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Political Affairs Committee

The impact of the Lisbon Treaty on the Council of Europe

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Information note on the fact-finding visit to Brussels (9-10 June 2010)

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1. Introduction

1. In my capacity as Rapporteur of the Political Affairs Committee on the impact of the Lisbon Treaty on the Council of Europe, I visited Brussels on 9-10 June 2010.

2. My visit was very efficiently organised by the Liaison Office of the Council of Europe with the European Union (Brussels Office) and I particularly thank Ambassador Frøysnes, Director of the Office and Special Representative of the Secretary General of the Council of Europe, as well as Mr Humbert de Biolley, Deputy Director, who also accompanied me at the various meetings.

3. The visit allowed me to meet representatives of all EU institutions based in Brussels, namely the Commission, the Council and the European Parliament (see the programme in Appendix).

4. According to the terms of the motion for a resolution for which I was appointed Rapporteur, the report I will prepare will cover several aspects with regard to the relations between the EU and the Council of Europe in the post-Lisbon era such as the impact of the Lisbon treaty on:

- the democratic functioning of the decision-making process of the reformed EU and, in particular, the impact of the treaty on:
 - the role and powers of the European Parliament;
 - the role of national parliaments in the EU decision-making process and in particular how the interaction between national parliaments and the EU will work in practice;
 - the role and powers of EU citizens (European Citizens' Initiative as the first tool of direct and transnational democracy in Europe);
- the participation of the EU in Council of Europe work, in particular in the areas of standard-setting and monitoring, including EU accession to Council of Europe instruments, the most important one (but not the only one) being the European Convention of Human Rights;
- the interaction between the EU and its member states in the negotiation of and participation in Council of Europe conventions;
- the implementation of the Stockholm Programme² of the EU and the Council of Europe's contribution in this context, in particular through its monitoring bodies and mechanisms;
- the representation of the EU in the Council of Europe's statutory organs and bodies;
- the overall co-operation between the Council of Europe and the European Union, including a stable financial partnership.

5. Although **the EU accession to the ECHR** is thus only one of the matters with which I will deal in my report, it was by far the main issue of my discussions with all EU representatives and MEPs, who I met in Brussels.

6. This is due not only to the major importance of such accession for the two Organisations and above all for European citizens, but also to the timing of my visit. In fact, it was only 5 days before my visit, on 4 June 2010, that the EU Council, under the Spanish Presidency, adopted the **negotiating directives** authorising the Commission to negotiate the Accession Agreement of the EU to the ECHR.

7. The second most discussed subject was the need to ensure more generally a **stronger CoE-EU partnership**, in which the CoE plays fully its role of benchmark for human rights, rule of law and democracy in Europe. In particular, I raised the issue of **EU accession to other relevant CoE Conventions**, as well as the need to **strengthen synergies in the monitoring of standards**, especially in the context of the implementation of the **Stockholm Programme** of the EU.

8. Finally, I briefly raised two further issues: the need for the EU to **promote**, in its external relations, key CoE instruments (such as the conventions on data protection and on cybercrime) towards **non EU member**

² The "Stockholm Programme", adopted on 11.12.2009, presents priority actions of the EU in the fields of Justice and Home Affairs for the period 2010-2014.

states and beyond the European borders, as this would contribute to the construction of a **coherent and solid European model** on the continent and on the global scene; the new opportunities for the CoE to enhance its partnership with the EU through the development of co-operation between both organisations with respect to the countries participating in the **Eastern Partnership**³.

2. Main changes introduced following the entry into force of the Lisbon Treaty

2.1. In general

9. Following ratification by the Czech Republic (the last EU member state to do so), on 3 November 2009, the Lisbon Treaty entered into force on 1 December 2009. The general aim of the Treaty is to provide the EU with **modern institutions** and **optimised working methods** so as to enhance the efficiency and the democratic legitimacy of the Union as well as to improve the coherence of its action. It abolishes the former 3 pillar structure set up by the Maastricht Treaty, by merging the Community pillar with the two intergovernmental pillars into a single European Union. It should, however, be noted that, despite the fact that the Lisbon Treaty merges the three former pillars into a single legal framework, the distribution of competences in the different policy areas is now divided into the categories of **exclusive** (mostly in fields not of direct relevance to the CoE), **shared** (e.g. in the field of social policy and in the area of freedom, security and justice) and **supporting** (e.g. in the field of culture, education, youth and sport) competences.

10. As an amending treaty, it is not intended to replace the existing treaties. It consists of a number of amendments to the Treaty on the European Union (TUE) and the Treaty establishing the European Community, the latter being renamed Treaty on the Functioning of the European Union (TFEU).

11. The main changes which were brought about through the Lisbon Treaty include:

- the creation of two new key posts of President of the European Council and High Representative for Foreign Affairs and Security Policy;
- the granting of legal personality to the European Union;
- an increase in the legislative powers of the European Parliament;
- a greater role for national parliaments in the legislative processes;
- the introduction of the European Citizens' Initiative giving the right to one million European citizens to propose legislation⁴;
- the introduction of an emergency procedure at the Court of Justice of the European Union, which will allow the Court to act with a minimum delay when a case involves an individual in custody;
- the creation of an EU Public Prosecutor and of an European External Action Service;
- a secession clause;
- the provision for mutual solidarity if a member State is the object of a terrorist attack or man-made disasters;
- greater use of qualified majority voting in the Council of Ministers and an 18-month rotating presidency of the Council of Ministers shared by a troika of member States;
- the Fundamental Rights Charter has become legally-binding.

