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**REPORT BY THE SECRETARY GENERAL  
ON THE REVIEW OF COUNCIL OF EUROPE CONVENTIONS**

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## CHAPTER 1. GENERAL INTRODUCTION

1. In his proposals for priorities for 2011, the Secretary General had put forward the idea of taking stock of the situation of the Council of Europe's conventions through a critical review of the relevance of those conventions. It was understood that this exercise would provide "the basis for decisions on follow-up including measures to increase the visibility and the number of parties to relevant conventions".<sup>1</sup> At their 1084th meeting, the Ministers' Deputies "supported the [Secretary General's] proposals for Priorities for 2011".<sup>2</sup>

### 1.1 Nature of the Council of Europe conventions

2. The Statute of the Council of Europe provides, in Article 15.a, that:

*"On the recommendation of the Consultative Assembly or on its own initiative, the Committee of Ministers shall consider the action required to further the aim of the Council of Europe, including the conclusion of conventions or agreements and the adoption by governments of a common policy with regard to particular matters. Its conclusions shall be communicated to members by the Secretary General."*

3. This provision was supplemented, in May 1951, by a Resolution of the Committee of Ministers, adopted at its 8th session, which provided that:

*"The conclusions of the Committee of Ministers may, where appropriate, take the form of a convention or agreement. In that event the following provisions shall be applied:*

- i. The convention or agreement shall be submitted by the Secretary-General to all members for ratification;*
- ii. Each member undertakes that within one year of such submission, or, where this is impossible owing to exceptional circumstances, within eighteen months, the question of ratification of the convention or agreement shall be brought before the competent authority or authorities in its country;*
- iii. The instruments of ratification shall be deposited with the Secretary-General;*
- iv. The convention or agreement shall be binding only on such members as have ratified it."*

4. This Resolution was, however, never applied. It stemmed directly from Article 19 of the Constitution of the International Labour Organisation (ILO), and

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<sup>1</sup> CM(2010)42 rev of 30 April 2010.

<sup>2</sup> 1084th meeting of the Ministers' Deputies, 5 May 2010, item 1.8. This review of the conventions was carried out without additional budgetary resources, in pursuance of the budgetary decisions for 2011 adopted by the Ministers' Deputies at their 1099th meeting (23 November 2010).

the impediment to its implementation was the fundamental difference between ILO conventions and those of the Council of Europe in terms of their legal nature. ILO conventions are regarded as acts of the Organisation as such and subject to a procedure explicitly governed by the Constitution of the ILO. Thus, these conventions impose on member States concrete obligations, whether or not they have ratified the instrument concerned.

5. On the other hand, where the legal nature of the conventions adopted within the Council of Europe is concerned, a 1968 Secretariat note cast light on this in the following terms:

*"The conventions and agreements concluded within the Council of Europe are not, strictly speaking, legal acts of the organisation. They are, in respect of their legal existence, instruments between a certain number of States which have expressed, by ratification or by signature without reservation in respect of ratification, their consent to be bound by the provisions which they contain. Thus these international treaties owe their legal effects to the expression of the will of the Contracting Parties alone, realised outside any procedure followed within the Council of Europe as an international organisation. [...] However, in spite of this independence with regard to their legal existence, the said conventions and agreements preserve certain links with the Council of Europe within which they are drawn up [...] from the point of view both of their elaboration and their entering into force."*<sup>3</sup>

6. This link with the Council of Europe is marked by the fact that the Council has made available to its member States the institutional and administrative framework required for a multilateral negotiation. Furthermore, the Committee of Ministers has the last word on the draft texts of conventions, in light of the opinion of the Parliamentary Assembly on the draft text. The Council of Europe also plays a role in the implementation of conventions: the Committee of Ministers invites States which are not members of the Council of Europe to accede to them, the Secretary General acts as depositary, a number of steering committees are responsible for following-up the implementation of conventions falling within their field of expertise, etc.

7. Since its foundation in 1949, the Council of Europe has drawn up over 200 conventions. All these conventions were published in the European Treaty Series (ETS), which was continued, in 2004, by the Council of Europe Treaty Series (CETS).<sup>4</sup> The most recent convention is No. 211.

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<sup>3</sup> CM(68)239, "Opening of conventions and agreements to signature by member States", 22 November 1968, §§9-10.

<sup>4</sup> A list of all the conventions in the Council of Europe Treaty Series can be found on the Council of Europe Treaty Office website at < <http://conventions.coe.int> >.

8. In its [Resolution 1732\(2010\)](#) on "Reinforcing the effectiveness of Council of Europe treaty law",<sup>5</sup> the Parliamentary Assembly "welcome(d) the fact that the Council of Europe has laid the foundations of an innovative and coherent body of European law, particularly in its special fields of expertise of human rights protection, democracy and the rule of law" and noted that "this body of conventions, covering the entire continent, forms the basis for a Europe without dividing lines." As the Committee of Ministers noted in its reply to Parliamentary Assembly [Recommendation 1920\(2010\)](#) on "Reinforcing the effectiveness of Council of Europe treaty law",<sup>6</sup> "the Council of Europe conventions constitute a unique integrated system of legal standards collectively defined within the Organisation and agreed upon by the member States."<sup>7</sup>

9. The numerous references made by the European Court of Human Rights to Council of Europe conventions, other than the European Convention on Human Rights, also represent a form of recognition of their importance as an element of the common European legal heritage.

## **1.2 Purposes of the report, methodology and consultations**

10. The purpose of this report is to assess the relevance of the Council of Europe conventions. Thus, on 16 February 2011, the Secretary General presented an "Outline of convention review"<sup>8</sup> to the Ministers' Deputies indicating what he intended to do to implement this initiative. It was proposed that a full report be drawn up for the attention of the Committee of Ministers by the end of September 2011, encompassing *inter alia*:

- a) Identification of a set of criteria which will allow the relevance of Council of Europe conventions to be assessed;
- b) Application of these criteria to the list of existing conventions;
- c) Classification of the conventions in several groups on the basis of the set criteria and according to subject matter;
- d) Identification of measures that the Committee of Ministers and/or the Contracting Parties could adopt to increase conventions' visibility and the numbers of Contracting Parties.

11. At their 1106th meeting (16 February 2011), the Ministers' Deputies took note of the general approach proposed by the Secretary General to the preparation of a

<sup>5</sup> < <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta10/ERES1732.htm> >

<sup>6</sup> < <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta10/EREC1920.htm> >

<sup>7</sup> CM/AS(2011)Rec1920final, "Reinforcing the effectiveness of Council of Europe treaty law" – Parliamentary Assembly Recommendation 1920(2010) (Reply adopted by the Committee of Ministers on 25 May 2011 at the 1114th meeting of the Ministers' Deputies).

<sup>8</sup> SG/Inf(2011)2 final of 17 February 2011.

full report on Council of Europe conventions, and of the provisional timetable for completion of this report and for the adoption of the relevant decisions.

12. Following this decision, the Secretary General, in April 2011, set up a working group within the Secretariat to prepare the draft report. This group, co-ordinated by the Directorate of Legal Advice and Public International Law, was composed of staff members from the different major administrative entities, who were involved – due to their duties – in the preparation, follow-up or management of conventions in their respective fields of activity.

13. The working group benefited from the outset from the recent relevant works of the Parliamentary Assembly and took into account Resolution 1732(2010) and Recommendation 1920(2010) of the Parliamentary Assembly on “Reinforcing the effectiveness of Council of Europe treaty law” and the reports relating to them,<sup>9</sup> as well as the reply from the Committee of Ministers to this Recommendation, adopted by the Ministers’ Deputies on 25 May 2011, and the opinions of the CDDH, CDCJ, CDPC and CAHDI which are appended to that reply.

