intersex people (LGBTI). Mr McNamara will focus on the relations between the EU Special Representative for Human Rights and the Council of Europe.

3. Parliamentary Assembly relations with the European Parliament and the European Commission

39. Co-operation between our Assembly and the European Parliament takes place on the basis of the Agreement concluded by the respective presidents on 28 November 2007, which adds a parliamentary dimension to the MoU.

40. Annual meetings take place between our Assembly's Presidential Committee and the European Parliament Conference of Presidents. At the last meeting on 9 January 2014 in Brussels, President Schulz and former President Mignon discussed the need to ensure more complementarity between the European Union and the Council of Europe with regard to respect for human rights, co-operation after the Vilnius Summit and the rise of extremist rhetoric in political debates. Speaking at the January part-session of the Assembly on 29 January 2014, Mr Schulz emphasised that "the European Parliament and the Parliamentary Assembly are natural partners" and hoped that the co-operation between them would grow and strengthen. He also had a bilateral meeting with our President, Ms Anne Brasseur.

41. Following Mr Schulz's re-election as President of the European Parliament, Ms Brasseur met him again, on 17 September 2014, to discuss current political issues, as well as ways to improve interaction between the Parliamentary Assembly and the European Parliament. In a further meeting which took place on 18 November 2014, in the presence also of their respective Secretaries General, the two Presidents discussed ways of expanding and improving co-ordination and co-operation between the two parliamentary bodies and their political groups, including ways of improving the format of regular discussions between our Presidential Committee and the Conference of Presidents of the European Parliament. Ms Brasseur stated that their concerns were "very much shared, whether in terms of the challenges faced by growing extremism, or dealing with the crisis in Russia and Ukraine. Not only were we able to discuss the political challenge of Russia in the context of the European Parliament and Parliamentary Assembly, but we talked about how to bring the leaders of political groups closer together".[20]

42. I hope that intensified contacts between the two Presidents will allow reciprocity and eventually lead to an invitation to the President of our Assembly to address a plenary session of the European Parliament in the near future.

43. Moreover, following her informal contacts in Luxemburg with the new President of the European Commission, the President of our Assembly invited, on 23 October 2014, Mr Jean-Claude Juncker to address the Assembly. Ms Brasseur also met, on 16 September 2014, with Ms Federica Mogherini in her capacity as Minister of Foreign Affairs of Italy, as well as designated EU High Representative for Foreign Affairs and Security Policy. It was agreed to meet and exchange views on a regular basis on issues of common interest.

19. 14th General Activity Report (2013) of the Group of States against Corruption, 24-28 March 2014.
20. "PACE President 'calibrates' human rights priorities with new EU leaders", 20 November 2014.

A further meeting of Ms Brasseur with both Mr Juncker and Ms Mogherini, a former active member of our Assembly, took place on 19 November. On the same day, Ms Brasseur also met Mr Johannes Hahn, European Commissioner for Enlargement and Neighbourhood Policy.

44. I understand that regular meetings and informal exchanges between the President of the Assembly and the new EU leaders on current political issues are likely to intensify in the near future. As Ms Brasseur stated following her most recent meetings in Brussels, referring to the evolving conflict involving Ukraine and Russia, it is particularly important that both the European Union and the Council of Europe have co-ordinated positions in order to send clear messages and find appropriate solutions.

45. Practical co-operation include regular exchanges of information between the European Parliament and Parliamentary Assembly rapporteurs, hearings at committee level and contacts at Secretariat level, which take place on a regular basis. During my discussions in Brussels, some MEPs from the Civil Liberties, Justice and Home Affairs (LIBE) Committee proposed appointing contact parliamentarians in the corresponding Parliamentary Assembly and European Parliament committees to co-ordinate work on issues of mutual interest. Election missions could also intensify co-operation though information exchange and contacts.

46. In the field of election observation, the Parliamentary Assembly Interparliamentary Co-operation and Election Observation Division maintains regular working contacts with its counterpart in the European Parliament Secretariat.

47. A number of practical proposals were also presented by former Assembly President Mignon to the Bureau on 2 September 2013, *inter alia*:

– to establish closer contacts between the Parliamentary Assembly's pre-election missions and the European Parliament, which does not organise such missions;

– to develop more regular contacts to exchange information on future European Parliament and Parliamentary Assembly activities, including through participation in their respective sessions;

– hold an event in Brussels, for example in the framework of the International Day of Democracy;

– seek ways of getting MEPs more closely involved in Parliamentary Assembly activities in the European Union's enlargement zone.

