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CAHDI (2004) 14 Addendum 2

**COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW
(CAHDI)**

**28th meeting
Lausanne, 13-14 September 2004**

**DECISIONS BY THE COMMITTEE OF MINISTERS CONCERNING THE CAHDI AND
REQUESTS FOR CAHDI'S OPINION**

**RECOMMENDATION 1650 (2004) - LINKS BETWEEN EUROPEANS LIVING ABROAD
AND THEIR COUNTRIES OF ORIGIN**

Secretariat Memorandum
Prepared by the Directorate General of Legal Affairs

Foreword

At its 876th meeting (17 March 2004), the Committee of Ministers considered Parliamentary Assembly Recommendation 1650 (2004) - Links between Europeans living abroad and their countries of origin, and decided to forward it to the Committee of Legal Advisers on Public International Law (CAHDI) for information and possible comments before 30 June 2004 with a view to enabling its Rapporteur Group of Legal Affairs (GR-J) to prepare a draft reply to the Parliamentary Assembly. The text of the decision is enclosed (Appendix I)

The Secretariat informed the Secretariat of the Committee of Ministers that the CAHDI could not provide any comment to that text in view of the fact that its next meeting would be after the deadline.

At its meeting on 7 September 2004, the GR-J examined a draft reply (Appendix III) and decided to return to the issue in the light of possible comments by the CAHDI.

Action required

Members of the CAHDI are invited to examine the above-mentioned Recommendation (enclosed, Appendix II) and possibly provide comments thereon.

Appendix I

Ministers' Deputies Decisions

CM/Del/Dec(2004)876 19 March 2004

876th meeting, 17 March 2004

Decisions adopted

Standing Committee (Paris, 2 March 2004) - Texts adopted

(2004 Session (Provisional compendium of texts adopted) and
CM/Del/Dec(2004)875/3.1)

Decisions

The Deputies

1. concerning Recommendation 1650 (2004): "Links between Europeans living abroad and their countries of origin"

a. decided to bring it to the attention of their governments;

b. decided to communicate it to the Committee of Legal Advisers on Public International Law (CAHDI), to the European Committee on Migration (CDMG), to the Steering Committee for Culture (CDCULT) and to the Steering Committee for Higher Education and Research (CDESR) for information and possible comments by 30 June 2004;

c. invited their Rapporteur Group on Legal Cooperation (GR-J) to prepare a draft reply for adoption at one of their forthcoming meetings;

Appendix II

Parliamentary Assembly

Recommendation 1650 (2004)¹

Links between Europeans living abroad and their countries of origin

1. Several million Europeans live legally outside their countries of origin, both in Europe and outside the continent, and regular migration flows are constantly on the rise. For some countries, in particular in central and eastern Europe, the question of links with their expatriates is a relatively new problem.

2. Migration policies in most Council of Europe member states which consider themselves host countries are based mainly on issues concerning immigration and integration, ignoring the emigration dimension.

3. Relations between countries of origin and their expatriates in Council of Europe member states vary from strong and institutionalised to loose and informal. There is no harmonisation in this respect at the pan-European level.

4. The Parliamentary Assembly believes that it is in the interest of states to ensure that their expatriate nationals continue to actively exercise their rights linked to nationality and contribute in a variety of ways to the political, economic, social and cultural development of their countries of origin.

5. At the same time expatriates have an important role to play as intermediaries between their countries of origin and host countries, and for their respective cultures, promoting co-operation and exchange in different fields, based on respect for other peoples and cultures.

6. Multiculturalism and cultural and religious diversity are now a reality and must be reflected in coherent and co-ordinated migration policies involving both host countries and countries of origin. Expatriation is the outcome of increasing globalisation and should be viewed as a positive expression of modernity and dynamism; it is of real economic benefit for both host countries and the countries of origin.

7. It is essential for all parties concerned that the right balance between the process of integration in the host country and the links with the country of origin is defined and maintained.