12. The Belgian Prime Minister M. van Rompuy was appointed, on 19 November 2009, as President by the European Council for 2 ½ years. The mandate is renewable once. His role is to promote cohesion and

³ I refer here to the report being prepared by my colleague Mr Lipiński (Poland, EPP) on the Council of Europe and the Eastern Partnership of the European Union. In his draft memorandum dated 23 April 2010 (Doc. AS/POL (2010) 17), the Rapporteur stresses the need for coordination between new initiatives and existing cooperation and raises a number of concerns with respect to the establishment of a Euro-NEST Assembly.

⁴ See in this respect the report by Mr Gross on "Democracy in Europe: crisis and perspectives", Doc.12279.

consensus within the European Council that he will be presiding. He has also the power to call a European Council meeting if international events require it.

13. The current High Representative for Foreign Affairs and Security Policy, Lady Ashton (UK), was also appointed on 19 November 2009 by the European Council. She is also Vice-President of the Commission and therefore her appointment has been approved by the Commission's President and the European Parliament. The creation of this post is, in fact, the result of the merger of the functions of the Commissioner for External Relations and the European Neighbourhood Policy and the High Representative for the Common Foreign and Security Policy. The High Representative will be assisted by its European External Action Service (EEAS), which is currently being set up. The EEAS, which will be composed of officials from the Commission, the General Secretariat of the Council and diplomats of EU member states, should help build a common diplomatic culture.

14. Relations with the CoE are now under the overall authority of High Representative Ashton. As all former European Commission delegations (some 130 all over the world) have become EU delegations under the authority of the High Representative, so also has Ambassador Pavan-Wolfe (former EC representative) now become representative of the EU to the CoE. She will head the future EU delegation to the Council of Europe to be opened soon in Strasbourg.

15. The Lisbon Treaty should not affect the overall goal of **the 2007 Memorandum of Understanding (MoU)**, currently guiding and structuring relations between the two organisations and confirming the Council of Europe's role as "the benchmark for human rights, rule of law and democracy in Europe"⁵. The modalities of co-operation may, however, be adapted, as deemed necessary. Officials from the Directorate-General for External Relations (DG Relex) in the Commission we met told us that that they consider that the 2007 MoU offers a valuable basis for the co-operation between the two organisations and that they were very happy with how it works in practice. Its revision was therefore not on the agenda, at least for the moment. It is recalled, in this respect, that the MoU foresees that both organisations "will regularly evaluate the implementation of the Memorandum of Understanding. In the light of this evaluation, it will be decided by common agreement, not later than 2013, to revise, if necessary, the Memorandum of Understanding with a view to including new priorities for their co-operation."

16. As regards **international agreements**, in the context of the Common Foreign and Security Policy (CFSP), it is the role of **the EU Council** to: decide upon the opening of negotiations on the basis of a recommendation of either the High Representative, if the agreement concerns exclusively or principally the CFSP, or the Commission in the other cases; designate the negotiator (no longer the presidency); set up the negotiating guidelines; authorise the signature, and adopt the decision to conclude the agreement. Throughout the procedure, the Council shall act by qualified majority. However, it shall act **unanimously** for agreements covering a field for which unanimity is required, for association agreements, for agreements concerning economic, financial and technical cooperation with the States which are candidates for accession and for the **accession of the EU to the ECHR**.

17. Except where agreements relate exclusively to CFSP, **the consent of the European Parliament** will be necessary (introduced by the Lisbon treaty). This will notably be the case for the agreement on accession to the **ECHR**. In other cases, **consultation** of the Parliament is sufficient. If the agreement contains CFSP and non-CFSP elements, it will be treated according to the procedure linked to the principal object of the agreement.

18. A member state, the European Parliament, the Council or the Commission can ask the **European Court of Justice** (ECJ) for an **opinion** on the compatibility of the agreement with the existing treaties.

19. Under Article 6 of the (TEU), the **Charter of Fundamental Rights of the European Union** is granted the same legal value as the EU Treaties. It should be noted that this same article stipulates that the Charter may "not extend in any way the competences of the Union as defined in the Treaties"⁶.

20. The provisions of the Charter are addressed to the institutions and bodies of the Union, with due regard for the principle of subsidiarity, and the member states, when they are implementing Union law.

21. Accordingly, the **Luxembourg Court** can rule on the compatibility of the laws of a member state or of an EU institution with the Charter with respect to the implementation of EU law. The legally binding nature of

⁵ See for more details the Report for the 120th Ministerial Session on Co-operation between the Council of Europe and the European Union, adopted on 11 May 2010, doc. CM(2010)52final.

⁶ See the document explaining the Charter : http://www.europarl.europa.eu/charter/pdf/04473_en.pdf.

the Charter implies that the ECJ will exercise jurisdiction over all EU competencies, which exercise powers in relation to individuals.

22. The Charter will not be applicable in the Czech Republic, Poland and the United Kingdom.

2.2. In particular the impact of the entry into force of the Lisbon Treaty on the powers of the European Parliament.

23. The entry into force of the Lisbon Treaty has **significantly increased** the legislative, budgetary and appointment powers of the European Parliament (EP).