14. After discussing criteria for determining the relevance of the conventions and their provisional application to all of these, the members of this working group referred to the members of the intergovernmental steering and ad hoc committees the proposed provisional classification of the conventions in their respective fields. The experts of the intergovernmental committees were also asked to indicate which conventions could usefully be updated in order to recover or retain their relevance, and to suggest possible measures that the Parties or the Committee of Ministers might take to increase the number of ratifications and the visibility of the Council of Europe conventions.

15. Consultations therefore took place with the members of the following committees: Steering Committee for Human Rights (CDDH), European Committee on Crime Problems (CDPC), European Committee on Legal Co-operation (CDCJ), European Committee on Local and Regional Democracy (CDLR), Committee of Experts on Terrorism (CODEXTER), Committee of Experts on Social Security (CS-SS), Committee of Legal Advisers on Public International Law (CAHDI), Steering Committee for Cultural Heritage and Landscape (CDPATEP), Consultative Committee of the European Convention on the Legal Status of Migrant Workers (T-MG), Steering Committee on Culture (CDCULT), Steering Committee on Media and New Communication Services (CDMC) and Steering Committee for Higher Education and Research (CDESR).

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<sup>9</sup> See the report of Mr John Prescott (United-Kingdom, SOC), [Doc. 12175](#), 26.02.2010, as well as the report « *The specificity and added value of the acquis of the Council of Europe treaty law* », prepared by Mr Jeremy McBride at the request of the rapporteur and which can be found at: < <http://assembly.coe.int/CommitteeDocs/2009/ajdoc40%202009.pdf> >.

16. The working group also benefited from the opinion supplied by the Bureau of the Congress of Local and Regional Authorities and the analysis prepared by the Registry of the European Court of Human Rights on the use of Council of Europe treaties in the case-law of the Court (see Appendix 5 to this report).

17. Exchanges also took place with the Legal Service of the European Commission with a view to considering possible measures likely to increase the number of accessions by the European Union to certain Council of Europe conventions.

18. Following these consultations, in July 2011 the working group drew up a preliminary draft and submitted it, as scheduled in the Secretary General's Outline of February 2011, to the CAHDI, which held an exchange of views at its 42nd meeting, on 22-23 September 2011, and adopted Observations<sup>10</sup> on the preliminary draft at its 43rd meeting, on 29-30 March 2012. Taking into account these Observations, the Secretary General finalised his report, which he transmitted to the Ministers' Deputies in May 2012.

### **1.3 Main objectives of the review of the conventions**

19. The main objectives of this exercise are listed below:

- a) draw up a list of key conventions which can provide a common legal platform for all member States in the fields of Human Rights, the Rule of Law and Democracy;
- b) identify those conventions which are obsolete, not in force, or with a limited application, in order to tidy up the list of Council of Europe conventions and possibly avoid unnecessary expenditure;
- c) identify those conventions which need updating in order to retain or increase their relevance over the next ten years;
- d) identify ways of promoting accession to the relevant conventions by non-member States in order to consolidate the leading role of the Council of Europe in its priority fields of action;
- e) identify ways of facilitating accession by the European Union to existing and future Council of Europe conventions in order to avoid, as far as possible, duplication in the fields of Human Rights, the Rule of Law and Democracy;
- f) suggest measures which the Committee of Ministers and/or Contracting Parties might adopt to increase the relevance and visibility of, and ultimately the number of Contracting Parties to, Council of Europe conventions, in order to attain the objectives set out in a) to e) above.

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<sup>10</sup> CAHDI(2012)10 of 30 March 2012, Abridged report of the 43rd meeting, Appendix II and Addendum to Appendix II.

## CHAPTER 2. CLASSIFICATION OF COUNCIL OF EUROPE CONVENTIONS

20. The classification of conventions proposed in the present report is just a snapshot of the situation of the Council of Europe's conventions. It is not intended to make a definitive assignment of the conventions to specific categories and it is without prejudice to possible developments which might affect conventions. A convention may in fact meet several criteria and appear in more than one of the categories mentioned hereunder. So the fact that a convention is regarded as a key convention does not prevent it from needing amendment or supplementation to make it more relevant. One example is the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (CETS No. 108), which is a key convention, and to which the drafting of a protocol has been approved by the Committee of Ministers in order to adapt the convention to Internet-related technological developments.<sup>11</sup> Similarly, a convention with few ratifications could become an important convention in the light of international developments, political events, etc. Several conventions on co-operation in criminal matters, for instance, were the subject of a significant number of signatures and ratifications following the 11 September 2001 terrorist attacks on New York.<sup>12</sup>

### 2.1 Subject matters and evaluation criteria

#### 2.1.1 Subject matters

21. It first has to be noted that the Council of Europe Treaty Series spans a wide variety of subjects in which conventions have been adopted within the Council of Europe. This diversity stems from the broad mandate given to the Organisation, as defined in Article 1 a. and b. of the Statute of the Council of Europe:

*"a. The aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress.*

*b. This aim shall be pursued through the organs of the Council by discussion of questions of common concern and by agreements and common action in economic, social, cultural, scientific, legal and administrative matters and in the maintenance and further realisation of human rights and fundamental freedoms."*

<sup>11</sup> Decision of the Committee of Ministers of 10 March 2010 (1079th meeting of the Ministers' Deputies).

<sup>12</sup> In a declaration of 12 September 2001 "on the fight against international terrorism", the Committee of Ministers called on member States to ratify a number of conventions of importance to the fight against terrorism. The European Convention on the Suppression of Terrorism (CETS No. 90) thus received another six signatures during the weeks which followed the adoption of this declaration. Similarly, the European Convention on the Compensation of Victims of Violent Crimes (CETS No. 116) gained six signatures and 11 ratifications following this appeal by the Committee of Ministers, whereas the number of States Parties had been at a standstill prior to that date.

22. The Treaty Office website bases its classification of the treaties on 50 different subject matters, with the understanding that a single convention may relate to several subject matters. The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201), for example, is classified under the headings of "Protection of victims" and "Family Law – Rights of Children". This large number of subject matters makes research easier in the database provided by the Treaty Office website.

23. However, for the purposes of this report, and with a view to simplification, the conventions have been classified under three main headings which correspond to the Organisation's three pillars, as defined in the 2011 Programme:

- human rights,
- rule of law and judicial co-operation,
- democracy.

### **2.1.2 Evaluation criteria**

24. A number of possible evaluation criteria had been identified and were presented by the Secretary General to the Committee of Ministers on 16 February 2011, when the "Outline of convention review" was presented. Parliamentary Assembly Recommendation 1920(2010) and Resolution 1732(2010), the reply from the Committee of Ministers and the replies from the steering and ad hoc committees consulted were taken into account for the validation of the criteria used. However, in its Observations, the CAHDI suggested to adjust the proposed classification of the Council of Europe conventions and considered that, at this stage of the exercise, the report should not draw up an exhaustive list of the conventions belonging to the respective groups.

25. The application of the criteria identified by the CAHDI in order to evaluate the relevance of Council of Europe conventions would lead to a classification in four groups, as detailed below. However, it should be noted that, with the exception of the measures suggested in relation to inactive conventions, the measures proposed in the Action Plan for Council of Europe conventions (Chapter 3 of this report) are not strictly linked to the classification of the conventions. Indeed, certain measures relating to the promotion of conventions could be decided in relation to most conventions classified in groups 1 and 2 but could also concern some conventions in group 3. Thus, in view of the large number of conventions, a selection will need to be made in the light of the Programme of activities or other priorities when deciding on the application of a suggested measure.