8. The Assembly regrets that little follow-up has been given to the main principles included in [Recommendation 1410 \(1999\)](#) on the links between Europeans living abroad and their countries of origin. It stresses their importance and refers to other relevant texts touching upon different aspects of this vast subject: [Recommendation 1500 \(2001\)](#) on the participation of immigrants and foreign residents in political life in Council of Europe member states; [Recommendation 1587 \(2002\)](#) on the residence, legal status and freedom of movement of migrant workers in Europe: lessons from the case of Portugal; and [Recommendation 1492 \(2001\)](#) on the rights of national minorities.

9. For these reasons, the Assembly recommends that the Committee of Ministers:

¹ Text adopted by the Standing Committee, acting on behalf of the Assembly, on 2 March 2004 (see [Doc. 10072](#), report of the Committee on Migration, Refugees and Population, rapporteur: Ms Bušić).

i. invite member states:

a. to review their emigration policies and solutions in the field of relations with their expatriates with a view to improving and strengthening them;

b. to establish institutional links with expatriate communities if this has not already been done, in order to enable them to defend their rights, express their opinions and influence any decisions which might concern them;

c. to take account of their expatriates' interest in policy making, in particular concerning questions of nationality; political rights, including voting rights; economic rights, including taxation and pension rights; social rights, including social schemes; and cultural rights;

d. to encourage and support the activities of expatriate associations and NGOs;

e. to promote and support all forms of co-operation with their expatriate communities;

ii. promote an exchange of views and co-operation between Council of Europe member states as regards political, legal, economic, social and cultural measures aimed at strengthening the links between European expatriates and their countries of origin;

iii. review the existing models of relations between expatriates and their countries of origin, with a view to making proposals for the introduction of legally-binding measures at the European level;

iv. consider the elaboration and implementation of specific programmes and projects aimed at encouraging qualified expatriates from particular countries to return to their country of origin;

v. initiate the establishment, under the auspices of the Council of Europe, of a council of Europeans abroad, a body representing European expatriates at the pan-European level;

vi. initiate the elaboration and establishment of a pan-European, harmonised system for collecting statistics on the nationals of Council of Europe member states living in other Council of Europe member states;

vii. clarify different administrative concepts, classifications and definitions concerning expatriates with a view to harmonising them at European level;

viii. involve associations and NGOs in activities concerning expatriates.

Appendix III

Ministers' Deputies / Rapporteur Groups

GR-J

Rapporteur Group on Legal Co-operation

GR-J(2004)25 (restricted) 31 August 2004

Parliamentary Assembly Recommendation 1650 (2004) on links between Europeans living abroad and their countries of origin -
Draft reply

Item to be considered by the GR-J at its meeting on 7 September 2004

Background

1. The Parliamentary Assembly adopted Recommendation 1650 (2004) on links between Europeans living abroad and their countries of origin on 2 March 2004.

2. At their 876th meeting (17 March 2004, item 3.1), the Ministers' Deputies agreed to bring the Recommendation to their governments' attention. On the same occasion, they decided to communicate it to the Committee of Legal Advisers on Public International Law (CAHDI), to the European Committee on Migration (CDMG), to the Steering Committee for Culture (CDCULT) and to the Steering Committee for Higher Education and Research (CD-ESR) for information and possible comments by 30 June 2004. Finally, they instructed their Rapporteur Group on Legal Co-operation (GR-J) to prepare a draft reply for adoption at one of their forthcoming meetings.

3. The Secretariat has prepared the following draft reply to the Recommendation in the light of opinions received from the CDMG, the CDCULT and the CD-ESR (see the appendices). The Rapporteur GR-J is invited to examine it with a view to its subsequent submission to the Deputies.

Concerning the Recommendation

4. The Parliamentary Assembly underlines that several million Europeans live legally outside their countries of origin, both in Europe and outside the continent, and that regular migration flows are constantly on the rise. It notes that migration policies in most Council of Europe member states which consider themselves host countries are based mainly on issues concerning immigration and integration, ignoring the emigration dimension. The Assembly believes that it is in the interest of states to ensure that their expatriate nationals continue to actively exercise their rights linked to nationality and contribute in a variety of ways to the political, economic, social and cultural development of their countries of origin.