24. A considerable number of new fields have been brought within the "ordinary legislative procedure" (the former "co-decision" procedure), under which the EP has become **co-legislator**, together with the EU Council. They include a number of key policy areas, which fall within the CoE's remit such as **freedom, security, justice**, health and sport.

25. As mentioned above, except where agreements relate exclusively to the Common Foreign and Security Policy (CFSP), the **consent** of the EP on international agreements to be concluded by the EU, including on accession to the ECHR, is necessary. In the CFSP context, the European Parliament has the right to be **informed** and to be **consulted** by the High Representative, but it has no role in the decision-making process. It can formulate recommendations and hold a debate twice yearly on progress achieved in the CFSP and the Common Security and Defence Policy (CSDP). In budgetary terms, the Lisbon Treaty has given the Parliament **full parity** with the EU Council in approving all expenditures related to the annual budget.

26. Protocol No 1 to the Lisbon Treaty on **the role of national parliaments in the EU** provides that the European Parliament and national parliaments shall together determine the organisation and promotion of **effective and regular inter-parliamentary cooperation** within the Union. A conference of Parliamentary Committees for Union Affairs may submit any contribution it deems appropriate for the attention of the European Parliament, the Council and the Commission. That conference shall in addition promote the exchange of information and best practice between national Parliaments and the European Parliament, including their special committees. It may also organise inter-parliamentary conferences on specific topics, in particular to debate matters of **common foreign and security policy**, including **common security and defence policy**. Contributions from the conference shall not bind national Parliaments and shall not prejudice their positions. This is an issue I will deal with more extensively in the next stages of preparation of my report.

27. As regards appointment powers, in accordance with the Lisbon Treaty, the Parliament elects the Commission's President on the basis of a candidate proposed by the European Council taking into consideration the outcome of the European Parliament elections.

3. EU accession to the European Convention of Human Rights

28. Accession of the EU to the ECHR has been discussed for well over 30 years and the Assembly has adopted numerous resolutions and recommendations calling for this accession, the most recent ones being Resolution 1610 and Recommendation 1834 of 2008. The main arguments in favour of accession have been repeatedly stated in earlier PACE resolutions. On the EU side, they have been extensively highlighted in the resolution adopted by the European Parliament, on 19 May 2010, on the institutional aspects of the accession of the EU to the ECHR. In summarising these arguments, let me underline that EU accession to the ECHR offers a unique opportunity to achieve a **coherent system of fundamental rights' protection across Europe**, in which 47 governments and the institutions of the EU will be bound by **the same set of human rights standards** and scrutinised by **the same human rights court**⁷; it will thus afford citizens protection against the action of the Union similar to the one they already enjoy against action by all its member states. This is all the more relevant at present since, following the entry into force of the Lisbon Treaty, the EU member states have transferred substantial powers to the Union. It is also crucial in cases where the protection granted by the EU is inferior to that provided by the ECHR.

29. Accession will also allow for **external control** over the EU's legal order and, consequently, **enhance the credibility of the EU's** commitment – internally and externally - to fundamental rights. In a situation in which the EU Charter of Fundamental Rights becomes an **internal** "Bill of Rights" which sets limitations on the EU institutions' powers, the ECHR mechanism will offer an **external** control and check on EU activities.

⁷ See doc. CM (2010)52final.

Accession will further contribute to the **harmonious development of the case law of the two European courts**, the European Court of Justice in Luxembourg and the European Court of Human Rights in Strasbourg, particularly because of the increased need for dialogue and co-operation, and thus will create an integral system in which the two courts will function in harmony. Accession will not threaten the Luxembourg Court's **jurisdictional autonomy** as the latter will remain the sole supreme court adjudicating issues relating to EU law and the validity of EU acts and will be considered by the Strasbourg Court as a "domestic court" with a status analogous to that enjoyed by the supreme or constitutional courts of any state party to the ECHR⁸. The Strasbourg Court must be regarded as a specialised court exercising external supervision over compliance by the EU with obligations under international law arising from its accession to the ECHR on the basis of the principle of subsidiarity.

30. Whereas all these arguments in favour of EU accession to the ECHR were valid also before the entry into force of the Lisbon Treaty, what has changed now is that the Lisbon Treaty not only provided the **legal basis** to initiate negotiations with a view to such accession, but also made this accession an **obligation of result** (see Article 6 of the Lisbon Treaty). Further to this, the EU Stockholm Programme called for a "**rapid**" accession to the ECHR. On the Council of Europe side, the entry into force of Protocol 14, on 1 June 2010, has provided the legal basis for the accession (see Article 59 ECHR as amended by Protocol No 14). At the Ministerial Session of 11 May 2010, the Council of Europe Ministers welcomed the commitment of the EU to accede to the ECHR and called for the **early** completion of negotiations and a **rapid** accession.

31. EU accession, however, requires an **Accession Agreement** which, according to the Lisbon Treaty, should be adopted following a complex and demanding procedure: unanimity in the EU Council, consent by 2/3 in the EP, ratification by all EU member states. To negotiate an Accession Agreement with the CoE, the EU needs a negotiating mandate from its member states.