## **Group 1: Conventions with numerous ratifications and considered as key**

26. The criteria suggested by the CAHDI are the following:

- ratification by 40 or more member States, and
- convention considered as key.

27. In its Observations, the CAHDI specified that “the key conventions are conventions termed as “flagship” instruments, identified as belonging to one of the areas relating to the Organisation’s core values or the conventions considered as important by the steering committees”. The CAHDI underlined that it will be the task of the different steering committees to decide on the classification of the conventions into the different groups on a case-by-case basis and to establish lists as complete as possible. The CAHDI considered that the result of the classification by the steering committees should be evaluated at a later stage.

28. At this stage, it is suggested to include under the criterion “convention considered as key” the conventions identified as “core Council of Europe treaties” in the appendix to Parliamentary Assembly Resolution 1732(2010) on *“Reinforcing the effectiveness of Council of Europe treaty law”* and for which the Committee of Ministers agreed that these were “important conventions”.<sup>13</sup> It is also suggested to include under this criterion the conventions considered as key by the steering committees which had already been consulted at technical level during the preparation of the preliminary draft report.

29. These criteria reflect, first and foremost, the fact that conventions' relevance results primarily from their acceptance by States. It is States which, by becoming Parties to Council of Europe conventions, give them their influence, visibility and effectiveness. The opinions issued by the Parliamentary Assembly on Council of Europe conventions which have to be ratified by States wishing to become members of the Organisation, endorsed by the Committee of Ministers when the invitation is issued, were also taken into account by the Parliamentary Assembly when drawing up the list of conventions appearing in the appendix to Resolution 1732(2010). This is further evidence of the relevance and importance of the instruments concerned.

30. This category thus contains the fundamental conventions of the Council of Europe, embodying the ideals and principles shared by the member States of the Council of Europe. Participation in these conventions is the basis of membership of the Council of Europe. This category also includes the conventions which have received the largest number of ratifications, and are therefore the most widely accepted and most relevant of all those adopted within the Organisation.

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<sup>13</sup> Reply of the Committee of Ministers to Parliamentary Assembly Recommendation 1920(2010), CM/AS(2011)Rec1920final, 25 May 2011, 1114th meeting of the Ministers' Deputies.

31. The conventions identified as “conventions with numerous ratifications and considered as key” are listed in Appendix 1 to this report, classified according to subject matter, with an indication of the number of Parties to each convention.

### **Group 2: Conventions with fewer ratifications but considered as key**

32. The criteria suggested by the CAHDI are the following:

- convention considered as key,<sup>14</sup>
- and
- recent convention (opened for signature after 2002), or
  - regular ratifications (at least one every year or two), or
  - replacement of numerous bilateral agreements, or
  - influence outside Europe: requests for accession from non-member States.

33. Recent adoption of a convention by the Committee of Ministers bears witness to its relevance. That said, experience has shown that internal signature, ratification or accession procedures take a certain amount of time. Thus, a lower number of ratifications or accessions is not in itself an indication of a lack of relevance, provided that the rate of ratifications or accessions is sustained or regular.

34. The conventions included in this group work well and their level of ratification progresses regularly. Consideration could nevertheless be given to analysing possible ways of making them more visible and more relevant, and to planning initiatives to increase their numbers of ratifications.

35. The conventions identified as “conventions with fewer ratifications but considered as key” are listed in Appendix 2 to this report.

### **Group 3: Other active conventions**

36. The criterion suggested by the CAHDI is the following:

- active convention which is not considered as key.

37. Although these conventions are not considered as key, they have an interest for those States which have expressed their wish to become Parties to them and which wish to remain Parties. Consideration could be given to analysing possible ways of making them more visible and more relevant, and to planning initiatives to increase their numbers of ratifications.

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<sup>14</sup> See the explanations relating to this criterion in paragraphs 27 and 28 above.

38. The conventions identified as "other active conventions" are listed in Appendix 3 to this report.

#### **Group 4: Inactive conventions**

39. The criteria suggested by the CAHDI are the following:

- conventions which have not yet come into force 20 years after being opened for signature (although this may not be an absolute criterion and an examination case by case will be necessary), or
- superseding of a convention by more recent conventions, including revised conventions, or
- existence of legislation or instruments of the EU or other international organisations which set higher standards superseding or updating those of the Council of Europe convention concerned, or
- entry into force of protocols of amendment which are thus incorporated into the parent Council of Europe convention, or
- protocols having fulfilled their purposes and lost their *raison d'être*.

40. If a convention has not come into force 20 years after being opened for signature, this, in itself, shows that it is of little interest to member States, and therefore lacks relevance. In certain cases, its original relevance has disappeared, and States have gradually lost interest in it.

41. This category therefore covers old conventions which States no longer ratify, which are no longer implemented or the content of which is now obsolete or lies completely outside the Organisation's activities and priorities. This category also includes those protocols which no longer have legal effect or which are no longer open to participation by States.

42. The conventions identified as "inactive conventions" are listed in Appendix 4 to this report.

## **2.2 Conventions for which updating or revision could be considered**

43. This issue is a cross-cutting one, which may apply to all Council of Europe conventions, whatever group they belong to. Updating or revising a convention is one means used to increase an old convention's effectiveness and to respond to the legislative, societal or technical developments which may have occurred since the convention was adopted. Some Council of Europe conventions have already been subjected to this process, either through protocols of amendment or through the adoption of a new convention. The European Convention on the Adoption of

Children was revised in this way in 2008 (CETS No. 202) in order to take account of societal and legislative developments in this sphere.

44. The consultations which took place during the preparation of the present report enabled the identification of certain conventions for which updating or revision could already be considered. They are 11 in number.

45. The CDPC stated, in its opinion appended to the reply from the Committee of Ministers to Recommendation 1920(2010) of the Parliamentary Assembly, that certain criminal law conventions might need updating. The conventions concerned are:

- The European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (CETS No. 51): This instrument has been ratified by 19 States. The issue it was designed to address is partly dealt with in the European Convention on the International Validity of Criminal Judgments (CETS No. 070), which it has also been proposed to update.
- The European Convention on the Punishment of Road Traffic Offences (CETS No. 52): In spite of the low number of States who have ratified this Convention, it might be useful to update this instrument, as the issue remains very much a priority of member States.
- The European Convention on the International Validity of Criminal Judgments (CETS No. 70) and European Convention on the Transfer of Proceedings in Criminal Matters (CETS No. 73): These two instruments deal with pertinent issues and it is noted that they have been ratified by roughly half of the Council of Europe's member States. Given recent developments in international legal co-operation within the criminal law field, it may be necessary to update or perhaps even consolidate them, in light of such changes.
- The European Convention on the Compensation of Victims of Violent Crimes (CETS No. 116): This issue is likewise an issue which continues to be debated, currently within the wider context of the general standing and rights of victims. Given that more than half of member States have ratified it, it has been deemed more appropriate to review and update it.
- The Agreement on illicit traffic by sea, implementing Article 17 of the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances (CETS No. 156): This Convention has been ratified by 13 States, the latest ones being Ukraine and Ireland, in 2007. Of the member States who signed up to it in 1995, the year it was adopted (Greece, Italy, Norway, Sweden and the UK), only Norway subsequently ratified. Of the 13 States

which did ratify however, the geographic distribution is interesting, as they together form a corridor of States from central Europe to the rest of the world. This corridor begins with the Black Sea coastlines of Ukraine and Romania, through the land-locked States of Hungary, Slovakia, Austria and the Czech Republic, to States with access to every European coast: the Atlantic Ocean (Ireland); the Adriatic Sea (Slovenia); the Mediterranean Sea (Cyprus); the Baltic Sea (Lithuania, Latvia, Germany); and the North/Norwegian Seas (Norway). This, plus the fact that the most recent ratifications occurred less than four years ago, indicates it is potentially highly relevant to specific member States, and the CDPC considers that it should therefore be reviewed with a view to updating.