5. According to the Assembly, multiculturalism and cultural and religious diversity should be reflected in coherent and co-ordinated migration policies involving both host countries and countries of origin. Expatriation is the outcome of increasing globalisation and is of real economic benefit for both host countries and the countries of origin. It is essential for all parties concerned that the right balance between the process of integration in the host country and the links with the country of origin is defined and maintained.

6. The Assembly regrets that little follow-up has been given to the main principles included in Recommendation 1410 (1999) on the links between Europeans living abroad and

their countries of origin. It stresses their importance and refers to other relevant texts touching upon different aspects of this vast subject: Recommendation 1500 (2001) on the participation of immigrants and foreign residents in political life in Council of Europe member states; Recommendation 1587 (2002) on the residence, legal status and freedom of movement of migrant workers in Europe: lessons from the case of Portugal; and Recommendation 1492 (2001) on the rights of national minorities.

7. For these reasons, the Assembly recommends (*paragraph 9*):

i. that the Committee of Ministers invites member states to:

a. review their emigration policies and solutions in the field of relations with their expatriates with a view to improving and strengthening them;

b. to establish institutional links with expatriate communities if this has not already been done, in order to enable them to defend their rights, express their opinions and influence any decisions which might concern them;

c. to take account of their expatriates' interest in policy making, in particular concerning questions of nationality; political rights, including voting rights; economic rights, including taxation and pension rights; social rights, including social schemes; and cultural rights;

d. to encourage and support the activities of expatriate associations and NGOs;

e. to promote and support all forms of co-operation with their expatriate communities.

8. It also recommends the Committee of Ministers to:

ii. promote an exchange of views and co-operation between Council of Europe member states as regards political, legal, economic, social and cultural measures aimed at strengthening the links between European expatriates and their countries of origin;

iii. review the existing models of relations between expatriates and their countries of origin, with a view to making proposals for the introduction of legally-binding measures at the European level;

iv. consider the elaboration and implementation of specific programmes and projects aimed at encouraging qualified expatriates from particular countries to return to their country of origin;

v. initiate the establishment, under the auspices of the Council of Europe, of a council of Europeans abroad, a body representing European expatriates at the pan-European level;

viii. involve associations and NGOs in activities concerning expatriates.

Draft reply

9. The Committee of Ministers considers that Parliamentary Assembly Recommendation 1650 (2004) on links between Europeans living abroad and their countries of origin, raises important and timely issues that should be given serious consideration. Therefore the Committee of Ministers has brought it to the attention of the governments of the member states. The Committee of Ministers has received opinions on the Recommendation from the European Committee on Migration (CDMG), the Steering Committee for Culture (CDCULT) and the Steering Committee for Higher Education and Research (CD-ESR) (see appendices I-III).

10. The Committee of Ministers agrees with the Assembly that growing expatriation should be viewed as a positive effect of globalisation that contributes to building diverse, tolerant and multicultural societies. It recognises the role that migrants can play as vectors of development for both countries of origin and destination. It also recognises the importance they can have for their countries of origin. A workshop that was recently organised in the Council of Europe's North-South Centre in Lisbon (April 2004) considered this issue in the context of co-development.

11. The Committee of Ministers also shares the view expressed by the Parliamentary Assembly that a right balance between the process of integration into host societies and the links with the country of origin should be achieved and maintained. In particular, it agrees that the problem of emigration should be given greater attention at international and local level. In this context it wishes to draw the attention of the Parliamentary Assembly to the Migration Management Strategy, adopted by the CDMG, which provides a framework within which many existing or potential issues related to the links between migrants and their countries of origins can be addressed. As the CDMG stresses in its opinion, it is committed to continue to develop the Migration Management Strategy to better reflect the needs of migrants, willing to maintain and strengthen links with their countries of origin as well as the interests of the countries of emigration.