32. The **European Parliament** has so far been the **driving force** within the EU system in promoting EU accession to the ECHR, which has been supported by the two other EU institutions as well, namely the Commission and the Council. The European Parliament held a debate on this issue in May 2010 on the basis of a report by the Committee on Constitutional Affairs (Rapporteur: Mr Ramón Jáuregui Atondo, S&D, Spain) and opinions of the Foreign Affairs Committee (Rapporteur: Mr Cristian Dan Preda, EPP, Romania) and the Committee on Civil Liberties, Justice and Home Affairs (Rapporteur: Ms Kinga GÁL, EPP, Hungary). The debate led to the adoption of a resolution on **the institutional aspects of the EU accession to the ECHR** on 19 May 2010.

33. The European Parliament's resolution is a comprehensive report, in which all the main issues are thoroughly analysed. From a CoE perspective, the report is **very positive and encouraging**⁹. Strong support is expressed for rapid EU accession to the ECHR and the overall human rights protection system of the CoE (see also below, section 4).

34. As regards the **scope of accession**, the European Parliament observes that the ECHR system has been supplemented by a series of additional protocols concerning the protection of rights which are not covered by the ECHR and recommends that the Commission be mandated also to negotiate accession to all the protocols concerning rights corresponding to the Charter of Fundamental Rights, regardless of whether they have been ratified by the Member States of the Union.

35. The European Parliament is in favour of a **co-respondent mechanism** providing that, in any case brought against a EU member state before the European Court of Human Rights which may raise an issue concerning the law of the Union, the Union may be permitted to intervene as a co-defendant, and in any case brought against the Union, subject to the same conditions, any EU member state may be permitted to intervene as a co-respondent.

⁸ See also the intervention by Mr Holovaty to the hearing on the institutional aspects of the EU accession to the ECHR organised on 18 March 2010 by the EP Committee on Constitutional Affairs.

http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=5379

⁹ The CoE was involved in hearings and events in the preparation of this report. It was invited to a first meeting of the EP Subcommittee on Human Rights, on 22 February 2010, to which Ambassador Frøysnes participated. On 2 March, 2010 the Secretary General had a working lunch with MEPs directly involved in the accession by the EU to the ECHR, including rapporteur Jáuregui Atondo, the Chair of the LIBE Committee and former Spanish Minister of Justice, Mr Lopez Aguilar, and the rapporteurs on the opinions from the two Committees consulted. More recently, on 18 March, 2010 the Constitutional Affairs Committee organised a hearing on the accession with several experts, a PACE representative (Mr Holovaty), a judge from the Strasbourg Court (Judge Tulkens) and from the Luxembourg Court (Judge Timmermans).

36. For the European Parliament, a degree of **participation by the Union in the ECHR bodies** is necessary in order to ensure proper integration of the Union into the ECHR system and, therefore, the Union should have certain rights in this domain, particularly:

- **the right to submit a list of three candidates** for the post of judge, one of whom is elected by the Parliamentary Assembly of the Council of Europe on behalf of the Union and participates in the work of the Court on **an equal footing** with the other judges; the European Parliament being involved in drawing up the list of candidates in line with a procedure similar to that provided for in Article 255 of the Treaty on the Functioning of the European Union for candidates for the position of judge at the Court of Justice of the European Union;
- **the right to attend** via the European Commission, with voting rights on behalf of the EU, meetings of the **Committee of Ministers** when it performs its task of monitoring the execution of judgments given by the European Court of Human Rights or when it decides on the desirability of seeking an opinion from the Court and the right to be represented on the Steering Committee for Human Rights (a subsidiary body of the Committee of Ministers);
- **the right of the European Parliament to appoint/send a certain number of representatives to the Parliamentary Assembly of the Council of Europe when the latter elects judges to the European Court of Human Rights.**

37. The European Parliament stresses that, as accession to the ECHR affects not only the EU institutions, but also the Union's citizens, the European Parliament must be **consulted** and **involved** throughout the negotiation process, and must be **associated and immediately and fully informed** at all stages of the negotiations, in accordance with the Lisbon Treaty. It also suggests that, in order to raise awareness of the added value of the accession to citizens, the Council of Europe and the EU should develop **guidelines** with clear explanations of all the implications and effects of accession. Finally, it stresses that it is important to have an **informal body** in order to coordinate **information sharing** between the European Parliament and the Parliamentary Assembly of the Council of Europe.

38. In our talks in Brussels, members of the European Parliament we met, including Mr Jáuregui Atondo, Rapporteur, and Mr Lopez Aguilar, Chairman of the Committee of Civil Liberties, Justice and Home Affairs, which presented an opinion to the report and organised several hearings on the matter, told us that the report was warmly received by a large majority of MEPs, who generally supported EU accession, as well as by the Commissioner for Justice, Freedom and Security, Ms Reding, who stressed the historical importance of the process of EU accession to the ECHR and of this debate¹⁰. During the debate, some MEPs underlined that a number of issues had to be further analysed, such as the relations between the two European courts. Only a few MEPs, mainly representatives from the European Conservatives and Reformists, questioned the added value of accession and spoke against it.

