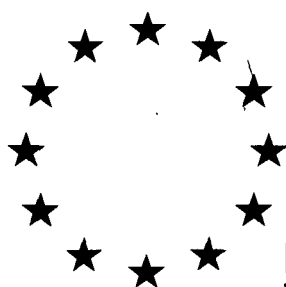


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## **1996 INTERGOVERNMENTAL CONFERENCE OF THE EUROPEAN UNION**

### **Possible contribution by the Council of Europe**

Elements for reflection proposed by the Secretariat

At their 538th meeting (May 1995), the Deputies instructed the Secretariat to prepare a document identifying questions linked to the recommendation of the Parliamentary Assembly to the Committee of Ministers to "start preparing immediately, in close co-operation with the Assembly, proposals for the Council of Europe's contribution to the Intergovernmental Conference of 1996" (paragraph 9.iv of Recommendation 1267).

This preliminary document presents elements for a first reflection by the Deputies, without setting out to describe the form or content of a possible contribution from the Council of Europe.

**Why a contribution by the Council of Europe?**

The 1996 Intergovernmental Conference, provided for by the Maastricht Treaty, is intended to enable the European Union to adapt its institutional structures and its policies, with the threefold aim of making substantial enlargement possible, increasing efficiency and improving transparency to ensure greater acceptance by citizens.

This conference, whose preparation has entered into an active phase with the creation, on 3 June last in Messina, of a Reflection Group responsible for reporting to the Madrid Summit (December 1995), is undeniably a matter for the Union itself and its member states. It is, however, of equally undeniable interest to the future member States of the Union.

Moreover, it will reflect a particular approach to the institutional architecture of Europe, a subject to which the Council of Europe both in the framework of the Committee of Ministers and of the Parliamentary Assembly has always devoted particular interest.

Accordingly, it seems appropriate for the Council of Europe, like other international organisations, to submit a "contribution" describing the broad lines of what it itself proposes to do for the cause of European integration over the next years and to suggest prospects for interaction between the two institutions, as advocated by the Parliamentary Assembly (Recommendation 1267).

The objective is not, of course, to try to use this opportunity in order to arrange a general division of labour between the EU and the Council of Europe, but rather to ensure that the Union takes account of Council of Europe action in the latter's recognised spheres of excellence.

Initially, the main purpose will be to attract the attention of those in charge of preparing the Conference in the capitals of the fifteen member States and in the decision-making bodies of the Union.

In order to serve some purpose, this contribution would have to be made available shortly, while leaving certain points to be expanded or amended subsequently in the light of the work of the Reflection Group or the Conference itself.

A list of points which could suitably be covered in such a document is given below.

**INTRODUCTION: The tasks assigned to the Council of Europe**

A brief introduction would seem appropriate in order to provide an overall view of the tasks assigned to the Council of Europe now that its action is almost pan-European in scope. The main elements to be drawn on would be the Vienna Declaration and the deliberations of the Committee of Ministers at its most recent session.

This would constitute a sort of general introduction providing the minimum prior information necessary in order to situate the particular questions to which it was desired to draw the attention of the Conference.

(to be expanded subsequently)

## **European Union and Council of Europe: proposals for manageable interaction**

The European Union lies at the heart of European integration. By its intrinsic nature, the logic of its development and its force of attraction, it provides remarkable impetus for the integration process.

Nevertheless, its enlargement and consolidation do not take place in a vacuum. They affect other, more or less specialised types of international action, above all the action pursued by the Council of Europe whose main features were described in the introduction.

Working relations have already been established between the two institutions, essentially between the Council of Europe and the Commission. These are founded on Article 230 of the Treaty of Rome. Their legal framework is the Arrangement of 1987, which it has already been decided to revise, and the decisions of 5 May 1989 by the Committee of Ministers of the Council of Europe, which entail quadripartite consultations.

At a time when the Union is tackling the job of revising its founding treaties, it is important that it takes greater account in its development of certain aspects of the work of the Council of Europe, to which all its member States contribute, along with several other States which are seeking accession to the Union.

This would make it possible to ensure greater coherence of the integration process as a whole, to guarantee from the outset certain common foundations for the entire edifice, to allow full scope for certain specialisations and to take full advantage of certain achievements characterised by particularly rich experience or high standards.

With this in view, a number of **questions calling for particular attention** have been identified below:

### **1. The European Union and Human Rights (HR)**

In conformity with its vocation, the Council of Europe has developed in this field a unique body of standards and mechanisms both legal and political for the purpose of their promotion and supervision of their application.

The authority of these texts and the efficiency of these mechanisms uniformly applicable in practically all Europe should be fully preserved and, if possible, reinforced.

Concretely, the following measures could be envisaged:

**1.1 The standard-setting part of the European Convention on Human Rights would form the central part of the catalogue of fundamental rights secured for the citizens of the Union.**

Admittedly, the Court of Justice has already frequently referred to the European Convention on Human Rights (ECHR), and the Treaty on European Union contains a clause (Article F.2) stating that the Union shall respect fundamental rights as guaranteed by the Human Rights Convention. On the other hand, the adoption of a catalogue of fundamental citizens' rights entirely independently of the European Convention might weaken the future scope of that instrument.