12. Furthermore, the Political Platform, which constitutes a basis for harmonising national approaches to migration and the development of synergies with the EU policies under the Common Asylum and Migration Policy, serves as a forum where all the questions relevant to the problem under consideration may be discussed and examined. In particular, issues of student migrants and the role of co-development have been subjects of discussion within the Political Platform.

13. With reference to paragraph 9 (vi), the Committee of Ministers recalls its reply to Parliamentary Assembly Recommendation 1624 (2003) on a common policy on migration and asylum, in which it pointed out that the CDMG is undertaking a study on the feasibility of establishing an Agency on Migration, which, if established, would address the root causes of forced migration and other migratory movements in close co-operation with other international actors. It considers that this feasibility study should cover also the question of the need to establish a pan-European, harmonised system for collecting statistics on migration in Council of Europe member states. It could cover also the question whether such an agency would be able to undertake some of the other tasks referred to in the Assembly's Recommendation (paragraph 9 (ii-viii)).

14. The Committee of Ministers agrees with the Assembly that expatriation should be accompanied by coherent migration policies involving both host countries and countries of origin. In this context, it is of vital importance that migrants' qualifications be fairly recognised across national borders. The Council of Europe / UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region (the Lisbon Recognition Convention, ETS 165), as well as the Council's activities to promote implementation of this Convention, are cornerstones of the overall European efforts to facilitate the recognition of higher education qualifications.

15. In the context of the Bologna Process aiming to establish a European Higher Education Area by 2010, to which the Council of Europe is an important contributor, the work to develop transparent and compatible degrees and cooperation in quality assurance are also of great importance. The development of joint degrees could be of particular importance in maintaining contacts between expatriates, including children of expatriates, and their countries of origin. The Lisbon Recognition Convention Committee adopted a Recommendation on the Recognition of Joint Degrees at its meeting on 9 June 2004.

16. In its opinion the CD-ESR draws the attention to the brain drain phenomenon, which is also referred to in paragraph 9 (iv) of the Assembly's Recommendation. The Committee of

Ministers recalls that its Recommendation R (95) 7 “On Brain Drain in the Sectors of Higher Education and Research” promotes a set of measures to be taken in order to combat brain drain. It also recalls the 2nd Conference of Ministers of Education from South-East Europe (Strasbourg, 19-20 November 2001) on “The future of educational reforms and the obstacles facing them – from the brain drain to brain gain”, which focused on practical measures for reducing brain drain and in particular for stimulating the return in their countries of skilled young migrants. The Committee of Ministers encourages the CD-ESR to explore policies in this area, with a view to elaborating specific programmes and projects aimed at encouraging qualified expatriates to return to their country of origin in line with the Assembly’s Recommendation.

17. The Committee of Ministers shares the opinion of the CDCULT that language education is of particular importance in this context. It recalls that the European Social Charter (revised) in its Article 19, relating to the right of migrant workers and their families to protection and assistance, provides that Parties to the Charter shall undertake “*to promote and facilitate, as far as practicable, the teaching of the migrant worker’s mother tongue to the children of the migrant worker.*”

18. The Committee of Ministers does not agree with the Assembly that little follow-up has been given the Assembly’s Recommendation 1410 (1999) on the links between Europeans living abroad and their countries of origin. On the contrary, it considers that serious consideration has been given to many of the issues raised therein and that a number of activities have been carried out in this field by the Council of Europe. It is clear, however, that some of the recommendations made by the Assembly are a matter for the interested parties. In this respect, the Committee of Ministers refers to its reply to Recommendation 1410 (1999) (paragraph 8). The Committee of Ministers stated in that reply that it could envisage the advisability of exploring further some of the approaches favoured by the Assembly in the said Recommendation, when drawing up the Organisation’s future programmes of activities. This has been done and will be done also as regards the Assembly’s new recommendations in line with what has been stated above.