46. At its 89th meeting (6-7 July 2011), the Bureau of the CDCJ also identified a number of conventions which fall within its sphere of competence and for which updating could be envisaged. The conventions concerned are, in particular, the European Convention on the Service Abroad of Documents relating to Administrative Matters (CETS No. 94) and the European Convention on the Obtaining Abroad of Information and Evidence in Administrative Matters (CETS No. 100). These conventions have been ratified by less than 10 States 20 years after being opened for signature. However, updating the mechanism provided for in these conventions might enable an increase of the number of ratifications, bearing in mind that there is no other international instrument covering this subject.

47. The Bureau of the CDCJ also identified the European Convention on the Legal Status of Migrant Workers (CETS No. 93) as in possible need of updating. The Consultative Committee of this convention (T-MG) has indicated that the convention, ratified by 25 member States, could usefully be opened to participation by States which are not members of the Council of Europe, in order to promote legal channels of migration for workers. The T-MG has also said that this convention could play a more important role in these times of economic crisis as an instrument protecting vulnerable migrant workers from unfair dismissal, exploitation, discrimination, etc.

48. The Bureau of the CDMC has been consulted and it would appear that the European Convention on Transfrontier Television (CETS No. 132) still offers added value but that a revision would be desirable. It should be noted in this context that the Standing Committee of the Convention (T-TT) drew up a draft protocol of amendment which was submitted to the Committee of Ministers in the autumn of 2009. Consideration of this draft has nevertheless been postponed *sine die*.<sup>15</sup>

49. Finally, in Recommendation 1892(2009) on the "contribution of the Council of Europe to the development of the European Higher Education Area", the Parliamentary Assembly recommended that the Committee of Ministers "*analyse*

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<sup>15</sup> Decision of the Committee of Ministers of 4 November 2009 (1069th meeting of the Ministers' Deputies).

*whether the European Agreement on continued Payment of Scholarships to Students Studying Abroad (ETS No. 69) and the European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe (ETS No. 25) should be amended to support the development of the European Higher Education Area*'. In its opinion on Recommendation 1892 (2009), the CDESR undertook to consider proposing possible amendments to the European Agreement on continued Payment of Scholarships to Students Studying Abroad (CETS No. 69), a fact which the Committee of Ministers noted in its reply to this Assembly Recommendation.<sup>16</sup>

50. This list of conventions which might be updated or revised is, of course, only of indicative value at this stage, and it is for the Committee of Ministers to decide whether it wishes to instruct the committees concerned to evaluate in greater detail the need for these conventions to be updated or revised.

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<sup>16</sup> CM/AS(2010)Rec1892 final "*Contribution of the Council of Europe to the development of the European Higher Education Area*" – Parliamentary Assembly Recommendation 1892(2009) (Reply adopted by the Committee of Ministers on 16 September 2010 at the 1091st meeting of the Ministers' Deputies). The comments of the CDESR are appended to the reply from the Committee of Ministers.

## **CHAPTER 3. PROPOSED ACTION PLAN FOR THE COUNCIL OF EUROPE CONVENTIONS**

### **3.1 Measures relating to the promotion of the conventions among member States**

51. The twofold aim of *internal* promotion of the conventions is to publicise the Council of Europe's instruments and raise States' awareness of those already in force. The conventions become better known as explanations are given of their purpose and their substance. Lack of knowledge of the potential offered by certain conventions for solving the problems faced by our societies may in practice be the reason for the sometimes low numbers of ratifications.

52. However, in view of the large number of Council of Europe instruments that exist, a selection has to be made. This could be done by the Committee of Ministers, on the basis of proposals by the Secretary General, in the light in particular of the relevance that each convention has to current events and/or to the Council of Europe's biennial programme of intergovernmental activities.

53. Quite clearly, the effort must focus on the conventions which are central to the Organisation's values. These instruments are, of course, those which are already "best off". Sometimes their ratification was part of the commitments and obligations undertaken by States when they joined the Council of Europe, and many of them go hand-in-hand with a monitoring mechanism. Alongside these key instruments, it is important to promote as well those conventions adopted recently and the other conventions capable of providing solutions to current problems.

54. Promotion of a convention (among national authorities and/or to the general public) may be regarded as a single objective or, in certain cases, as part of a wider priority set by the Organisation for the months ahead. Concrete promotion of a treaty on data protection, for instance, could be part of a comprehensive activity on Internet-related challenges.

#### **3.1.1 Promotion methods at multilateral/international level**

##### **1. Events at which conventions relating to a major theme can be promoted**

55. Conferences, seminars and training workshops could be arranged on one or more major themes (such as the protection of children) covered by a number of Council of Europe instruments, ratification of which would be encouraged on that occasion. In each two-year budgetary period, under the chairmanships of the

Committee of Ministers concerned, events would thus be held on a theme or themes adopted as priorities during the reference period. The Secretary General would propose the promotion of a limited number of conventions to the incoming chairmanships of the Committee of Ministers, taking into account the programme of activities and the prevailing European and international context as well as the promotion of other conventions dealing with any subject of specific interest to the chairmanship concerned. Thought could be given to promoting, throughout the subsequent chairmanships of the Committee of Ministers, the ratification and implementation of the conventions connected with the major theme selected.

## **2. Treaty ceremonies modelled on those organised by the United Nations**

56. The United Nations model could be taken into account and be adapted to the Council of Europe's needs. In practice, every year, the UN Secretary-General invites Heads of State and Government to participate in a ceremony organised by the Treaty Section at which treaties are signed or ratified, in order to encourage both wider participation in the multilateral treaties of which he is the depositary and more rapid entry into force of those treaties.<sup>17</sup> Events of this kind could be organised in the context of ministerial sessions or of specialised conferences of ministers of Justice.

## **3. Targeted activities by the Parliamentary Assembly**

57. Activities carried out by the Parliamentary Assembly or its representatives in order to promote certain conventions also deserve to be highlighted.<sup>18</sup>

## **4. Raising awareness among the Judges of the European Court of Human Rights and other eminent lawyers**

58. High-level seminars or colloquies could be held in order to raise awareness of the new treaties adopted by the Committee of Ministers among the Judges of the European Court of Human Rights and other eminent lawyers.<sup>19</sup>

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<sup>17</sup> The Secretary-General chooses a set of treaties centred on a common theme, on the basis of specific problems related to the international context. The ceremony coincides with the opening of the General Assembly session in September, providing the United Nations with an opportunity to promote public international law as a whole.

<sup>18</sup> One example that may be quoted dates from 15 June 2011, when representatives of the Parliamentary Assembly and the United Nations jointly called on the 27 EU member States and the EU itself to accede to the new Council of Europe Convention on Violence against Women and Domestic Violence (CETS No. 210). See the press release of 15 June 2011, document APCE 029(2011).

<sup>19</sup> In its Observations, the CAHDI suggested "that care be taken when considering running a campaign to "raise awareness among judges" of European or domestic courts, which might infringe the principles of independence of judges and the separation of powers" (§22).