**1.2 The entry into force of the ECHR in a candidate State could be formally recognised as a condition for accession to the Union.**

To date, no state has joined the Community/Union without first having become a member of the Council of Europe and, hence, without having first acceded to the ECHR. The idea would be to incorporate this implicit condition formally in the Treaty on European Union.

**1.3 Forms of concertation/co-operation could be envisaged between the Committee of Ministers of the CE and the competent bodies of the Union to ensure compliance with the commitments by member States and members of the Union or candidates for membership.**

**1.4 Consideration of the accession of the European Union as such to the ECHR could be pursued, once the Court of Justice has pronounced on the matter.**

**1.5 More generally, the Union should make every effort to avoid any action relating to human rights, the prevention of torture, the protection of national minorities and combating intolerance, which risk undermining the legal instruments and practical initiatives of the Council.**

## **2. The Parliamentary Assembly and the European Union**

The Parliamentary Assembly is currently reflecting on the role which it might possibly play with regard to reinforcing the legitimacy of the Union. It is concentrating its reflections on various proposals designed to enable national parliaments to take a fuller part in the decision-making process within the Union. It will make known its conclusions in due course. These will also concern its own relations with the European Parliament.

### 3. The CLRAE and the European Union

The Congress will also inform the Committee of Ministers of the aspects to be taken into consideration in preparing the contribution, including comments on its relations with the Committee of the Regions.

### 4. Intergovernmental co-operation within the European Union and within the Council of Europe

Since the European Single Act, the Community has consolidated its powers in fields such as social cohesion and environmental protection. In adopting the Maastricht Treaty, it entered into new spheres of action: education, youth and cultural policies, and public health, although the intention is to use incentives rather than the harmonisation of legislations. In certain of the said fields, co-operation with the Council of Europe is provided for under the Treaty.

With regard to the "third pillar", the Union is already conducting co-operation in the fields of judicial and home affairs.

Although it is different in nature, the co-operation pursued by the Union in these new fields of action can be compared to the intergovernmental action pursued by the Council of Europe on the same subjects.

In order to derive maximum benefit from this complementarity between our Institutions, the following measures could be considered:

4.1. Co-ordination/co-operation between the Council of Europe and the Union should therefore be envisaged in the revised Treaty, either by a **general clause on partnership**, similar to Article 230 of the Treaty of Rome, but also applicable to the "third pillar" - or by various special clauses. The revised Arrangement could constitute a further consolidation of this, in particular for relations between the Council of the Union.

4.2. Apart from such clauses, which are indispensable, criteria and methods could be developed with a view to **ensuring, whenever possible and desirable**, a true interaction between co-operation within the Union and co-operation within the Council of Europe.

In so doing, account would be taken of:

- the dimension offered by the Council of Europe: certain questions should be tackled preferably in the widest circle of partners on a strict footing of equality (examples: common principles regarding nationality, international co-operation in criminal matters, action on drug-addition);

- the "acquis" of each Institution: legal heritage (example: data protection), agencies (pharmacopoeia), networks of experts, etc;

- the possibilities offered by the Council of Europe, through Partial Agreements and Conventions, to introduce a certain element of "variable geometry", without weakening the coherence of the Union;

4.3 One of the most highly developed expressions of such partnership might consist in the **management of certain Europe-wide services by agencies set up jointly** by the Union and the Council of Europe, for example in the fields of culture, education, audiovisual or pharmaceutical.

## **5. Council of Europe Conventions and Agreements**

Special reference should be made in this context to the Council of Europe's system of Conventions and Agreements which should continue to develop at a moderate pace over the coming years. Special priority will be assigned to improving the degree of ratification of all the important texts, in order that they may constitute an even stronger framework for the legal area of Greater Europe.

Several questions deserve to be dealt with in this connection:

5.1 Whether it would be appropriate for the Union to take part in the conclusion of new instruments.

5.2 The problems of "disconnection" with regard to Conventions or Agreements under preparation.

5.3 The use of the Council of Europe Convention procedures for legislative purposes shared between the Union and the Council.

5.4 The joint examination of the functioning of the Treaties and Agreements which are of interest to both institutions.

## **6. Promotion of democratic security in Europe**

For many years to come, special priority will be given by the European Union and the Council of Europe to supporting reform in the countries which have opted since 1989 for democracy, with a view to promoting stability, founding the enlargement of Europe firmly on common values and providing a framework for economic and social transition.

By virtue of its scale, this undertaking calls for the optimum combination of political, legal and financial means available to both institutions and the judicious use of their know-how.

6.1 Efforts should be made to continue to develop **joint programmes or partnerships** in order to support democratic reforms (whether institutional, legislative or administrative) and to provide training for leaders in every field in these countries.

6.2 As suggested in section 1.3 above, the European Union could take **advantage, for its action in this field, of the constructive monitoring mechanism** which the Committee of Ministers of the Council of Europe has set up relative to the basic commitments of member States.