39. For the members of the European Parliament we met, the greatest issue of concern was to ensure that they would be fully informed and involved throughout the negotiation process. They thus reiterated the need for increased **transparency** on the Commission and the Council side. They also stressed the need for **information sharing** between PACE and the European Parliament and shared my view that the subject of participation of the European Parliament in the **election of judges** of the Strasbourg Court should be discussed separately by our two parliamentary bodies, in parallel with accession negotiations carried out at intergovernmental level¹¹. Our interlocutors from the Commission side told us that they were currently considering the most appropriate manner of ensuring that the European Parliament would be informed of the negotiation process although the negotiating directives were **confidential**.

40. Where does the procedure stand now?

41. The adoption of a **negotiating mandate** (i.e. negotiating directives) by the EU Council has been a priority of the Spanish Presidency. In the EU Council, a large majority of countries are in favour of rapid

¹⁰ Commissioner Reding also stressed that the Commission shared the views expressed in the report, in particular: EU accession to the ECHR Protocols was desirable and the negotiating mandate should cover accession to *any* Protocol; a co-defendant mechanism should be set-up, and the EU judge should be on equal footing with the other ECHR judges (no *ad hoc* judge). At the end of the debate, Commissioner Reding added that the EU Charter of Fundamental Rights and the ECHR were much too important to give ground to political disputes. With respect to the election of judges, Commissioner Reding indicated that this should be left "in the hands of parliamentarians" (i.e., to be dealt with by the EP & PACE), adding that the Commission was ready to assist, if need be. See also Commissioner Reding's speech at the High Level Conference on the Future of the European Court of Human Rights held in Interlaken on 18-19 February 2010.

¹¹ See also Mr Holovaty's intervention mentioned above and Commissioner Reding's views on the matter quoted above.

negotiations. Some (e.g. UK and Poland), however, have warned that negotiations might take time and argued that the need for quality in the preparations should take priority over urgency. The fact is that the EU Council **adopted** the negotiating directives authorising the Commission to negotiate the Accession Agreement **on 4 June 2010**, that is even earlier than initially expected at the end of June.

42. By so doing, the EU Council gave a **strong political signal** of its commitment to a rapid accession. Although the content of the negotiating directives is confidential, we were told that, in order to reach rapidly a positive decision, the EU had Council left some difficult legal issues unsolved by formulating the directives in a manner that allows for flexibility in making the final choices during negotiations.

43. On the Council of Europe side, the Ministers' Deputies, on 26 May 2010, entrusted the Steering Committee for Human Rights (CDDH) with the task to elaborate, **by 30 June 2011 at the latest**, a legal instrument setting out the modalities of accession of the EU to the ECHR, including its participation in the Convention system, and in this context to examine any related issue. They invited the Secretary General to ensure that this activity is carried out effectively with a view to its swift completion. Last week, the CDDH elected 14 members (7 from EU member states and 7 from non EU member states) to participate in an **informal restricted Working Group** to implement the above ad hoc terms of reference.

44. On the basis of information we received during our meetings in Brussels and by our CoE interlocutors, the main issues that should be tackled during negotiations are the following:

- **The scope of EU accession to the ECHR system** and, in particular, whether accession will be limited to the ECHR as such or will also cover its protocols. In this respect, as we already mentioned, the European Parliament has expressed itself in favour of accession to all ECHR protocols "concerning rights corresponding to the Charter of Fundamental Rights, regardless of whether they have been ratified by all member states of the EU". Our interlocutors explained to us that this is one of three existing options. A second option is the accession of the EU to all ECHR protocols, regardless of whether they have been ratified by all member states of the EU and of whether they concern "rights corresponding to the Charter of Fundamental Rights", a criterion which some told us was difficult to apply. A third option, and the most restrictive one, is the accession of the EU to the ECHR and only to those of its protocols which all EU member states have ratified. This option would exclude EU accession to Protocols 4, 7, 9, 10, 12 and 13 to the ECHR which have not been ratified by all EU member states.
- **Institutional issues:** the participation of the EU in CoE bodies which exercise functions related to the ECHR (see above the requirements set by the European Parliament resolution).
- A number of **legal issues related to the procedure before the European Court of Human Rights**, in particular the co-defendant mechanism and the question of the most appropriate manner to ensure that the accession complies with the conditions set in the Lisbon treaty (in particular Article 6 of the TEU and Protocol No. 8 relating to it), namely the preservation of the monopoly of the Court of Justice of the EU in the interpretation of EU law and the issue of its prior internal control in cases brought before the Strasbourg Court which concern an act by an EU institution.
- **Budgetary issues.**

45. As regards **timing**, the relevant Working Group should meet for the first time before the summer break. We were told that three negotiating rounds should be held in Autumn this year. The date of **30 June 2011** for the completion of negotiations has been referred to in the relevant decision of the CoE Committee of Ministers. It has also been mentioned to us by the Commission. The EU Council seems to be more cautious since, in their view, the process may last longer, even up to five years.

4. **The need for a stronger CoE-EU partnership: EU accession to other CoE conventions and to CoE monitoring bodies.**

46. The entry into force of the **Lisbon Treaty**, which increases the role of the EU in the traditional fields of activity of the CoE such as justice, freedom and security, **calls for increased co-operation and coordination** between both organisations beyond EU accession to the ECHR. In particular, it has increased the need to ensure **coherence** between the **standards** of the CoE and EU law and to ensure a coherent **monitoring** of these standards.