## 5. Reports to the Committee of Ministers

59. It is also be useful to mention the practice of reporting to the Committee of Ministers used by certain steering committees and their subordinate bodies. The state of ratification of certain Council of Europe instruments is regularly examined, and reports are submitted to the Committee of Ministers.<sup>20</sup> Preparation of a report to the Committee of Ministers on the application of conventions 10 years after they came into force may prove useful for taking stock of relatively recent conventions.

## 6. *Tours de table*

60. One method which might be described as a Council of Europe "tradition" is what is known as the *tour de table* (in the Committee of Ministers or the relevant committees) on the state of ratification by member States of Council of Europe instruments. Experience has shown that this is a relatively effective method for certain categories of convention, and one which may be combined with other methods.<sup>21</sup>

## 7. Council of Europe campaigns

61. Council of Europe campaigns are useful for promoting ratification of some of the Organisation's conventions.<sup>22</sup> Given national parliaments' competence in respect of the ratification of international treaties, the addition of a parliamentary dimension may enhance their effectiveness. The Parliamentary Assembly has already run successful campaigns of this kind, setting up and arranging meetings of networks of contact parliamentarians from national parliaments, and helping to promote relevant Council of Europe texts to policy-makers.<sup>23</sup>

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<sup>20</sup> One example that can be cited is the use of the aforementioned practice by the Committee of Experts on Terrorism (CODEXTER), in accordance with its terms of reference.

<sup>21</sup> Examples are the instruments of the European Social Charter, for which the Committee of Ministers organises an annual *tour de table*, and Protocols Nos. 6 and 13 to the European Convention on Human Rights concerning abolition of the death penalty, of which the Committee of Ministers examines the state of ratification twice a year.

<sup>22</sup> Examples are the campaign launched recently on the subject of sexual violence against children, one of the objectives of which was to promote ratification and full implementation of the fundamental legal instrument of the Council of Europe in this field, namely the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, and the campaigns relating to the Convention on Cybercrime and the Convention on Action against Trafficking in Human Beings.

<sup>23</sup> Examples are the "ONE in FIVE" campaign:

< [http://www.coe.int/t/dg3/children/1in5/pace/about\\_EN.asp?expandable=5](http://www.coe.int/t/dg3/children/1in5/pace/about_EN.asp?expandable=5) >

and the "Parliaments united to combat violence against women" campaign:

< [http://assembly.coe.int/main.asp?link=/Communication/Campaign/DomesticViolence/default\\_EN.asp](http://assembly.coe.int/main.asp?link=/Communication/Campaign/DomesticViolence/default_EN.asp) >.

### **3.1.2 Promotion methods at national level**

#### **1. Political dialogue between the Secretary General and member States' highest authorities**

62. Systematic inclusion of the question of a possible ratification of certain Council of Europe conventions (particularly the key conventions) as a subject for political dialogue between the Secretary General and member States' highest authorities is already proving highly useful. If the President of the Parliamentary Assembly and the Commissioner for Human Rights spoke about the same conventions during their visits to member States, the message would gain in consistency.

#### **2. Promotion of conventions during on-the-spot visits**

63. On-the-spot visits by the bodies responsible for monitoring or follow-up activities are another – already widely used – means of facilitating, through dialogue with national authorities, effective implementation of certain conventions which have already been ratified. Although such on-the-spot visits primarily consider implementation of a convention, they do enable dialogue to be started with national authorities, and particularly with convention users, fostering a better understanding of the way in which the country's authorities have taken ownership of the texts and are, in their turn, promoting them domestically. This being said, such visits may also prove useful, within the context of the dialogue thus begun with the national authorities, for discussing the possibility of withdrawing any reservations formulated on signature/ratification of, or accession to, the convention concerned,<sup>24</sup> and for promoting ratification of connected instruments, such as additional protocols or conventions dealing with related or similar issues.

64. One might cite as examples the monitoring visits made in respect of the European Charter of Local Self-Government, which sometimes afford an opportunity, especially at meetings with the highest national authorities responsible for local and regional government, to raise the issue of possible signature or ratification of the additional protocol or of a connected convention. If this possibility is envisaged, the planned timetable could be mentioned in the recommendation made to the State as a positive development. If not, these meetings give national authorities an opportunity to explain the constraints, obstacles or reasons which are delaying or preventing such signature or ratification. This will then enable the competent Council of Europe bodies, that is to say primarily the Committee of Ministers, to target any internal promotion activities more effectively, in particular through the Congress of Local and Regional Authorities.

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<sup>24</sup> Following direct dialogue with the main national stakeholders, some reservations already withdrawn *de facto* are often withdrawn *de jure* as well. Also see Section 3.5.

### **3. Raising awareness among the judges of the highest domestic courts**

65. It is important to plan high-level seminars or colloquies to raise awareness in the highest domestic courts of Council of Europe instruments, particularly the most recent conventions.<sup>25</sup>

### **4. Information about the ratification policy of certain States**

66. In Resolution 1732(2010) on "Reinforcing the effectiveness of Council of Europe treaty law", the Parliamentary Assembly inter alia invites each national parliament to "*require its government to submit during each legislature a report on its policy on ratifying Council of Europe conventions, as is already the case in certain member States*". The aim is to encourage an active policy by the State so that the conventions which it has negotiated are signed and ratified within a reasonable time.

### **5. Technical subjects**

67. Particular attention could be given to the Council of Europe instruments which deal with highly technical subjects. There have sometimes been efforts to promote these among member States' experts in the subject, but not enough among policy-makers.<sup>26</sup> It would be feasible to promote this category of instruments among policy-makers in order to obtain larger numbers of ratifications.

## **3.2 Measures relating to the promotion of conventions to the European Union and to non-member States**

### **3.2.1 Make Council of Europe conventions more visible**

68. A first, necessary step would be to improve visibility and knowledge of Council of Europe conventions which are open to the European Union participation or are, by their characteristics, particularly suitable for participation by non-member States.

69. In general, it appears that more could be done to "advertise" in relevant fora outside the Organisation the negotiations to be undertaken within the Council of

<sup>25</sup> In its Observations, the CAHDI suggested "that care be taken when considering running a campaign to "raise awareness among judges" of European or domestic courts, which might infringe the principles of independence of judges and the separation of powers" (§22).

<sup>26</sup> One example that may be cited is that of the Additional Protocol to the Convention on Human Rights and Biomedicine, concerning Biomedical Research (CETS No. 195), which States feel no need to ratify because this instrument is promoted more among the research community, and because there already exist, at national level, texts which encompass the principles set out in the protocol.

Europe on new conventions. A systematic reference to conventions existing and in preparation in the Council of Europe, whenever representatives of the Organisation act in other international fora or meet authorities of non-member States, may be a useful vehicle of promotion.

70. In particular, strengthening awareness-raising of future Council of Europe conventions in the context of the United Nations may be particularly appropriate for the identification of States potentially interested in being associated to the negotiations of new Council of Europe conventions or in the accession to existing conventions. Where possible, it may be desirable to involve interested non-member States already at the stage of negotiation of a convention with a potential "global" geographical scope, in order to avoid situations in which potentially interested States do not accede because they did not take part in the negotiations. To this effect, it may be a useful measure to introduce some sort of "early warning" procedure to inform relevant international organisations and non-member States about the opening of negotiations of new Council of Europe conventions providing for non-member States' accession. The Council of Europe Offices in charge of liaison with the OSCE, United Nations Office and other international organisations based in Vienna and Geneva would have an important role to play in this respect.

