

## Edition provisoire

### A. Draft resolution<sup>1</sup>

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

1.1. provided an obligation for the EU to accede to the European Convention on Human Rights (ECHR); allowed for EU accession to other international human rights legal instruments, such as the UN Convention on Persons with Disabilities which the EU joined already in 2010; offered the EU a legally binding bill of rights of its own, i.e. the Charter of Fundamental Rights;

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

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

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

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

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

6. Referring to its previous resolutions and recommendations, which for some 30 years have called for EU accession to the ECHR, in particular Resolution 1610 and Recommendation 1834 of 2008, the Assembly:

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

6.2. welcomes the Resolution of the European Parliament (EP) of 19 May 2010 on the institutional aspects of the accession of the EU to the ECHR, which advocated EU accession to the

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<sup>1</sup> Draft resolution adopted unanimously by the committee on 6 September 2011.

ECHR as “an essential first step”, to be completed by EU accession to other Council of Europe conventions;

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

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

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

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

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

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

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

7.4. raise awareness among people about the enhanced protection of their rights following EU accession to the ECHR and relevant procedures.

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

8.1. accede to key Council of Europe conventions tackling major challenges of today’s European society, such as: the conventions on the prevention of torture and inhuman or degrading treatment or punishment; on action against trafficking in human beings; on the protection of children against sexual abuse; on preventing and combating violence against women; on data protection; on the prevention of terrorism; on corruption; on cybercrime, as well as to the revised European Social Charter;

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

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

- 8.4. promote accession to key Council of Europe conventions and monitoring mechanisms and bodies among its member states and in the context of its enlargement and neighbourhood policies, as appropriate;
  - 8.5. ensure systematic and open consultations with the relevant bodies of the Council of Europe, throughout the EU legislative process, so as to allow for an adequate assessment of EU activities against the human rights benchmarks set by the Council of Europe;
  - 8.6. enhance consultations with the Council of Europe Commissioner for Human Rights, especially as regards the implementation of human rights standards by EU member states.
9. Moreover, the Assembly:
- 9.1. calls for coherence of the normative activities within the two Organisations, which should be ensured in particular through prior consultations at an early as possible stage and at high political level, in addition to inter-secretariat information sharing at operational level;
  - 9.2. urges the creation of appropriate synergies between Council of Europe monitoring mechanisms and any new evaluation mechanisms to be set up by the EU;
  - 9.3. welcomes the fact that, pending full EU accession to GRECO and evaluation of EU institutions by the latter, negotiations will soon start on an enhanced EU participation in GRECO which should allow for synergies to be developed with the proposed EU Anti-Corruption report; negotiations should soon start also on EU accession to the Council of Europe data protection convention, whereas EU accession to the cybercrime convention is also being considered;
  - 9.4. supports the on-going convention review within the Council of Europe, which should identify ways of facilitating EU accession to Council of Europe conventions, while ensuring that each convention system be preserved as it stands with minor adjustments;
  - 9.5. notes that arrangements agreed in the context of EU accession to the ECHR regarding the participation of the EU and its voting rights within the Council of Europe Committee of Ministers might serve as a precedent for future EU accession to other Council of Europe conventions;
  - 9.6. invites the Secretary General to present a list of concrete implications and advantages of EU accession to relevant Council of Europe conventions or monitoring mechanisms thus helping the EU to form a long-term vision on synergies with the Council of Europe, building also on the position already taken in this respect by the European Parliament.
10. The Assembly further notes that the Lisbon Treaty has put emphasis on issues related to human rights, rule of law and democracy in the Union's co-operation with neighbouring countries, thus allowing for enhanced cooperation with the Council of Europe also in this respect. Recent events throughout the Southern Mediterranean have created new opportunities for cooperation in the context of a revised EU European Neighbourhood Policy and a new Council of Europe policy towards neighbouring regions, of which an important element is the Partnership for Democracy status created by the Assembly for parliaments in these regions. The Assembly therefore calls on the European Union to:
- 10.1. make better use of the Council of Europe's benchmarking and advisory role and expertise in the context of its enlargement and neighbourhood policies, in particular to the extent that these policies apply to countries which are either full Council of Europe member states, and thus benefit from the Organisation's monitoring procedures; or belong to its neighbourhood and have thus joined or may join open Council of Europe conventions or partial agreements, such as the Venice Commission and the North South Centre, and whose parliaments have been or may be granted Partnership for Democracy status with the Assembly;
  - 10.2. further develop joint actions and joint programmes with the Council of Europe in the latter's member states or in countries in its neighbouring regions, with a view to supporting the reform agenda in these countries, including through a more stable financial partnership with the Council of Europe, which would allow for increased strategic co-operation and joint long-term planning.
11. As regards relations between the European Ombudsman and the Council of Europe Commissioner for Human Rights, the Assembly welcomes their on-going informal cooperation, including for the purpose of

coordinating activities among European Ombudspersons, and calls for this cooperation to be further developed on all matters related to individuals' rights.

