

Santiago de Compostela, 4 June 2002

SdC (2002) Concl

THE COUNCIL OF EUROPE'S CONTRIBUTION TO THE EUROPEAN UNION'S ACQUIS

SANTIAGO DE COMPOSTELA (GALICIA) - SPAIN
3 - 4 JUNE 2002

CONCLUSIONS

The Council of Europe, in collaboration with the Spanish authorities and the Xunta de Galicia, the Parliamentary Assembly of the Council of Europe and the European Parliament, organised a Conference on the Council of Europe's contribution to the European Union's acquis in Santiago de Compostela, 3-4 June 2002.

The Conference was opened by the President of the Xunta de Galicia.

It brought together representatives of the Council of Europe and the European Union institutions, Governmental and Parliamentary representatives from Council of Europe member States, in particular from countries that have applied to join the European Union and members of the scientific community.

The purpose of the conference was to promote co-operation and coordination between the Council of Europe and the European Union, as well as the coherence of their activities, through the analysis of their relations from an inter-institutional point of view, the interchange and the pooling of information on themes for which they are competent and the formulation of proposals for projects involving co-operation between the two.

Participants discussed the following themes:

- the Council of Europe and European integration;
- the enlargement of the European Union and its impact in the areas of justice and home affairs;
- the European Convention on Human Rights and the EU Charter of Fundamental Rights in search for coherence;
- the normative complementarity between Council of Europe and European Union in the field of criminal law;
- European and pan-European legal co-operation, the perspective of candidate countries to European Union accession.

At the close of proceedings, they adopted the following

C O N C L U S I O N S

I. Effective cooperation between the Council of Europe and the European Union

The participants,

Recalling the outstanding achievements of the Council of Europe in the pursuance of its statutory aim to achieve greater unity between its members for the purpose of safeguarding and realising the ideals of pluralist democracy, human rights and the rule of law;

Emphasising the standard-setting role of the Council of Europe, which has found its expression in almost 200 European treaties, thus contributing to the creation of a common European legal space;

Recalling that the Council of Europe and the European Union share the same values and pursue common aims with regard to the protection of democracy, respect for human rights and fundamental freedoms and the rule of law;

Recalling that cooperation between the European Union and the Council of Europe is expressly mentioned in several provisions of the EC Treaty (Articles 149 § 3, 151 § 3 and 303);

Recalling in particular Article 303 of the EC Treaty which stipulates that "the Community shall establish all appropriate forms of cooperation with the Council of Europe";

Recalling that the European Council in Dublin (December 1996) recognised the Council of Europe's crucial role in upholding human rights standards and supporting pluralist democracy;

Convinced that cooperation between the Council of Europe and the European Union should be extended to all areas where it brings added value to both sides and strengthens complementarity of action;

Recalling the *Joint Declaration on Cooperation and Partnership between the Council of Europe and the European Commission* of 3 April 2001, which emphasised the importance of close cooperation between the two organisations;

Emphasising the important role of the Council of Europe assisting countries applying for European Union membership in meeting in particular the standards in the areas of justice and home affairs required by EU membership;

Recalling the European Union's Joint Action of 29 June 1998 (OJEC L 191) establishing a mechanism for collective evaluation of the enactment, application and effective implementation by the applicant countries of the *acquis* of the European Union in the field of justice and home affairs, this evaluation being based *inter alia* on reports of the Council of Europe;

Recalling the successful realisation by the Council of Europe and the European Union of a number of joint programmes for cooperation with countries which have joined the Council of Europe since 1989, or have applied for membership,

Call on the Council of Europe and the European Union

- to use all possible synergies, to enhance the complementarity of their activities and to avoid duplication of work in order to ensure maximum benefit for all countries concerned;
- to join forces in order to prepare the successful accession of new member States to the European Union, notably through the realisation of joint programmes;

Call on the European Community

- to participate as actively as possible in the work of the Council of Europe, both at the level of the Committee of Ministers and its subsidiary bodies and in committees of governmental experts;
- to become a Party to Council of Europe treaties open for signature or accession by the European Community;

Call on the member States of the European Union not only to preserve Art. 303 of the EC Treaty, but also to extend its scope of application to include all matters falling within the competence of the European Union, notably those dealt with under the present second and third pillars.