### **3.2.2 The accession of the European Union to Council of Europe conventions**

71. Given the close links which exist between the Council of Europe and the European Union (EU) and the continuous evolution of the law and the competencies of the EU, the question of the accession of the EU to Council of Europe conventions has some specificities, if compared to the accession of non-member States.

72. To begin with, the EU is a privilege partner of the Council of Europe. Moreover, the EU may be interested in being part of a common pan-European legal platform by joining some of the key and active Council of Europe conventions. The level of the EU commitment in this area remains, however, undetermined for the time being. It should be noted in this respect that the participation of the EU to the Council of Europe conventions is today rather low. Indeed, amongst the 37 conventions open to the EU, 11 have been ratified, on very specific issues: health and medicine (including the Convention on the Elaboration of a European Pharmacopoeia), animal welfare and wildlife, information society services.<sup>27</sup> Four other conventions have been signed but not ratified. Only one of them, the Convention on the Conservation of European Wildlife and Natural Habitats (CETS No. 104), is part of the Council of Europe key conventions.

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<sup>27</sup> Source: < <http://conventions.coe.int/Treaty/Commun/ChercheStats.asp?CM=17&CL=ENG> >.

73. Under a formal point of view, while most Council of Europe conventions already allow for the accession by non-member States, only these 37 conventions are currently open for the accession of the EU. EU accession to the other Council of Europe conventions would necessitate the adoption of amending provisions. The elaboration of such provisions may be time-consuming and cumbersome and would require a strong political engagement both by the existing Parties and by the European Union.

74. The accession of the EU, alongside with or instead of its member States, to Council of Europe conventions, may, in fact, have a number of implications on the functioning of the conventions concerned, including the possible need for disconnection clauses<sup>28</sup> in the text of the convention, and the co-ordination of the action by the EU and its member States when taking positions and/or expressing a vote.

75. For these reasons, it would seem necessary to start by:

- engaging into a bilateral dialogue with the EU on the possible political and legal reasons why the latter has not yet acceded to the Council of Europe conventions to which it is entitled to become Party, with a view to identifying possible solutions;
- determining carefully, in the framework of that dialogue, the concrete interest of the EU in acceding to conventions which at present are not open to its accession and to carry out an assessment of the impact of the EU accession on the functioning of the convention before launching any revision process aiming at opening the convention to the accession of the EU.

76. It is clear, however, that this work of identification of the potential interest of the EU in joining certain Council of Europe conventions does not automatically imply a request to accede to any of them, something which would possibly occur as a subsequent step, once the internal EU procedures would have been completed satisfactorily.

77. Once conventions which are suitable to be open to the EU accession will have been identified, and after having verified whether there is a political interest, both on the Parties' and on the EU's side, for such accession, their provisions should be examined to identify the possible amendments required. This concerns, in particular:

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<sup>28</sup> See CAHDI, *"Report on the consequences of the so-called "disconnection clause" in international law in general and for Council of Europe conventions, containing such a clause, in particular"*, CM(2008)164, 27 October 2008.

- the possible need to adapt the model final clauses (accession, amendment, notification),
- the possible need for interpretation clauses (for example, where terms related to State entities are used),
- the possible need for disconnection clauses,
- the modalities of EU participation in follow-up mechanisms, and
- the possible financial participation of the EU, in particular as regards follow-up mechanisms.

78. This dialogue with the EU would also require a thorough and complex assessment, requiring specific knowledge of the EU law, of whether other aspects of its functioning need adaptations in order to allow the EU to become a Party to the convention. Such an assessment would, in any case, require the active involvement of the competent services of the EU.

79. On the basis of the results of this assessment, the question of the legal instrument allowing the accession would be discussed, in order to establish whether the convention should simply be amended and open for EU accession by the existing Parties, or whether an accession agreement between the Parties and the EU would be required. In both cases, the participation of the EU in the intergovernmental committee in charge of drafting the amendments would be indispensable to the success of the exercise.

80. The timing of the dialogue with the EU on the issues referred to above should be agreed carefully, so as to avoid any possibility of interference with the current discussions and future decision-making process on the EU accession to the European Convention of Human Rights, which is a priority issue for the Council of Europe and the EU alike.

### **3.2.3 Review the conditions for accession to Council of Europe conventions by non-member States**

81. There are only 41 Council of Europe conventions open exclusively to Council of Europe member States. All the other conventions allow States which are not members of the Organisation either full right participation (usually only to Council of Europe observer States or to Parties to other related Conventions), or the possibility to be invited, upon request, to accede (with possible limitations in a few cases – for instance only to European non-members States).

82. In spite of this, figures<sup>29</sup> concerning the actual participation of States which are not members of the Council of Europe to the Council of Europe conventions are rather low:

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<sup>29</sup> Source: < <http://conventions.coe.int/Treaty/Commun/ChercheStats.asp?CM=17&CL=ENG> >.

- As regards the observer States, Canada ratified two of the 27 conventions to which it has full right to become a party, Japan one out of 20, the Holy See six out of 34, Mexico three out of 18 and the United States of America three out of 26.
- 33 other States have the full right to participate or have been invited by the Committee of Ministers to become party to one or more Council of Europe conventions. This figure includes States Parties to conventions concluded in co-operation with other international organisations, which are for this reason open also to the members of such organisations.<sup>30</sup> Apart from these particular conventions, there are only few conventions to which more than 10 other States have the full right to participate or have been invited by the Committee of Ministers to become Party, the most known being the Convention on the Transfer of Sentenced Persons (CETS No. 112), which has been ratified by 18 States which are not members of the Council of Europe, and the Convention on Cybercrime (CETS No. 185), to which 12 States which are not members of the Council of Europe have the full right to participate or have been invited by the Committee of Ministers to become Party.

#### **a. Identification of relevant conventions and amendments thereto**

83. In principle, most Council of Europe conventions allow non-member States to accede, upon invitation. There is therefore a relatively limited need for amendments to Council of Europe conventions in order to open them to non-member States.

84. There are, however, a number of Council of Europe conventions which allow for the accession by member States of the Council of Europe only, or by "European" non-member States. It may be questioned whether such a limitation is still relevant for all these conventions or whether some of them may also be open to other States. In this respect, discussion may be carried out at the level of the competent steering committees, or perhaps more appropriately (given the political implications) at the level of the competent Committee of Ministers Rapporteur Groups, in order to identify conventions which may benefit of amendments aiming at facilitating accession by non-member States, and to which accession by such States should in any case be encouraged.

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<sup>30</sup> Such as the Convention on mutual administrative assistance in tax matters (CETS No. 127) and its Amending Protocol (CETS No. 208), which is open also to the member countries of the OECD, or the Convention on the Recognition of Qualifications concerning Higher Education in the European Region (CETS No. 165), which is open to the member states of the UNESCO Europe Region and to the States Parties to other Council of Europe or UNESCO conventions.

85. Once such technical amendments to the relevant conventions are agreed, it may be envisaged to set out procedures facilitating their early entry into force (for example, the automatic entry into force after a given time in the absence of objections).

**b. The procedure for the accession by non-member States**

86. When discussing the possible facilitation of accession to Council of Europe conventions by non-member States, it should be borne in mind that an equilibrium should be sought between the need to preserve, at least for some conventions, a possibility for the existing Parties to decide on the admission of a non-member State, and the opportunity to ensure a wider diffusion of some Council of Europe conventions. It is recalled that, according to the Council of Europe treaty practice, the invitation to a non-member State to join a convention always requires the unanimous consent of the Parties to that convention. This being so, it may be envisaged to determine different levels of scrutiny by the Committee of Ministers according to the content of the convention concerned.