48. The European Parliament Resolution of 12 March 2014 on the evaluation of justice in relation to criminal justice and the rule of law (whose Rapporteur, Ms Kinga Göncz, I met in Brussels) proposed some measures to give a new impetus to this co-operation by suggesting, *inter alia*, the organisation of ad hoc meetings between committees, the appointment of focal points on both sides, targeted invitations for Council of Europe and EU experts in both Assemblies, an update of the 2007 Parliamentary Assembly–European Parliament Agreement and increased co-operation between the European Parliament and the Venice Commission.

49. I pointed out that some technical difficulties, such as the use of official languages and balanced representation, need to be thoroughly discussed to evaluate the feasibility of those proposals. However, I would be in favour of a discussion at the level of our Presidential Committee and their Conference of Presidents, as such bodies could discuss practical arrangements.

50. Agenda-driven meetings and informal exchanges between the two Presidents and the leaders of the political groups in the two parliamentary bodies on current political challenges could be a way of intensifying high-level political dialogue.

51. Article 6 of the Draft revised agreement on the accession of the European Union to the European Convention on Human Rights foresees the participation of a delegation of the European Parliament, with the right to vote, in the sittings of the Parliamentary Assembly of the Council of Europe related to the election of judges. A European Parliament–Parliamentary Assembly working group has considered this subject[21] and a separate report is being prepared by the Committee on Legal Affairs and Human Rights.

21. For the conclusions of this working group, see my previous report on "The impact of the Lisbon Treaty on the Council of Europe", Doc. 12713, section 3.1.3.2, as well as the synopsis of the last meeting of this group in document AS/BURAH EP PACE (2012)2.

4. Recent EU developments in justice, home affairs and the rule of law

52. The European Union is developing policies to create an area of freedom, security and justice where democracy, the rule of law and respect for human rights are upheld. From a Council of Europe perspective, this development cannot but be welcomed. I share the observation of the Council of Europe Commissioner for Human Rights, who stressed that "while the EU's promise on human rights is good news and needs to be supported, its deeds have to improve if it wants to leave a positive imprint on Europe's future".[22]

53. The Lisbon Treaty reinforced the importance of human rights in EU policies, both inside and outside the Union, including by making the European Union's Charter of Fundamental Rights legally binding. As shown in the European Commission's 4th report of April 2014 on the implementation of the Charter of Fundamental Rights, the EU Court of Justice increasingly applies the Charter in its decisions while national judges are more and more aware of the Charter's impact and increasingly seek guidance from the Court of Justice. Since 2010, the European Commission has put in place a "fundamental rights check list" and screens every legislative proposal to ensure that it is "fundamental-rights proof".[23]

54. The Lisbon Treaty has also created the conditions for a more democratic, legal and judicially accountable sphere of co-operation in many policy fields, such as the EU area of freedom, security and justice, with a stronger European Commission, a European Parliament acting as co-legislator and a Court of Justice with widened jurisdiction.

55. I acknowledge relevant developments brought about by the Stockholm Programme in the field of freedom, security and justice in the period 2009-2014. However, daily news reports and policy papers by a number of national and international organisations as well as non-governmental organisations (NGOs) show that the European Union remains an area where some groups, such as the Roma, experience widespread discrimination, violence against women remains pervasive, intolerance towards LGBTI people continues, the rights of migrants, refugees, asylum seekers are not protected and radicalisation and hate speech are on the rise[24]. Corruption continues to be a challenge for Europe and costs the European economy approximately €120 billion per year. In all those areas and many more, the Council of Europe has conducted extensive work in the past 60 years and has developed legal standards and instruments which may well serve the interest of the European Union. However, we should also ask ourselves why we have not been more successful and how we can improve Europe's human rights record, also by further tapping into the synergies between the two organisations.

56. On 11 March 2014, the European Commission presented a package "on the future of Justice and Home Affairs and the rule of law initiative", offering a contribution for the June 2014 European Council, which later in June adopted strategic guidelines in the field of freedom, security and justice. This package consists of three main communications, in which the Council of Europe has consolidated experience and expertise.