47. During my meetings in Brussels, I raised the issue of **EU accession to other relevant key CoE conventions**, which would contribute to creating a **common European legal space** for the benefit first and foremost of European citizens. In particular, I urged my interlocutors to consider EU accession to CoE conventions on the **Prevention of Terrorism; on the Prevention of Torture; on Action against Trafficking in Human Beings¹²; on the Protection of Children against Sexual Abuse**, as well as to the **revised Social Charter**. I insisted on the fact that accession to CoE conventions would ensure that **common minimum standards** would apply at pan-European level. This does not prevent the EU to go further and ensure **higher** standards for its members, as actually any CoE member state, in its domestic legislation, can provide for higher standards than those guaranteed by CoE conventions. But both duplication and lowering of standards should clearly be avoided.

48. The European Parliament, for its part, has already taken a clear position on this matter by stating in its Resolution of 19 May 2010 that accession to the ECHR constitutes **an essential first step** which should be completed by EU accession to **other CoE conventions** such as **the revised Social Charter**.

49. My interlocutors from the Commission argued that accession to other CoE conventions should be considered only after accession of the EU to the ECHR has been completed. The choice was made for a **step-by-step** approach since otherwise there was a risk to jeopardise accession to the ECHR.

50. For my part, I cannot see why we should lose time waiting for the EU accession to the ECHR, which presupposes that we find solutions to many complex legal issues, and not start **already now** considering EU accession to other CoE conventions which may raise less legal and technical problems. My interlocutors from the EU Council seemed to agree that accession to other CoE conventions could be considered at an earlier stage and, in any event, before the completion of the EU accession to the ECHR.

51. As regards **normative initiatives** to be taken by the EU or the CoE, all my interlocutors insisted on the need for **prior consultations** between the two organisations, at as early a stage as possible and also at a **higher political level**. I confirmed that this is also the position of the CoE. I underlined that it was essential that, **prior to** embarking on new normative initiatives, the EU **considers** the full potential and advantages of CoE conventions, **promotes** accession of its member states (and also of non member states in the framework of its external relations) and, when applicable, **accedes to them¹³**.

52. Regarding the position of EU member states during negotiations for future CoE conventions and their participation in expert committees, it should be noted that the Lisbon Treaty provides that EU member states should coordinate actions in international organisations, under the responsibility of the High Representative for Foreign Affairs and Security Policy. The requirement of a **common EU position** is a legal requirement under the Lisbon Treaty which is not dependent on whether a given policy falls under the exclusive competence of the EU or under the shared competence of the EU and its members. Our interlocutors from the Commission told us that, despite these provisions and the fact that EU members form the majority among the CoE members, the EU had no interest in creating blocks within the CoE and impose common EU views in all matters. The impact that CoE membership and work within this organisation can have on EU external partners was more important than strict coordination in itself. They considered that this approach will not change even after the entry into force of the Lisbon Treaty.

53. In all my meetings I also raised the need for **strengthening synergies between the EU and the CoE in the monitoring of standards**, especially in the context of the implementation of the Stockholm Programme of the EU. The CoE monitoring bodies such as the **European Committee for the Efficiency of**

¹² In its Resolution 1702 (2010), the Assembly has strongly urged the EU to accede to the CoE Anti-trafficking convention as soon as possible. In her report, Ms Wurms has insisted on the risks of duplication of the future EU Directive on trafficking in human beings with the monitoring mechanism provided by the CoE Anti-trafficking convention. See <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc09/EDOC12096.htm>

¹³ To quote a recent example, questions have been raised with respect to normative initiatives by the two organisations in the field of **domestic violence**. The EU has an observer status in the drafting committee of the future Council of Europe convention on preventing and combating violence against women and domestic violence (CAHVIO). The EU representatives indicated that the EU would not block the negotiation and would let member states negotiate on an individual basis. However, some issues covered by the future convention (in particular criminal law provisions) are or have become, EU competencies under the Lisbon Treaty. Moreover, it is not clear yet how the EU would be involved in the monitoring mechanism to be set up (a matter of concern for some non EU delegations). In the meantime, the EU is preparing **new legal instruments** (i.e. a European protection order and a Directive to harmonise legislation on violence against women, subject to the findings of a survey currently being prepared by the EU Commission, and to be released in November 2010, i.e. before the finalisation of the drafting of the future CoE Convention). It is of utmost importance that consultations at a high political level ensure that under no circumstances should any new legal instruments that may be developed by the European Union in this field duplicate or be in contradiction with Council of Europe instruments or result in lower standards.

Justice (CEPEJ), which is monitoring judicial systems in Council of Europe member states, and **the Group of States against Corruption (GRECO)**, have an important experience in their respective fields of competence and represent an *acquis* for Europe as a whole. They can therefore make an effective contribution to the evaluation process that the EU may set up in the framework of its **Stockholm Programme**¹⁴.