II. Consistency and effectiveness in judicial cooperation in criminal matters all over Europe

The participants,

Recalling the importance of the *acquis* of the Council of Europe in the field of criminal law and judicial cooperation in criminal matters which is composed of more than 20 international treaties and numerous recommendations adopted by the Committee of Ministers;

Convinced of the importance of follow-up mechanisms for the effectiveness of international treaties, particularly in the criminal field;

Noting with satisfaction, in this connection, the successful work of mechanisms of mutual evaluation established within the Council of Europe, notably the Group of States against Corruption (GRECO) and the Select Committee of Experts on the evaluation of anti-money laundering measures (PC-R-EV);

Convinced that effective responses to crime require the realisation of a European area of shared justice within which the fundamental justice-related rights of all can effectively be safeguarded and respected;

Acknowledging that cooperation within the Council of Europe allows a common approach to crime and judicial cooperation on a pan-European level;

Recognising that the Council of Europe and the European Union, while using different methods and means, share the same values and pursue common aims with regard to the fight against crime in general and terrorism in particular;

Acknowledging that many of the Council of Europe treaties are part of the European Union's own *acquis* on the basis of which closer cooperation within the Union is being developed;

Recalling that the importance of Council of Europe treaties has been reaffirmed *inter alia* in the Pre-Accession Pact on Organised Crime between the Member States of the European Union and the Applicant Countries (OJEC C 220);

Recalling that the European Union is committed to the creation of an area of freedom, security and justice;

Recalling that the terrorist attacks of 11 September 2001 have tragically emphasised the necessity of further coordination and harmonisation in standard setting and action in the field of criminal law and procedures, in particular in order to ensure effective protection of the right to life;

Convinced that measures to fight terrorism must be reasonable and proportionate, and that effective prevention and prosecution are possible with full respect of the obligation to protect fundamental human rights and freedoms;

Welcoming the measures already taken by the European Union in the fight against terrorism, in particular the common definition of terrorism and the European arrest warrant;

Welcoming the work of the Multidisciplinary Group on International Action against Terrorism (GMT) of the Council of Europe;

Welcoming the creation of Eurojust,

Call on the Council of Europe and the European Union

- to improve the knowledge of and access to all existing European instruments relevant for the fight against crime in general and terrorism in particular;
- to ensure better coordination and consistency in the drafting of new instruments, using wherever possible harmonised language;

- to revise the existing rules and practices whereby States may refuse or otherwise hold back cooperation for non-legal reasons with a view to abolishing them or reducing their effects;
- to strengthen their respective arsenal of counter-terrorist measures, while fully respecting human rights and complying with the demands of democracy and the rule of law;
- to improve the protection of victims within the criminal justice system;
- to improve the training of national judges, prosecutors and investigators in all questions relating to the judicial cooperation in criminal matters and to promote such training in candidate countries for EU membership;
- to establish contacts between Eurojust and the Council of Europe with a view to exploring the possibility of concluding a cooperation agreement, as provided for in Article 27 § 3 of Eurojust's constituent text.

Call on the Council of Europe

- actively to pursue its intergovernmental work, both in the fields of standard-setting and mutual evaluation, with a view in particular to the realisation of a European area of shared justice;
- to step up its assistance to candidate countries for EU membership and to other countries not candidates for EU membership, in particular in the field of justice and home affairs;
- to ensure that countries not candidates for EU membership remain fully integrated into effective pan-european mechanisms of judicial cooperation.