4.1. Strengthening the rule of law

57. The "new EU Framework to strengthen the rule of law" is a mechanism aimed at addressing systemic threats to the rule of law in any of the EU member States.[25] It will be complementary to infringement procedures, when EU law has been breached, and to the so-called "Article 7 procedure" of the Lisbon Treaty which allows for the suspension of voting rights in the case of a "serious and persistent breach" of EU values by a member State.[26]

58. The new "Framework" establishes an early warning tool allowing the European Commission to enter into a dialogue with the member State concerned to prevent the escalation of systemic threats to the rule of law. The former EU Commissioner for Justice, Citizenship and Fundamental Rights, Ms Reding, while noting that the European Union will draw on external expertise of the Council of Europe, also stressed that "Article 7 is a Union-specific procedure. And protecting the Union's rule of law enabling the defence of the values set out in Article 2 of our Treaties is a Union business!".

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22. Council of Europe Commissioner for Human Rights, Talk about human rights in the EU, 5 December 2013.
23. COM(2014)224 final: Report on the application of the Charter of Fundamental Rights in 2013, 14 April 2014.
24. See also Amnesty International, The future of EU policies in the area of freedom, security and justice: a human rights perspective, January 2014.
25. This initiative originates from a proposal of the foreign ministers of Denmark, Finland, Germany and the Netherlands of 3 March 2013, requesting a new mechanism to safeguard the fundamental values of the European Union and asking that the European Commission find ways to cut the funds of member States that are found in persistent and serious violation.
26. Article 7 of the Treaty on European Union (TEU) has never been applied so far.

59. The European Commission communication underlines that "along with democracy and human rights, the rule of law is also one of the three pillars of the Council of Europe and is endorsed in the Preamble to the European Convention for the Protection of Human Rights and Fundamental Freedoms" and that "from a broader European perspective, the framework is meant to contribute to reaching the objectives of the Council of Europe", including on the basis of the expertise of the Venice Commission. Assessment on the rule of law can be based on the "indications received from available sources and recognised institutions, including the Council of Europe and the Fundamental Rights Agency", and the European Commission will "as a rule and in appropriate cases seek the advice of the Council of Europe and/or its Venice Commission, and will co-ordinate its analyses with them in all cases where the matter is also under their consideration and analysis".

60. I welcome the explicit recognition of the role played by the Council of Europe, which for over sixty years has provided benchmarks, indicators and concrete assistance in the rule of law, a pillar which is closely intertwined with democracy and the respect for human rights. Promoting the rule of law and democracy is also one of the statutory objectives of the Venice Commission, which has 24 years of experience and has assisted a variety of countries. Systemic rule of law problems in Europe are normally revealed by judgments of the European Court of Human Rights ("the Court") and by analytical country reports prepared by the Council of Europe, including reports by its monitoring bodies in the appropriate areas, in accordance with agreed procedures (often treaty-based) in which the State in question has a say. The importance of the execution of Court judgments should also be underlined as this gives a more up-to-date picture of the situation than the judgments themselves. As stressed by Mr Gianni Buquicchio, President of the Venice Commission, at the *Assises de la Justice* which took place on 21 November 2013 in Brussels, "the Council of Europe represents the best and in many ways ideal source of information on the state of the rule of law in Europe, capable of identifying, accurately and in time, shortcomings in the implementation of the rule of law".

61. The Venice Commission is also preparing a checklist for evaluating the state of the rule of law in single States, which will be available in 2015. This checklist will be an instrument of detection and analysis of systematic rule of law problems in Europe, and can be used by any competent observer, including the European Union. In the case of "deliberate" violation of the rule of law, stemming from a sudden constitutional or legal reform, the Venice Commission can also provide ad hoc opinions and the European Commission can exercise its own means of pressure or activate any additional sanctioning mechanism.

62. Besides co-ordination with the Venice Commission, the European Union must ensure complementarity with the relevant monitoring bodies of the Council of Europe.