Appendix I

Opinion of the European Committee on Migration (CDMG) on the Parliamentary Assembly Recommendation 1650 (2004) on links between Europeans living abroad and their countries of origin

1. The European Committee on Migration (CDMG) welcomes the attention of the Parliamentary Assembly to the subject of the links between Europeans living outside their countries of origin with their home countries. It agrees that growing expatriation should be viewed as a positive effect of globalization that contributes to building diverse, tolerant and multicultural societies in Europe. It recognises the role that migrants can play as vectors of development for both countries of origin and destination.
2. Moreover, the CDMG recognises the importance of immigrants for their countries of origin. A workshop that was organised in the Council of Europe’s North-South Centre in Lisbon in April 2004 considered this issue in the context of co-development.
3. The CDMG also shares the view expressed by the Parliamentary Assembly that a right balance between the process of integration into host societies and the links with the country of origin should be achieved and maintained. In particular, it agrees that the problem of emigration should be given greater attention at international and local level. It also wishes to draw the attention of the Parliamentary Assembly to the Migration Management Strategy, which provides a framework within which many existing or potential issues related to the links between migrants and their countries of origins can be addressed. At the same time, the CDMG wishes to stress that it is committed to continue to develop the Migration Management Strategy to better reflect the needs of migrants, willing to maintain and

strengthen links with their countries of origin as well as interests of the countries of emigration.

4. The CDMG believes that the problem raised by the Parliamentary Assembly is acute not only for Europeans, but also for nationals of non-European countries residing in Europe.

5. The CDMG also wishes to mention that the Political Platform serves as a forum where all the questions relevant to the problem under consideration may be discussed and examined. In particular, the issues of student migrants and the role of co-development have been subjects of the discussion within the Political Platform.

Appendix II

Opinion of the Bureau of the Steering Committee for Higher Education and Research (CD-ESR) on Parliamentary Assembly Recommendation 1650 (2004) on links between Europeans living abroad and their countries of origin

1. The CD-ESR Bureau notes with satisfaction the Parliamentary Assembly Recommendation 1650 (2004) on links between Europeans living abroad and their countries of origin, which raises a good number of timely issues. While the present opinion is limited to the aspects concerning higher education, the CD-ESR Bureau would like to underline the educational, cultural, political and economic importance of international exchange, including migration. The CD-ESR Bureau underlines that such exchange represents numerous opportunities and should be encouraged, and it regrets that much current political discourse only focuses on negative aspects of migration. Education, at all levels, has an important mission in conveying a balanced approach to migration, and in promoting attitudes of tolerance, acceptance and inclusion.

2. The CD-ESR Bureau agrees with the Recommendation that expatriation should be seen as a positive expression of modernity and dynamism and should be accompanied by coherent migration policies (paragraph 6). In this context, it is of vital importance that migrants' qualifications be fairly recognised across national borders. The Council of Europe / UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region (the Lisbon Recognition Convention, ETS 165), as well as the Council's activities to promote implementation of this Convention, are cornerstones of the overall European efforts to facilitate the recognition of higher education qualifications.

3. In the context of the Bologna Process aiming to establish a European Higher Education Area by 2010, to which the Council of Europe is an important contributor, the work to develop transparent and compatible degrees and cooperation in quality assurance are also of great importance. The development of joint degrees could be of particular importance in maintaining contacts between expatriates, including children of expatriates, and their countries of origin. The Lisbon Recognition Convention Committee adopted a Recommendation on the Recognition of Joint Degrees at its meeting on 9 June 2004.

4. While fully supporting the initiative of the Parliamentary Assembly that links between Europeans living abroad and the countries of origin should be maintained (paragraph 4) and that further co-operation should be encouraged (paragraph 5), the CD-ESR believes that students and young graduates should be seen as promoters in those activities because of their dynamism and their European-oriented education.

5. For some countries, the need for links with this highly educated segment of population is particularly vital also because of the brain drain phenomenon, which has important costs as well as potential benefits in the long run. The CD-ESR Bureau would like to point to the role of the Council of Europe in tackling this problem.