III. Coherence in the protection of fundamental rights and freedoms all over Europe

The participants,

Acknowledging the work accomplished in Europe over the last fifty years with regard to the protection and development of human rights;

Stressing the unique and crucial role played by the Convention for the Protection of Human Rights and Fundamental Freedoms ("the ECHR"), opened for signature in Rome on 4 November 1950, as a constitutional instrument of European public order on which the democratic stability of the continent depends;

Emphasising the impact of the ECHR, its Protocols and the case-law of the European Court of Human Rights on the law and practice of States Parties and the resulting unification of human rights standards all over Europe;

Recalling that the ECHR remains a minimum standard (Article 53 of the ECHR), which allows for national 'margins of appreciation' in respect of several of its rights and freedoms;

Recognising that the European Court of Human Rights exercises its supervisory role subject to the principle of subsidiarity, it being fundamental to the machinery of protection established by the ECHR that the national systems themselves prevent and provide redress for breaches of its provisions;

Recognising that protection of fundamental rights is a founding principle of the European Union and an indispensable prerequisite for her legitimacy;

Considering that the fundamental and human rights of the ECHR are also of direct relevance for the European Union's legal order;

Taking into account that the Court of Justice of the European Communities (the "Court of Justice") ensures respect for human rights "as laid down in particular in the European Convention on Human Rights", using the ECHR as a source of inspiration for the purposes of identifying general principles of Community law;

Considering that the Court of Justice has repeatedly shown its willingness to respect not only the provisions of the ECHR, but also the constantly evolving case-law of the European Court of Human Rights, an approach confirmed by Article 6 § 2 of the EU Treaty, thus contributing to a certain degree of uniformity in European fundamental rights standards;

Welcoming the proclamation of the EU Charter of Fundamental Rights on 7 December 2000 ("the Charter"), which brings together in a single instrument the rights found hitherto in the case-law of the Court of Justice and a range of national and international instruments, as a further step in the affirmation of human rights within the European Union;

Noting with satisfaction that the Charter contains provisions intended to ensure a harmonised approach to the interpretation of rights which correspond to rights guaranteed by the ECHR;

Concerned that the differences of content and formulation between the Charter and the ECHR nevertheless could create difficulties in the application of the two instruments to identical cases, in particular if the Charter was formally given normative or even constitutional validity;

Convinced that a situation must be avoided in which there are competing and potentially conflicting systems of human rights protection, with the risk of weakening the overall protection of human rights in Europe;

Noting that the Laeken Declaration of 15 December 2001 has put the questions of integration of the EU Charter of Fundamental Rights into the EU Treaties and of accession by the EC/EU to the ECHR on the agenda of the Convention on the future of Europe;

Recalling that accession by the EC/EU to the ECHR has repeatedly been advocated not only by the Parliamentary Assembly of the Council of Europe, but also by the European Commission and the European Parliament;

Convinced that the credibility of the European Union's human rights policy would be strengthened if its institutions were subjected to the same of external scrutiny by the European Court of Human Rights as all the institutions of its member States,

Agree that possible integration of the Charter into the EU Treaties and accession by the EC/EU to the ECHR and its Protocols are fully complementary steps;

Agree that accession by the EC/EU to the ECHR would constitute an effective means of achieving coherence in fundamental rights protection all over Europe;

Invite the Convention on the future of Europe to take into account the forthcoming report by the Steering Committee for Human Rights (CDDH) on the legal and technical issues of a possible accession by the EC /EU to the ECHR;

With a view to ensuring as informed a debate as possible on the protection of fundamental human rights, *invite*:

- the Council of Europe, building on its experience and expertise, to contribute, as appropriate, to the Convention on the future of Europe;
- the Convention to take this contribution into account, seizing the opportunity of outlining a comprehensive and coherent architecture for the protection of fundamental rights and freedoms for the whole of Europe.

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The participants thank the Council of Europe and the Spanish authorities for the perfect organisation of the conference and wish to express their gratitude to the Xunta de Galicia for its valuable contribution and generous hospitality

and call upon the participating institutions to hold in the future similar events.