87. In some cases, the Committee of Ministers could decide to open a convention to the accession by any State which is not a member of the Council of Europe without any scrutiny of the request.

88. In others, where a certain degree of scrutiny may be appropriate, once a State requests to accede to a convention, the request could be granted unless within a given lapse of time one Party to the convention objects, or at the end of a period of "observation" of the capacity of the requesting State to participate fully and meaningfully in co-operation under the convention in question and to fulfill the obligations set out therein.

89. Nevertheless, there would be cases in which the Committee of Ministers will wish to ensure that only States fully sharing the values of the community of the Council of Europe member States accede to a given convention.

90. This distinction may allow to maintain the equilibrium mentioned above, while increasing the transparency and predictability of the procedure by which the Committee of Ministers decides on the invitation of a non-member State to accede to a convention. It may also be envisaged to involve the competent steering committees in the preparation of the Committee of Ministers' decisions in this respect, particularly as regards the assessment of the capacities of the requesting State to comply with the obligations of the convention.

91. Finally, it can be observed that, in a certain number of cases, invitations made to non-member States to accede to a Council of Europe convention have not been followed by actual accession. Changes in the procedure before the

Committee of Ministers may also be envisaged in order to make sure that such requests are based on a true interest by the concerned State. This could be achieved for instance by strengthening preparatory dialogue with that State, or by requesting an engagement to accede to the Convention within a limited time-lapse (for example, five years), after which the invitation would no longer be valid.

### **3.2.4 Review the conditions for participation of non-member States to Council of Europe conventions**

92. One of the possible reasons for the limited participation of States which are not members of the Council of Europe (including observer States) to Council of Europe conventions may be related to the particular nature of these conventions which, while being (as indicated in Chapter 1) international treaties whose legal effects only derive from the will of the Parties, maintain a strict link with the institutional framework of the Council of Europe as regards their elaboration and implementation. The Council of Europe treaty law reserves a number of key decisions to the Committee of Ministers, thereby not providing Parties which are not members of the Council of Europe with full legal parity vis-à-vis Council of Europe member States.

93. In order to make accession to Council of Europe conventions more interesting for non-member States, it may be necessary to facilitate their participation in the "life" of the convention itself, by limiting as much as possible differences in the status between Parties which are members of the Council of Europe and Parties which are not. This could be done by various means, including for instance by granting observer or participant status to such Parties in the intergovernmental committees which are responsible for the implementation of a convention (when there is not an ad hoc convention-based body including all the Parties). Such participation may even imply, in appropriate circumstances where the agreement of all Parties to a convention is required, granting a right to vote when decisions are taken. By these means, all Parties to a convention would be involved in key decisions. This question becomes particularly important when financial issues and amendments to a convention are discussed.

#### **a. Financial issues**

94. In a situation of budgetary restrictions, the question arises as to the financial contribution to the functioning of the conventions by the non-member States Parties to them. So far, non-member States are usually not obliged pursuant to the conventions to provide any contribution, whilst they benefit from the work of the Council of Europe (including, in some cases, reimbursement of their experts' participation in meetings).

95. It can indeed be difficult to require *ex-post* a non-member State to agree to contribute financially to the implementation of a convention when the text of the convention itself does not contain provisions to that effect, even where a follow-up mechanism entailing financial implications is set up.

96. This consideration leads to two possible recommendations: to provide all new conventions whose implementation implies a cost for the Council of Europe with clauses ensuring the financial contribution of non-member States becoming Parties to the conventions; and to introduce specific conditions requiring a financial contribution when inviting non-member States to become Parties to existing conventions.

97. It may then be necessary to find, according to the specific conventions and to the States concerned, specific modalities to ensure some degree of participation in the decision-making process – notably on financial issues – while not requiring necessarily their systematic participation with right to vote in the Committee of Ministers. For instance, bilateral agreements or memoranda of understanding may be concluded with the States concerned setting out a sort of “compulsory” voluntary contribution to the financing of the activities related to the implementation of the convention.

## **b. Adoption of amendments**

98. An analysis of the new conventions adopted since 2001 (excluding additional protocols to existing conventions), and of former conventions to which a certain number of States which are not members of the Council of Europe are Parties, shows a certain degree of variance in the involvement of such Parties in the decision-making process.<sup>31</sup> This is particularly evident with respect to the adoption of amendments to the conventions. In all cases in which explicit provisions concerning amendments appear, it is indicated that the proposal for an amendment may be made by any Party. Likewise, the amendments once adopted will only enter into force after acceptance by all Parties. However, the extent of involvement of Parties which are not member States of the Council of Europe in the proposal, discussion and adoption of such amendments varies sensibly.

99. In most cases, such Parties are consulted, either by the Committee of Ministers or in the context of a consultation of the Parties, but their agreement is

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<sup>31</sup> The question could arise whether the Statute and the treaty law practice of the Council of Europe (requiring adoption by the Committee of Ministers, at the majority set out in Article 20.d of the Statute) should apply, or whether Article 39 of the Vienna Convention on the Law of Treaties, whereby “*a treaty may be amended by agreement between [all] the parties*” should prevail. However, in its Observations (§19), the CAHDI considered that this is not an issue in so far as the Vienna Convention, which reflects the rules of customary law applicable in the sphere of treaty law in numerous respects, makes it clear that the law specific to an international organisation may provide grounds for applying derogating rules (see Article 5 of the Vienna Convention on the Law of Treaties).

not formally required for the adoption of the amendments by the Committee of Ministers. The only notable exception in this respect is the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197), which requires, for the adoption of the amendment by the Committee of Ministers, the unanimous consent of the Parties to the Convention.

100. Similar considerations may be made with regard to decisions concerning possible financial aspects of these conventions, especially when they set up permanent follow-up mechanisms. Such decisions (without prejudice to the decision-making process with respect to partial agreements) are ultimately adopted by the Committee of Ministers, in which Parties which are not members of the Council of Europe are not entitled to sit, with the exception of the observer States and of the EU, which have however no right to vote.

101. In addition, where the follow-up of conventions is not conferred to a convention-based body, where all the Parties participate, but to a steering committee of the Council of Europe, Parties which are not members nor observers to the Council of Europe may not be entitled to attend the meetings of these committees, and therefore may be excluded from any discussion on the functioning of such conventions. Further reflection may be useful at the Committee of Ministers' level on possible solutions allowing the participation and agreement of all Parties at the level of the intergovernmental committee responsible for the elaboration of the proposed amendment.

### **3.3 Measures to improve the management of conventions**

#### **3.3.1 General considerations**

102. Steering committees and their subordinate committees play a crucial role in the preparation of conventions under the aegis of the Committee of Ministers. However, once a convention has been formally adopted by the Committee of Ministers and has subsequently entered into force, the daily work with the convention is, in most cases, being taken over by the States Parties, with the Secretariat in a facilitating role.

103. Given the high number of conventions and the broad scope they cover, this process entails a certain risk of fragmentation and decreases the ability for the Organisation to ensure a comprehensive and standardised management of its body of treaty law.

### **3.3.2 The concept of management of conventions**

104. The concept of management of conventions revolves around a number of functions, in particular:

- Promotion of conventions,
- Amendment or supplementation of conventions,
- Assessment of conventions and their impact in order to ensure their continued relevance,
- Administration/implementation of conventions (especially in cases where conventions provide the Secretary General with an administrative function).<sup>32</sup>

105. The possible role played by different bodies and committees in the management of conventions and possible means of improving their management are discussed in the following.

