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The impact of the Lisbon Treaty on the Council of Europe

Opinion¹

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Pieter OMTZIGT, Netherlands, Group of the European People's Party

A. Conclusions of the committee

1. The Committee on Legal Affairs and Human Rights congratulates the rapporteur of the Political Affairs Committee, Ms Kerstin Lundgren, on her excellent report, and supports by and large the draft resolution and draft recommendation.
2. On several occasions, the committee has dealt with the issue of relations between the European Union and the Council of Europe. In particular, quite recently, the committee took a stance on the relationship between the Council of the Europe and the European Union Agency for Fundamental Rights,² expressing satisfaction about the synergies created between both institutions and stressing that the Council of Europe's acquis in the area of human rights protection should always be a main reference for the Fundamental Rights Agency's work. It also noted that the risk of possible duplication of tasks might be avoided by a rapid accession of the European Union to the European Convention on Human Rights. Therefore, it is particularly important that Ms Lundgren's report takes stock of the negotiations between the European Union and the Council of Europe concerning the former's accession to the European Convention on Human Rights and is positive about this prospect.
3. Although the report is generally well-balanced and comprehensive, the committee wishes to propose some amendments to further strengthen the draft resolution and draft recommendation, given the political importance of this subject.

B. Proposed amendments to the draft resolution and to the draft recommendation

– In the draft resolution:

Amendment A (to the draft resolution)

In the draft resolution, paragraph 8.1, after the words “the Convention on Cybercrime (ETS No. 185)”, insert the words:

“; the Convention on Access to Official Documents (CETS No. 205)”.

1. Reference to Committee: [Doc. 12114](#), Reference 3640 of 29 January 2010. Reporting Committee: Political Affairs Committee. See [Doc. 12713](#). Opinion approved by the committee on 3 October 2011.

2. See [Resolution 1756 \(2010\)](#) and [Recommendation 1935 \(2010\)](#) on the need to avoid duplication of the work of the Council of Europe by the European Union Agency for Fundamental Rights, and [Doc. 12272](#), rapporteur: Mr Boriss Cilevičs.



Amendment B (to the draft resolution)

In the draft resolution, paragraph 8.2, second sentence, after the words “the Group of States against Corruption (GRECO),” insert the words:

“the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT),”.

Amendment C (to the draft resolution)

In the draft resolution, paragraph 8.5, after the words “throughout the European Union legislative process,”, insert the words:

“in particular in the area of freedom, security and justice,”.

Amendment D (to the draft resolution)

In the draft resolution, after paragraph 9.1, insert the following new sub-paragraph:

“notes with interest the manner in which the European Court of Human Rights and the Court of Justice of the European Union ensure coherence in their case law with respect to human rights standards;”.

Amendment E (to the draft resolution)

In the draft resolution, paragraph 12, at the end of first sentence, add the words “including those relating to freedom, security and justice”.

– In the draft recommendation:

Amendment F (to the draft recommendation)

In the draft recommendation, replace paragraph 3.3 by the following sub-paragraph:

“strengthen the role of the Council of Europe as ‘the guardian for human rights, the rule of law and democracy in Europe’ and, in so doing, promote this primordial role in its relations with European Union institutions”.

C. Explanatory memorandum by Mr Omtzigt, rapporteur for opinion

1. I can only congratulate Ms Lundgren on her excellent report, which deals with a wide range of political and legal issues stemming from the Lisbon Treaty in the context of the relations between the Council of Europe and the European Union. This treaty creates new possibilities for further improvement in synergies between both organisations, notably by allowing, from the legal perspective, the European Union accession to the European Convention on Human Rights.

2. I should like, however, to propose a few amendments to the draft resolution and draft recommendation, with a view to strengthening them, mainly by putting emphasis on some areas in which European Union institutions have gained more powers following the entry into force of the Lisbon Treaty, and which fall within the scope of the main activities of the Council of Europe.

– In the draft resolution

Amendment A

The Council of Europe Convention on Access to Official Documents (CETS No. 205), opened for signature on 18 June 2009, is the first binding international legal instrument which guarantees the right of access to official documents held by public authorities. In the European Union, the right of access to documents of its institutions is enshrined in Article 15(3) of the Treaty on the Functioning of the European Union and in Article 42 of the Charter of Fundamental Rights of the European Union. Since transparency of public authorities is essential for good governance, not only at the level of national administration but also at the level of EU administration, it would be good if the European Union acceded to this convention to ensure coherence of standards in this area.

Amendment B

The amendment aims to stress that the European Union should also join the monitoring mechanism of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which is one of the most crucial Council of Europe bodies monitoring respect for human rights in member states. This possibility has been mentioned in the report (in paragraph 11 and, as one of the conclusions, in paragraph 147). I should like to stress this point since, in implementing the Stockholm programme, the European Union has already begun taking initiatives in the prisons field (see Stockholm Programme, paragraph 3.2.6, Developing networks/Detention;³ the European Commission's Green Paper on the application of EU criminal justice in the field of detention⁴ and the draft directive on the right of access to a lawyer and on the right of notification of custody to a third person in criminal proceedings⁵). If the European Union is going to pursue these activities, it should adhere to the CPT mechanism in order to avoid duplication of standards and monitoring efforts in the area of the treatment of persons held in detention.

Amendment C

The amendment aims to emphasise that, following the entry into force of the Lisbon Treaty, the European Union has gained more competences within the scope of the so-called "area of 'freedom, security and justice'" which concerns directly the traditional areas of competence of the Council of Europe (see paragraph 10 of the report). Therefore, I find it crucial to stress that the consultation process between the European Union and the Council of Europe should be particularly intensive in this area.

Amendment D

The amendment aims to emphasise the need to ensure coherence of human rights standards in the case law of the European Court of Human Rights and the Court of Justice of the European Union. Therefore, the efforts made so far by both courts should be welcomed (see, in particular, the joint communication from Presidents Costa and Skouris, referred to in paragraph 6.3 of the draft resolution).

Amendment E

Following the entry into force of the Lisbon Treaty, the European Parliament has become co-legislator in some policy areas falling within the scope of the "freedom, security and justice" area (paragraph 27 of the report). It would be useful to mention this in the resolution, since certain policies, and in particular police cooperation and judicial cooperation in criminal matters, have a great potential impact on human rights. (See also the explanatory note under Amendment C.)

– In the draft recommendation:

Amendment F

It would be inappropriate for the Committee of Ministers to impose on EU institutions the way in which they should maintain their relations with the Council of Europe. Therefore I propose to formulate this paragraph more appropriately. Moreover, this amendment aims to simplify the text of the draft recommendation, by deleting the words "in this post-Lisbon Treaty era".

3. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:115:0001:0038:en:PDF>.

4. European Commission, Brussels 14 June 2011, COM(2011) 327 final, Green Paper, "Strengthening mutual trust in the European judicial area – A Green Paper on the application of EU criminal justice legislation in the field of detention", http://ec.europa.eu/justice/policies/criminal/procedural/docs/com_2011_327_en.pdf.

5. Proposed on 6 June 2011: http://ec.europa.eu/justice/policies/criminal/procedural/docs/com_2011_326_en.pdf.