4.2. An open and secure Europe

63. The European Commission Communication "An open and secure Europe: making it happen" builds on the achievements of the Stockholm Programme in the fields of migration and asylum and in tackling security issues (for example organised crime, trafficking, child sexual abuse, cybercrime, corruption and radicalisation). The former EU Home Affairs Commissioner, Ms Malmström, emphasised the need to implement the agreed legislation and consolidate the existing framework as the European Union and its member States will be confronted with new challenges, in particular nationalism and xenophobia.

64. Priority areas cover migration, asylum and freedom of movement issues, international crime networks, terrorism, including radicalisation and recruitment, cybercrime, border management, resilience to crises and security at global level. With regard to cybercrime, the European Commission acknowledges that "the Council of Europe's Budapest Convention on Cybercrime will continue to play an important role for global co-operation and member States that have not yet ratified the convention should do so".

65. It is essential that any forthcoming initiative takes into account the standards and recommendations already set by the Council of Europe and that consultation between the two organisations be intensified in those key areas during the next five years.

4.3. Justice

66. "The EU Justice Agenda for 2020 – Strengthening Trust, Mobility and Growth within the Union" aims to increase mutual trust and mutual recognition of judicial decisions across the European Union, remove obstacles to facilitate movement of citizens and businesses and promote structural reforms in the judicial systems for swift, reliable and trustworthy justice.

67. The European Commission refers to the European Union's accession to the European Convention on Human Rights and to the need "to overcome the last hurdles" to act speedily, following the opinion of the Court of Justice, to conclude the negotiations and complete the ratification process in all EU member States.

68. Furthermore, in its February 2014 anti-corruption report, the European Commission showed that corruption deserves greater attention in all EU member States. The report draws on and supports recommendations already formulated by other corruption reporting mechanisms, notably GRECO and the Organization for Economic Co-operation and Development (OECD), some of which have not yet been followed by member States, and actively promotes their implementation. The report highlights the importance of the synergy with GRECO, which covers all EU member States as well as other European countries of relevance for future enlargement and the Eastern Partnership. It also states that the European Commission is currently taking measures which will allow full accession of the European Union to GRECO in the future, allowing also closer co-operation in view of subsequent editions of the EU Anti-Corruption Report.

69. On 17 March 2014, the European Commission released the second edition of the "EU Justice Scoreboard" to promote the quality, independence and efficiency of justice systems in the European Union. Most of the quantitative data on the justice systems in the member States was provided by the Council of Europe's CEPEJ, which collects data from member States.

4.4. The future of freedom, security and justice policies in the European Union

70. In its Conclusions of 26-27 June 2014, the European Council adopted the new "Strategic Guidelines for Legislative and Operational Planning within the European Union's Area of Freedom, Security and Justice" for the period 2015-2020. The guidelines highlight the crucial need to build an area of freedom, security and justice with full respect of fundamental rights, to improve coherence between internal and external EU policies, and to guarantee internal policy coherence in areas such as:

– data protection;

– migration, asylum and borders policy;

– the prevention of and fight against serious and organised crime, including human trafficking and smuggling, and corruption;

– the fight against terrorism;

– the further development of a comprehensive approach to cybersecurity and cybercrime;

– the prevention of radicalisation and extremism;

– the smooth functioning of a true European area of justice.

71. Regrettably, the accession of the European Union to the European Convention on Human Rights is not put forward as a priority in the guidelines, but I welcome the commitment of the Trio Presidency of the European Union, made up of Italy, Latvia and Luxemburg, to achieve this process as a matter of priority in their 18-month programme (1 July 2014-31 December 2015). Following the opinion of the EU Court of Justice, the European Council should engage in transparent negotiations of the EU internal rules which are necessary for the accession of the European Union to the Convention, with a view to effectively strengthening Europe's human rights protection system.

72. Interestingly, the "Guidelines" also stress that the credibility of the European Union depends on its ability to ensure adequate follow-up on decisions and commitments, which requires strong and credible institutions, but will also benefit from closer involvement of national parliaments. I believe that our Assembly can support the EU objectives, both through our work in Strasbourg and in our own parliaments.

73. During my visit to Brussels on 20 and 21 March 2014, I discussed these matters in depth with my various interlocutors in the European Commission and European Parliament. Everybody seemed to recognise and value the expertise that the Council of Europe can provide in a number of areas, in particular in relation to justice, security and the rule of law. It remains to be seen how the Council of Europe and its expert bodies will be concretely involved in the implementation process.

