

OPINION OF THE CAHDI

ON RECOMMENDATION 2027 (2013) OF THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE – “EUROPEAN UNION AND COUNCIL OF EUROPE HUMAN RIGHTS AGENDAS: SYNERGIES NOT DUPLICATION!”

1. On 16 October 2013, the Ministers' Deputies communicated Recommendation 2027 (2013) of the Parliamentary Assembly of the Council of Europe to the Committee of Legal Advisers on Public International Law (CAHDI) for information and possible comments by 29 November 2013. The Ministers' Deputies have also communicated this Recommendation to the Steering Committee for Human Rights (CDDH).

2. The CAHDI examined the above-mentioned Recommendation by means of an electronic consultation and adopted the following comments which concern aspects of the recommendation which are of particular relevance to the mandate of the CAHDI (public international law).

3. In Recommendation 2027 (2013), the Assembly invites:

a) the European Union to:

- i) explore possible synergies with existing Council of Europe mechanisms in the fields of human rights, democracy and the rule of law before setting up new structures or further expanding the activities of recently created bodies;
- ii) in particular, to continue to make use of the expertise of relevant Council of Europe bodies such as the Venice Commission, the Parliamentary Assembly and relevant specialised monitoring mechanisms, including those set up under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126), the revised European Social Charter (ETS No. 163), the Convention on Action against Trafficking in Human Beings (CETS No. 197), the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (ETS No. 141), as well as with the Group of States against Corruption and the European Commission against Racism and Intolerance;
- iii) explore modalities of co-operation with the Council of Europe in promoting and implementing the above-mentioned Council of Europe conventions and becoming a Party to them to the extent possible;
- iv) accelerate the accession of the European Union to the European Convention on Human Rights;

b) the member States of the Council of Europe to facilitate co-operation between the Council of Europe and the European Union at all levels, including by ensuring that relevant conventions are drafted or adapted in such a way as to facilitate accession by the European Union;

- c) those member States of the Council of Europe which are also members of the European Union to exercise their influence in the Union in such a way as to minimise duplication and maximise synergies between the European Union and the Council of Europe in the field of human rights, democracy and the rule of law.

[...]

- d) the Committee of Ministers :

- i) to report back urgently to the Assembly on what it is doing to enhance the Council of Europe's role as the benchmark for human rights, the rule of law and democracy in Europe, as is set out in the Memorandum of Understanding between the Council of Europe and the European Union concluded in May 2007;
- ii) to take all necessary action to ensure that the European Convention on Human Rights is not undermined as the European legal instrument which addresses human rights, democracy and the rule of law among all member States of the Council of Europe, including those countries which are also members of the European Union.

4. From the outset, the CAHDI notes that the protection and promotion of human rights is a common objective of the Council of Europe and the European Union. As such, this issue is central to the cooperation between the Council of Europe and the European Union, as enshrined in the Memorandum of Understanding of 2007 concluded between these two entities. In this memorandum, which remains the relevant applicable framework, the European Union recognises the role of the Council of Europe as the Europe-wide reference source for human rights, both with respect to the relevant norms developed by the Council of Europe as to the decisions and conclusions of its monitoring structures which the European Union undertakes to take into account where relevant. Moreover, the CAHDI welcomes the recent initiatives undertaken by the Secretary General aimed at optimising the functioning and coordination of these monitoring mechanisms, as well as a better use of their conclusions.

5. To the extent that the proposals to reinforce the monitoring of fundamental rights and judicial systems are likely to cover shared priority areas of cooperation between the Council of Europe and the European Union, the CAHDI notes that they fall within the scope of the political and technical consultation called for in the aforementioned 2007 Memorandum. Such consultation remains subject to the principles framing the cooperation between the Council of Europe and the European Union which are set out in the Memorandum, namely the principles of indivisibility and universality of human rights, the independence of the judiciary, respect for the standards set out in this field by the fundamental texts of the United Nations and the Council of Europe, in particular the European Convention on Human Rights (ECHR), as well as the preservation of the cohesion of the human rights protection system in Europe.

6. Concerning in particular the cooperation between the European Union Agency for Fundamental Rights and the Council of Europe, the CAHDI notes that pursuant to the terms of the cooperation agreement which was concluded in 2008 between the European Union and the Council of Europe and which refers to the 2007 Memorandum, the Agency respects the unity, validity and effectiveness of the instruments used by the Council of Europe to monitor the protection of human rights in the member States of the European Union.

7. The CAHDI recommends that any initiative pertaining to the areas of cooperation between the Council of Europe and the European Union, and in particular to the Agency's present and future activities, take into account the principles for cooperation under the agreements concluded, in particular the concern to avoid duplication and promote complementarity in view of ensuring their added value.

8. Regarding the participation of the European Union to the Council of Europe conventions, the CAHDI takes note of the relevant decisions of the Deputies related to the review of Council of Europe conventions. Within this framework, the Deputies agreed that this question should be examined at the appropriate time in order to avoid any interference with the current negotiations on EU accession to the ECHR, whilst noting that the European Union had expressed its readiness to examine with the Council of Europe the possibility for the European Union to join certain Council of Europe's conventions. The CAHDI stands ready to assist, when appropriate, the Committee of Ministers in its examination of the modalities aimed in general to allow and/or facilitate the participation of the European Union to the conventions of the Council of Europe. The CAHDI recalls that the Committee of Ministers might wish to call upon its expertise also with respect to ongoing negotiations aimed at the accession of the European Union to any Council of Europe convention and/or mechanism in particular. The CAHDI refers in this regard to its contribution to the study of the consequences of the so-called "disconnection clause" in international law in general and for Council of Europe conventions in particular.

8. The CAHDI welcomes the measures taken by the European Union to foster the participation of States members and non-members of the European Union to the conventions of the Council of Europe and encourages any initiative which would reinforce such support.

9. The CAHDI underlines that it has closely followed the negotiations aimed at the accession of the European Union to the ECHR, through the participation of an observer of the CAHDI to the meetings of the CDDH and the informal group 47+1 in charge of finalising the legal instruments establishing the modalities of accession. It welcomes the successful conclusion of these negotiations, as an important step in the perspective of creating a unique European legal area concerning the protection of fundamental rights and expresses its commitment to continue following and supporting this process.