54. In addition to CEPEJ and GRECO, CoE has several **other monitoring bodies** coming into play on issues relating to justice and home affairs for which EU has now enlarged competences and with which stronger **synergies** should be **encouraged**, in particular: the **European Committee of Social Rights (ECSR)**, whose findings concern *inter alia* minimum social and economic rights for migrants and asylum seekers and the situation of Roma; the **Committee for the Prevention of Torture (CPT)**, whose findings cover conditions of detention of illegal migrants and foreigners under deportation orders; the **European Commission against Racism and Intolerance (ECRI)**, whose findings cover integration policies, racism and hate speech; the **GRETA**, an independent body dealing with trafficking of human beings, established under the CoE Anti-trafficking Convention, whose findings cover specific needs and rights of victims of trafficking; **MONEYVAL**, as regards the fight against money-laundering. I stressed that **accession** to existing CoE monitoring mechanisms should be considered before embarking on creating new mechanisms in order to avoid **duplication** and thus the **risk of incoherence, diverging results, “forum shopping” and low impact**. Stronger synergies should also be encouraged of course with the **Council of Europe Commissioner for Human Rights**.

55. Here again, with the exception of GRECO, I found a strong partner in the European Parliament which, in its Resolution of 19 May 2010, has clearly called for **EU accession to CoE bodies** such as the CPT, ECRI, CEPEJ and for the strengthening of cooperation between the EU institutions and CoE specialised bodies. MEPs I met in Brussels reiterated this position.

56. As regards more specifically GRECO and the fight against corruption, **EU accession to GRECO** is envisaged in the Stockholm Programme. This Programme invites the Commission “to develop indicators, on the basis of existing systems and common criteria, to measure efforts in the fight against corruption, in particular in the areas of the EU *acquis* (public procurement, financial control etc) and to develop a comprehensive anti-corruption policy, in close cooperation with GRECO”; it also invites the Commission to submit in 2010 “a report on the modalities for the Union to accede to GRECO.” However, the Commission did not refer to such accession in the draft Action Plan it prepared last April on the implementation of this programme proposing instead an EU anti-corruption “evaluation mechanism”. The European Parliament, on 10 May 2010, adopted a written declaration calling on the EU to do more to tackle corruption, including putting in place a monitoring mechanism¹⁵. For their part, most EU member states would nevertheless not support the establishment of a new EU monitoring mechanism to monitor corruption. The conclusions of the EU Council adopted on the Commission’s Action Plan on 4 June 2010 firmly ask the Commission to take only those initiatives that are in full conformity with the Stockholm Programme in order to ensure its complete and timely implementation.

57. In the meantime, GRECO has expressed its **concern regarding duplication of work** and the possible weakening of anti-corruption endeavours in Europe through a proliferation of monitoring processes in this area. It has thus reiterated its **willingness to contribute** to the development of a comprehensive EU anti-corruption policy and to discuss modalities of **EU accession to GRECO**. Following discussion of the matter in the GRECO with the participation of representatives both from the Commission and the Council only two days before my visit to Brussels, it seems that the EU accession to GRECO is now high on the agenda and could be envisaged in the framework of the Commission’s comprehensive anti-corruption policy.

58. At the same time, a common understanding was reached according to which GRECO would contribute to the definition of common anti-corruption indicators and criteria, and its findings would be one of the elements on which the Commission should base its own evaluation of anti-corruption efforts by member states, in particular in the fields of EU *acquis*, whereas no new mechanism would be created to carry out monitoring from scratch. If this position is confirmed, this could be a very positive way forward, which would avoid duplication and ensure efficient EU anti-corruption policies.

¹⁴ See Doc. CM(2010)52final.

¹⁵ The declaration was drafted by five members from various political groups: Monica Macovei (EPP, Romania), Simon Busuttil (EPP, Malta), Luigi de Magistris (ALDE, Italy), Ana Gomes (S&D, Portugal) and Bart Staes (Greens/EFA, Belgium)].

5. Next steps

59. My interlocutors from the European Parliament firmly agreed with me that, in the light of the impact of the Lisbon Treaty on both the EU and the Council of Europe, it would be highly interesting to exchange views on **how the entry into force of the new treaty affects the two parliamentary bodies of the two organisations**, the EP on the one hand and PACE on the other, and calls for **enhanced dialogue and co-operation**. Our Political Affairs Committee may play an important role in this respect and this is why I would like to propose inviting key members of the EP to one of our next meetings in Autumn later this year.

60. With a view to collecting information from all EU institutions affected by the Lisbon Treaty for the purpose of completing my report, I also have the intention to visit the European Court of Justice in Luxembourg and meet the European Ombudsman in Strasbourg, if possible in Autumn this year.

61. While the technical details posed by **the EU accession to the ECHR** should be tackled at the intergovernmental level, it is our role as parliamentarians to provide a **powerful political signal** in favour of a **smooth accession process and its rapid completion**. Also, we should insist that accession modalities should be kept **as simple as possible**. The ECHR system should be preserved as it stands with **the minimum adjustments necessary** in order to take into account the specificities of the EU as a non-state party with a particular legal and institutional system. We should pass on these messages both as members of the CoE Parliamentary Assembly but also as members of our **national parliaments**, especially those among us who come from states members of the EU. Our guiding principle should be that the accession primarily aims at increasing the **protection of human rights of individuals**.