74. On 13 October 2014, during a conference organised in Rome in the framework of the semester of the Italian Presidency of the Council of the European Union, a positive signal was sent by the EU justice interim Commissioner, Martine Reicherts, who stressed that "[w]hen it comes to the protection of our fundamental values, the European institutions must be able to speak with one voice". She also fully acknowledged the complementarity between the European Union and the Council of Europe, "which plays an essential role in the promotion of democracy, human rights and the rule of law". Speaking of the new EU rule of law framework, she added that "the two institutions will support each other's efforts to promote the rule of law in Europe".[27]

5. Concluding remarks

75. Following the entry into force of the Lisbon Treaty in 2009, the Assembly welcomed the fact that human rights, democracy and the rule had been placed at the forefront of EU policies.[28] This development has opened up new opportunities for reinforced partnership between the two organisations based on each other's acquis and comparative advantages. We have indeed witnessed an increased role of the European Union in the traditional areas of activity of the Council of Europe, such as justice, freedom and security, and the rule of law, with the European Union having legal personality and voice within international and regional organisations, including the United Nations and the Council of Europe.

76. As highlighted by the EU Foreign Affairs Council, "co-operation is multi-faceted, based on complementarity, coherence and added value".[29] The Committee of Ministers of the Council of Europe also noted that the strengthening of the partnership is also "part of the reform of the Organisation, which shall enable the Council of Europe to fully play its role in Europe, notably as the benchmark for human rights, the rule of law and democracy, in line with the Memorandum of Understanding concluded between the two organisations in 2007".[30]

77. However, as also pointed out by the Council of Europe's Deputy Secretary General at the September 2014 committee meeting, "the Memorandum of Understanding is a contract with an obligation for results on both sides". My personal assessment of its implementation over the past seven years shows that co-operation between the Council of Europe and the European Union has indeed become more structured, strategic and political than it used to be, and that the role of the Council of Europe is being increasingly recognised by all EU institutions.

78. Contacts both at the political level and the technical and working level have been steadily increasing. Regular, institutionalised exchanges need to be continued and strengthened between the EU Council and Commission and the Council of Europe officials, especially on normative developments in the fields of human rights, justice, rule of law and home affairs, at least once per European Union Presidency.

79. An increasing number of EU documents refer explicitly to the work and instruments of the Council of Europe. Mutual representation in Brussels and Strasbourg has greatly facilitated co-ordination, intensified relations, briefings and presentations and enhanced their impact.

80. A comprehensive programme agreement on the financing of the European Union–Council of Europe Joint Programmes shows a high level of trust between the two organisations, making it possible to strengthen the co-ordination, impact and sustainability of the co-operation programmes.

81. When it comes to legal co-operation, positive developments can also be noted. However, in my view this is an area in which greater efforts should be made by the European Union to take on board existing human rights, democracy and rule of law standards developed by the Council of Europe, through the work of its monitoring bodies and expert committees. Current discussions on the reform of the Council of Europe monitoring systems may lead to greater coherence and better synergy with EU action.

82. I am convinced that stronger EU action in the field of justice, home affairs and the rule of law should be welcomed if that means that democracy, the rule of law and respect for human rights are better upheld in the 28 EU member States. The important contribution of the Council of Europe in promoting human rights in EU countries must be complementary to deeper EU action, which may, for instance, impose sanctions to ensure that respect for human rights is the bedrock of all EU policies. This requires the commitment of both organisations, which need more than ever to work hand in hand and tap into each other's strength, experience, resources and capability. This was ultimately the *raison d'être* of the Memorandum of Understanding.

83. The Committee of Ministers of the Council of Europe, for its part, needs to ensure that the Organisation remains a reference point and benchmark on human rights and rule of law standards in Europe by continuing to strengthen its monitoring and experts bodies.

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27. Speech by Martine Reicherts, *La protection des valeurs fondamentales de l'Union européenne*, Rome, 13 October 2014.
28. Resolution 1836 (2011) and Recommendation 1982 (2011) on the impact of the Lisbon Treaty on the Council of Europe.
29. Council of the European Union, EU priorities for cooperation with the Council of Europe in 2014-2015.
30. Reply of the Committee of Minister to Recommendation 1982 (2011), 28 March 2012, Doc. 12892.