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

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

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

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

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

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

12.6. enhancing cooperation in joint electoral observation missions.

13. The Assembly calls upon the governments and parliaments of Council of Europe member states, as well as the European Union, to promote the visibility of the reinforced partnership between the 2 Organisations, in the present post-Lisbon era and raise public awareness about the need to further consolidate such a partnership in the interest of all people in Europe. It particularly calls upon parliaments of EU member states to do so through regular debates on issues related to the relations between the two Organisations, including those between the Assembly and the European Parliament, as well as through parliamentary questions to the government.

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

## B. Draft recommendation<sup>2</sup>

1. The Assembly, referring to its Resolution ... (2011) on the impact of the Lisbon Treaty on the Council of Europe, notes that the entry into force of the Lisbon Treaty has opened up new opportunities for a reinforced partnership between the Council of Europe and the European Union (EU), based on each other's *acquis* and comparative advantages.

2. In the Assembly's view, such a partnership should aim at ensuring coherence between, on the one hand, the pan-European project promoted by the Council of Europe and, on the other, the integration process initiated by the EU and ultimately lead to a common space for human rights protection across the continent in the interest of all people in Europe.

3. While welcoming the steps already taken in the right direction, the Assembly recommends to the Committee of Ministers to:

3.1. further consolidate the recently reinforced partnership between the two Organisations, building on the 2007 Memorandum of Understanding, on the opportunities opened up by the Lisbon Treaty and on the perspectives opened up by the on-going reform of the Council of Europe;

3.2. ensure that regular policy coordination between the Council of Europe and the EU be further developed at all levels, including through the Council of Europe Liaison Office in Brussels and the EU delegation to the Council of Europe in Strasbourg;

3.3. strengthen the role of the Council of Europe as "the benchmark for human rights, rule of law and democracy in Europe" and, in so doing, ensure that this role is fully reaffirmed and effectively recognised by all EU institutions in the present post-Lisbon era.

4. For the purpose of pursuing the building of a common space for human rights protection at pan-European level and ensuring coherence of standards and of monitoring of their implementation by member states throughout the continent, the Assembly asks the Committee of Ministers to:

4.1. take all measures necessary to ensure the rapid conclusion of the Accession Agreement of the EU to the European Convention of Human Rights (ECHR), its endorsement and entry into force;

4.2. promote and facilitate EU accession to other key Council of Europe conventions, monitoring mechanisms and bodies, *inter alia* through the on-going review of Council of Europe conventions, while preserving the essence of each convention system and without prejudicing the effective functioning of each mechanism and body;

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

4.4. promote coherence of normative activities within the two Organisations, in particular through prior consultations at an early as possible stage and at a high political level, in addition to inter-secretariat information sharing at operational level;

4.5. develop appropriate synergies between Council of Europe monitoring mechanisms and bodies and any new evaluation mechanisms to be set up by the EU.

5. The Assembly further notes that the Lisbon Treaty, as well as recent events throughout the Southern Mediterranean have created new opportunities for cooperation between the two Organisations in the context of a revised EU European Neighbourhood Policy and a new Council of Europe policy towards neighbouring regions proposing a demand-driven co-operation with the countries concerned, of which an important element is the Partnership for Democracy status created by the Assembly for parliaments in these regions.

6. Building *inter alia* on these opportunities, the Assembly asks the Committee of Ministers to enhance the Council of Europe's benchmarking and advisory role and expertise in the context of the EU neighbourhood policy, in particular to the extent that this policy applies to countries which are either full Council of Europe member states or belong to its neighbourhood.

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<sup>2</sup> Draft recommendation adopted unanimously by the committee on 6 September 2011.

7. Welcoming recent positive examples, the Assembly recommends to the Committee of Ministers to further develop with the EU joint actions and joint programmes and seek, in this context, a broader and more stable financial partnership with the EU which would allow for increased strategic co-operation and joint long-term planning.

8. The Assembly asks the Committee of Ministers to promote a better understanding and visibility of the reinforced partnership between the Council of Europe and the EU in the present post-Lisbon era and raise public awareness about the need to further consolidate such a partnership in the interest of all people in Europe.

9. The Assembly believes that the entry into force of the Lisbon Treaty and the on-going reshaping of the European architecture give fresh topicality to the perspective of EU accession to the Council of Europe Statute, already recommended in 2006 by the Juncker report on "Council of Europe - European Union: 'A sole ambition for the European continent'", and thus invites the Committee of Ministers to give further consideration to this perspective.