62. As regards specific issues related to the **election of judges** and the need to ensure participation of the European Parliament in the Assembly when electing judges, they could of course be discussed at high political level between the Assembly's Presidential Committee and the Presidents' Conference of the European Parliament. At the same time, since these issues have complex legal and technical implications and given the predominant role that our Committee of Legal Affairs and Human Rights plays in the context of election of judges, through its relevant sub-committee, it would be advisable, in my view, that a **specific report** be elaborated for this purpose by this committee. The Rapporteur to be appointed would thus have a clear mandate to discuss these issues with representatives of the European Parliament and we could advance in parallel with intergovernmental negotiations on the overall accession process. Our colleague, Ms Bemelmans-Videc, has tabled a motion on the issue of election of judges in relation to the accession of the EU to the ECHR¹⁶.

63. We should also give concrete follow-up to two proposals made by the European Parliament, namely the proposals that the CoE and the EU develop **guidelines** on the effects of accession (to raise awareness of the added value of the accession to citizens) and to set up an **informal body** to coordinate **information sharing** between the EP and PACE.

64. In general, we should have the possibility to be **regularly informed** of the state of procedure of the negotiation process between the CoE and the EU. This could be achieved through **regular procedures and mechanisms** allowing us to gather information from the intergovernmental body of the Organisation, in particular in the context of the **enhanced dialogue** between the two bodies. This could comprise for instance Written Questions by members of the Assembly to the Committee Ministers, written or oral and spontaneous questions to the Chairman in office of the Committee of Ministers during Assembly sessions and Standing Committees; discussions at the Joint Committee. **Additional modalities** for information sharing should also be envisaged, for instance through the Director General of Human Rights and Legal Affairs who could **regularly inform** the relevant Assembly Committees, namely the Political Affairs Committee and the Legal Affairs and Human Rights Committee, which could in turn inform the Parliamentary Assembly when this is deemed necessary.

65. As regards the need for **increased co-operation and coordination** between the CoE and the EU, beyond the latter's accession to the ECHR, I feel that, as members of the Parliamentary Assembly of the Council of Europe, we should pass a clear message on **the need to avoid duplication and monitoring fatigue** on the European continent for all the reasons I mentioned above. In a time of economic crisis such as the one we are going through at present, it is important that European citizens' money is spent in the most efficient way.

¹⁶ See <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc10/EDOC12306.htm>

66. As most of us are also members of national parliaments of EU member states, we have the duty to urge our governments, which have not yet done so, to ensure **accession to key CoE conventions and monitoring mechanisms** and, when appropriate, also **promote EU accession to them**, prior to embarking to new initiatives at EU level. Hence the need also for **prior consultations** between the two organisations, at as early a stage as possible and also at a **high political level**. Since the procedure for accession to each convention and monitoring mechanism varies, I think that an effective way forward would be if lawyers from the two organisations started studying each CoE convention covering issues falling under the extended EU competences, as well as the rules related to the accession to relevant monitoring mechanisms, with a view to establishing the **legal requirements and procedures for EU accession**. It could then be clear which conventions and mechanisms pose less problems and therefore accession to them could be envisaged at an earlier stage. In any event, we should ensure **coherence of standards** between the CoE and the EU law and clearly avoid duplication and lowering of standards.

APPENDIX

**PROGRAMME OF THE VISIT
of
Ms KERSTIN LUNDGREN,**

**Rapporteur of the Political Affairs Committee, PACE
on the impact of the Lisbon Treaty on the Council of Europe,**

**accompanied by Ms Despina Chatzivassiliou,
Head of the Political Affairs Department, PACE**

Brussels, 9-10 June 2010

Wednesday 9 June

- 09:30** Meeting with Ambassador Frøysnes, Director of the Liaison Office of the Council of Europe with the European Union and Special Representative of the Secretary General of the Council of Europe, and Mr Humbert de Biolley, Deputy Director
- 11:30** Meeting with Mr. Hannes Kraemer, Member of the Legal Service, European Commission and Mr. Patrick Hetsch, Deputy Director General, DG Legal Service European Commission
- 13:00** Lunch hosted by Ambassador Frøysnes with the participation of:
- Ms. Heidi Hautala, Finland, Group of the Greens/European Free Alliance, Chair of the Sub-committee on Human Rights European Parliament
- Ms. Cecilia Wikström, Sweden, Group of the Alliance of Liberals and Democrats for Europe, Member of the Committee on Legal Affairs European Parliament
- Mr. Ramón Jáuregui Atondo, Spain, Group of the Progressive Alliance of Socialists and Democrats, Member of the Committee on Constitutional Affairs European Parliament
- 15:00** Meeting with Mr. Jean-Marc Pisani, Acting Head of UN, OSCE and CoE Unit, DG External Relations, and Mr. Kai Andersen, Desk Officer European Commission
- 17:00** Meeting with Mr. Rafael Fernandez-Pita, Deputy Director General, Justice and Home Affairs, and Mr Hans Nielsen, Head of Judicial Co-operation Unit, General Secretariat of the Council of the European Union
- 17:15** Meeting with Mr. Juan Lopez Aguilar, Spain, Group of the Progressive Alliance of Socialists and Democrats, Chair of the Committee on Civil Liberties, Justice and Home Affairs European Parliament

Thursday 10 June

- 14:00** Meeting with Ms. Edith Bauer, MEP, Slovakia, Group of the European People's Party (Christian Democrats), together with Ms Lydie Err, Luxembourg, SOC, Chairperson of the Sub-Committee on trafficking in Human Beings of the Committee on Equal opportunities for Women and Men