84. Many human rights organisations, including Amnesty International, think tanks as well as a number of MEPs I met, have called for more commitment with regard to a fully fledged internal fundamental rights strategy for the European Union.[31] Differing standards (LGBTI discrimination, for instance) or lack of human rights protection in EU legislation fail to protect human rights within the European Union and EU standards fall short of Council of Europe standards at times. I believe that, in order to avoid double standards and subsequent "forum shopping", the European Union should base itself on the higher existing standards, which would happen automatically with the European Union becoming Party to Council of Europe and United Nations conventions. Nevertheless, the European Union should be encouraged to go beyond Council of Europe or United Nations standards if that results in strengthening the protection of human rights.

85. If new human rights mechanisms are to be created to implement an internal human rights strategy within the European Union, these should follow up on existing Council of Europe and United Nations monitoring procedures and recommendations and enforce their implementation in EU member States. For this to happen, both organisations could further benefit from channels of regular and structured dialogue, which would allow for a truly synergic partnership:

– through consultation, to ensure that proposed EU policies and legislation respect human rights standards;

– by following up on the monitoring work and the recommendations issued to member States by the Council of Europe, and facilitating the implementation of judgments of the European Court of Human Rights.

86. The new European Commission's five-year term began on 1 November 2014 and Frans Timmermans, first Vice-President, will steer and co-ordinate the Commission's work in the areas of better regulation, inter-institutional relations, the rule of law and the Charter of Fundamental Rights. In his mission letter of 10 September 2014, the European Commission President, Jean-Claude Juncker, indicated that the main priorities of Vice-President Timmermans would include, *inter alia*:

– concluding the European Union's accession to the European Convention on Human Rights;

– co-ordinating the rule of law aspects of the Commission's activities;

– strengthening relations with national parliaments;

– ensuring that all European Commission proposals conform with the Charter of Fundamental Rights.

87. On 8 October 2014, during a hearing at the European Parliament, Mr Timmermans underlined his commitment to a swift EU accession to the European Convention on Human Rights. He added that the European Union would also consider accession to the European Social Charter (revised), and reiterated his strong commitment to the respect for the rule of law by EU member States as well his intention to launch an annual colloquium on the state of human rights in Europe, in co-operation with the Council of Europe, the Venice Commission, the Commissioner for Human Rights, the EU Fundamental Rights Agency and NGOs. In a joint statement issued on 12 November 2014, Secretary General Jagland and Vice-President Timmermans stated that co-operation between the two organisations "is strong and has provided excellent results" and it should be further intensified "in a spirit of complementarity and mutual support". They also confirmed their conviction that the European Union should accede rapidly to the European Convention on Human Rights and hoped that the accession agreement negotiated in April 2013 could enter into force rapidly.

88. The European Commission will be responsible for ensuring that the European Union and its member States' human rights obligations are fulfilled, and that human rights form an integral part of the Commission's work plan for the next five years. It will also need to implement the new EU Framework to strengthen the rule of law in such a way as to build on and complement the instruments and expertise of the Council of Europe, by following up on the monitoring work and facilitating the implementation of the decisions of the European Court of Human Rights. Only honest, continuous and substantial co-operation between the two organisations can help create a truly secure and just European Union where human rights and the rule of law are fully respected, protected and promoted.

89. I should reiterate that ultimately only the accession of the European Union to the Convention and to the Council of Europe will ensure deeper legal co-operation, enhance policy coherence and provide a unique framework for human rights, democracy and the rule of law in the whole continent. This will also afford European people protection against EU action similar to the one they enjoy against action by all European

31. See, in particular, Open Society European Policy Institute, Dr Israel Butler, A Fundamental Rights Strategy for the European Union, May 2014.

Union and Council of Europe member States. Following the opinion of the CJEU on the draft Accession Agreement, the 47 member States and the European Union on the one hand and the Council of Europe on the other hand will need to act speedily to conclude the negotiations and complete the ratification process. EU member States should also be invited to raise public awareness about the enhanced protection of their rights following EU accession.