6. Recommendation R (95) 7 “On Brain Drain in the Sectors of Higher Education and Research” of the Committee of Ministers to Member States promotes a set of measures to be taken in order to combat brain drain in the sectors of higher education and research. The Council of Europe also co-organized the Conference of Ministers of Education from South-East Europe on “The future of educational reforms and the obstacles facing them – from the brain drain to brain gain”, which focused on practical measures for reducing the brain drain and in particular for stimulating the return in their countries of skilled young migrants.

7. In the light of the above mentioned actions of the Council, the CD-ESR Bureau further supports “the elaboration and implementation of specific programmes and projects aimed at encouraging qualified expatriates from particular countries to return to their country of origin” (paragraph 9.iv of the Recommendation). In its future programme, the CD-ESR could explore policies in this area.

8. Finally, the CD-ESR Bureau considers that higher education institutions should be encouraged to maintain links with their former students regardless of their country of residence. The CD-ESR Bureau recalls that by crystallizing the solidarity with their students, universities would strengthen co-operation with other universities, in the spirit of the Bologna Process.

Appendix III

Opinion of the Steering Committee for Culture (CDCULT) on Parliamentary Assembly Recommendation 1650 (2004) on links between Europeans living abroad and their countries of origin

1. The Steering Committee for Culture (CDCULT) welcomes and congratulates the Assembly on issuing Recommendation 1650 (2004) on links between Europeans living abroad and their countries of origin at this time of the EU enlargement and global migration.

2. The Committee agrees with the Assembly in that migration has often been studied from the perspective of immigration and mainly integration policies, whereas the emigration issue seems somewhat underexposed.

3. The Committee thus underlines the role and potential of expatriates to serve as mediators between their home and host countries and making an important contribution to intercultural dialogue and mutual knowledge and respect between different people and cultures. In this, expatriates are active facilitators - promoting exchange and co-operation at many levels of society.

4. The Committee welcomes the proposals made in Recommendation 1650 geared to optimise the balance between the process of integration in the host country and keeping-up relations with the home country for migrants.

5. With a view to possible follow-up by the Committee of Ministers, the Steering Committee is happy to make the following specific comments on this Recommendation and provide information on its own projects, which are relevant:

5.1 Paragraph 9.i.c.

Immigrants are very often integrated into societies; emigrants however, are very often treated as second-class citizens by their original country's population, and sometimes language can be a barrier. Educational matters, such as language education, could thus be mentioned as well.

5.2 Paragraph 9.ii.

Lifelong education might bring emigrants back to their countries of origin, a possibly interesting option. Again, educational measures could be mentioned in this context.

5.3 General comment

What could be more stressed in the Recommendation is the positive contribution that emigrants make to their new societies, especially with a view to contributing and enhancing cultural diversity, but also in the double perspective host country – country of origin.

6. The Committee is happy to provide information on its own projects, which are relevant to the context.

6.1 The CDCULT has carried out a transversal study on cultural diversity involving some 15 European countries in recent years and consequently issued a Declaration on Cultural Diversity (adopted by the Committee of Ministers on 7 December 2000). The Declaration stresses the freedom of creative expression and the freedom of information in every form of cultural exchange (linguistic exchange, book and foreign literature fairs, food festivals, twinnings) and other events (artistic, for example), and more specifically those using new information technologies. A background report “Differing Diversities” is available.

6.2 Since 2002, the Committee is engaged in a priority project on Intercultural Dialogue and Conflict Prevention. The activity has produced a Declaration on Intercultural Dialogue and Conflict Prevention, adopted at the occasion of a Ministerial Conference in October 2003 in Opatija. The action plan 2002-2004 foresees expert colloquies, intercultural think-tanks (“Rethinking Stereotypes”, 2003, Sarajevo; “Core Values of Intercultural Dialogue”, 2004), an action line on “Shared Cities” and “Peace Cradles” analysing the impact of cultural projects on building inter-community dialogue, flagship activities such as exhibitions and the pilot project “Sarajevo, Intercultural City of the Council of Europe 2004”. As for follow-up in 2005 and beyond, specific emphasis shall be given to migrants within an enlarged project perspective on the social impact of culture.