90. With regard to other Council of Europe conventions, the European Union has expressed its readiness to examine with the Council of Europe the possibility for the European Union to join some of them, and agreed that this should be done at the appropriate time in order to avoid any interference with the current negotiations on EU accession to the Convention. As already stressed in Resolution 1836 (2011), the European Union should pursue further the building of a common space for human rights protection at pan-European level and ensure coherence of standards by acceding to key Council of Europe conventions tackling the major challenges of today's European society.[32]

91. The European Union should also pursue full accession to GRECO as soon as possible and respect the principle of equal treatment among GRECO's members, which involves the evaluation of EU institutions by GRECO's mechanisms, taking into account its specificity as a non-State entity. It should also carry on discussions concerning the terms of its participation in Council of Europe non-convention-based monitoring mechanisms and bodies such as 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). Finally, the European Union should make full use of reports by Council of Europe monitoring bodies and mechanisms, such as those of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and of the Group of Action against Trafficking in Human Beings (GRETA), and co-operate with the Council of Europe in the relevant fields.

92. It remains important to continue promoting accession to key Council of Europe conventions and to monitoring mechanisms and bodies among EU member States and in the context of the EU enlargement and neighbourhood policies, as appropriate.

93. Furthermore, I wish to reiterate a point I made in my previous report on the impact of the Lisbon Treaty on the Council of Europe when referring to a proposal formulated in 2006 by the Prime Minister of the Grand Duchy of Luxembourg, Mr Jean-Claude Juncker, now President of the European Commission, in the report he prepared 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 eight years ago, wrote: "It follows logically from the complementary relationship between the Council of Europe and the European Union … 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 European Union 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".[33]

94. I find it positive that Mr Juncker has accepted an invitation to address our Assembly and I hope that this exchange with parliamentarians from the 47 member States of the Council of Europe will allow us to develop further co-operation with the European Union on democracy and human rights issues in these difficult times.

95. Finally, it is time to explore ways of expanding and improving co-ordination and co-operation between our Assembly and the European Parliament and their political groups, as discussed by Presidents Brasseur and Schulz at their last meeting in November 2014, and possibly to consider the opportuneness of updating

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32. Resolution 1836 (2011) identified the following as a matter of priority: European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126); Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197); Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201); Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210); Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (ETS No. 108); Council of Europe Convention on the Prevention of Terrorism (CETS No. 196); Criminal Law Convention on Corruption (ETS No. 173); Civil Law Convention on Corruption (ETS No. 174); Convention on Cybercrime (ETS No. 185); Council of Europe Convention on Access to Official Documents (CETS No. 205); Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (ETS No. 164); Anti-Doping Convention (ETS No. 135); European Social Charter (revised) (ETS No. 163).

33. Doc. 10897, Council of Europe – European Union: "A sole ambition for the European continent", 11 April 2006.

the 2007 Parliamentary Assembly–European Parliament Agreement on the strengthening of co-operation between them in order to take into account the most recent developments since the entry into force of the Lisbon Treaty.

Appendix – Joint Programmes co-operation in 2013

(Source: Council of Europe Directorate General of Programmes)

European Union–Council of Europe Joint Programmes are one of the major instruments of co-operation in pursuit of common goals of promoting democratic values, respect for human rights, fundamental freedoms and the rule of law in wider Europe and beyond. Joint Programmes are the largest source of funding sustaining the Council of Europe's co-operation and technical assistance activities.

General statistics for 2013

55 Joint Programmes in operation, worth €95.2 million in total:

EU contribution €81.9 million (86%), Council of Europe contribution €13.3 million (14%)

Annual Budgetary Envelope (prorated):

€30 million (EU contribution €25.3 million (84%), Council of Europe €4.7 million (16%))

Annual receipts: €20 million

This accounted for 51% of the Council of Europe's total income from extra-budgetary contributions in 2013, re-confirming the European Union as the largest external contributor to Council of Europe activities.

22 new Joint Programmes were signed in 2013, worth €21.2 million in total.

Geographical distribution

South-East Europe and Turkey: €51.3 million (53.9%)

Eastern Europe and the South Caucasus: €16.95 million (17.8%)

Neighbouring regions: €6.7 million (7%)

EU member States: €4.5 million (4.8%)

Multilateral: €15.7 million (16.5%)

Thematic distribution

Rule of Law Programmes: €38.3 million (40.3%)

Democracy Programmes: €34.6 million (36.4%)

Human Rights Programmes: €21.7 million (22.8%)

Other: €0.55 million (0.5%)