106. The promotion of the conventions should be also included in the Council of Europe co-operation programmes and be part of the mandate of Council of Europe Field Offices.

### **3.3.3 Role of the Committee of Ministers**

107. The Committee of Ministers, as the decision-making body of the Council of Europe, could play an increased role in the management of Council of Europe treaty law, e.g. by instituting a practice according to which each member State, in co-ordination with the Secretariat, would identify one or more conventions which it would like to promote while holding the rotating Chairmanship. Such promotional activities by the Chairmanship of the Committee of Ministers would lend a high political profile to the conventions selected and could help to attract more interest among member States to certain conventions. The promotion of the conventions could be also in the form of campaigns, with some dedicated budget.

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<sup>32</sup> See, for example, the European Convention on Nationality (CETS No. 166) which provides for co-operation within the framework of the appropriate intergovernmental body of the Council of Europe in order to deal with (i) all relevant problems and (ii) promote the progressive development of legal principles and practice concerning nationality and related matters (Article 23) ; the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children (CETS No. 105) which provides that the representatives of the central authorities appointed by the Contracting States should meet in order to study and facilitate the functioning of the Convention (Article 28) ; the European Convention on the Legal Status of Migrant Workers (CETS No. 93) the consultative committee of which shall examine proposals submitted by the Contracting Parties with a view to facilitating or improving the application of the Convention (Article 33).

108. In addition, the Committee of Ministers could, in the light of reports prepared on the basis of the work conducted by the relevant steering committees (see also Section 3.3.4. below), on a regular basis carry out a "state-of-play assessment" of the Council of Europe body of treaty law, with particular focus on the functioning of conventions which are new, or do not attract many ratifications. Such an assessment may also help highlighting relevant conventions vis-à-vis the competent authorities in the member States, as well as be instrumental in pointing out to possible problems related to the functioning of conventions, which could then be properly addressed.

109. In the framework of the reorganisation of the committee structure (steering committees being disbanded, merged or enlarged), the Committee of Ministers should re-attribute responsibility for managing the conventions concerned, so that the conventions themselves are not "forgotten". Thus, co-operation among the Parties under the new framework would be facilitated.

### **3.3.4 Role of steering committees**

110. Steering committees should be directly involved in the management and functioning of the conventions falling within their respective field of expertise. This responsibility should be reflected in the terms of reference of the steering committees.

111. In order to improve the management of conventions, the Committee of Ministers could mandate all steering committees to review conventions in the areas for which they are responsible on a regular basis (whether in force or not), in order to establish if there is a need for these conventions to be revised, amended or supplemented. The aim would be to ensure that Council of Europe conventions remain "living instruments", fit for the contemporary requirements of member States, by offering "after delivery service" to all conventions. In the case of conventions with a dedicated conventional monitoring mechanism, the review could be carried out by the relevant steering committee in consultation with the monitoring mechanism. For the conventions that do not have a monitoring mechanism, the relevant steering committees could be tasked to conduct periodical reviews on the state of implementation of conventions, on the basis of information provided by the member States. The periodical review might also include recommendations and proposals.

112. The results of these periodical reviews should be fed into the aforesaid "state-of-play assessment" (see Section 3.3.3. above).

### 3.3.5 Role of the Secretary General and of the Secretariat

113. Several conventions place administration-style obligations on the Secretary General and the Secretariat, most notably in convening and assisting convention committees or other inter-party co-operation mechanisms but also to maintain lists of relevant contact authorities, share information in addition to his or her role as a depositary of treaties. Attention should be given to ensure that these treaty-based functions benefit from the necessary budgetary and secretariat resources in order that the Secretary General can correctly fulfil his or her role. Ensuring such resources can also contribute positively to the promotion of particular conventions.

### 3.4 Measures relating to inactive conventions

114. The classification of conventions proposed in this report includes one category entitled "inactive conventions". This category brings together conventions in fairly different situations. Some conventions, in practice, usually protocols of amendment, have had their legal effects and are no longer open to participation by States. No new measures should be taken in respect of these instruments, which are already identified on the Treaty Office website as being no longer open to participation by States.

115. On the other hand, other conventions have been superseded by more recent conventions or have never come into force. Measures could be considered in respect of these particular conventions.

116. Parliamentary Assembly Recommendation 1920(2010) invites the Committee of Ministers to identify "(...) *treaties that are obsolete and should be abrogated; (and) treaties which have lost their relevance and have not come into force within a certain number of years of their adoption and which should be withdrawn*". In support of this proposal, the Parliamentary Assembly report refers to ILO practice in respect of abrogation and withdrawal of conventions.<sup>33</sup> However, as explained above (see Chapter 1), ILO conventions are legal acts of the Organisation, which is not the case of Council of Europe conventions. So the Committee of Ministers has no powers under the Statute to abrogate or withdraw conventions adopted within the Council of Europe. Only the States Parties themselves can decide on the future of conventions.

117. The Committee of Ministers might, nevertheless, wish to invite States Parties to take a number of measures relating to these conventions deemed obsolete or

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<sup>33</sup> PACE, Report of the Committee on Legal Affairs and Human Rights, "*Reinforcing the effectiveness of Council of Europe treaty law*", Doc. 12175, §§24-29.

inactive. This invitation could be included in a (or more than one) recommendation of the Committee of Ministers.<sup>34</sup>

### **3.4.1 Adoption of a recommendation of the Committee of Ministers containing a list of Council of Europe conventions which may be deemed obsolete, and inviting States no longer to ratify these and to give precedence to ratifying more recent conventions**

118. Once a convention has been opened for signature, it may be signed and ratified by States without any time limit. A very small number of States may thus bring into force a convention opened for signature several decades ago. The European Convention on Consular Functions (CETS No. 61), of 11 December 1967, came into force on 9 June 2011, when it was ratified by one State, whereas the previous ratifications of this convention dated from the 1980s.

119. A list of conventions identified in the report as inactive (see Appendix 4) and which should also be deemed obsolete could be submitted to the Committee of Ministers. This would contain, for example, certain old conventions which have lost their relevance and which have never come into force after being open for signature for more than 20 years. The Committee of Ministers would thus recommend that member States do not ratify the conventions appearing on this list.

120. A recommendation of this kind by the Committee of Ministers could also deal with certain conventions which have been superseded by more recent ones. Several Council of Europe conventions have, in practice, been revised. However, notwithstanding the existence of a revised convention, these conventions remain in force and open for signature and ratification by States. The Convention on the Recognition of Qualifications concerning Higher Education in the European Region (CETS No. 165) provides for those States which become Parties to it to undertake to refrain from becoming Parties to several older conventions concluded in the education sphere to which they are not yet Parties.<sup>35</sup> However, there is nothing to prevent those States which are not Parties to CETS No. 165 from ratifying old conventions. It might therefore be useful to encourage States no longer to ratify those conventions and to give precedence to ratifying the revised convention. The same comment applies to the European Convention on the Adoption of Children

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<sup>34</sup> The legal basis for such a recommendation would lie in Article 15.b of the Statute of the Council of Europe. A precedent has been set by several recommendations of the Committee of Ministers on the application of conventions which contain invitations to member States and States Parties to adopt certain measures relating to those conventions. See, for example, Recommendation No. R (80) 7 of the Committee of Ministers to member States concerning the practical application of the European Convention on Extradition.

<sup>35</sup> Article XI.4, paragraph 2, of CETS No. 165. The Council of Europe conventions to which this provision relates are CETS Nos. 15, 21, 32, 49 and 138.

(CETS No. 58) and to the European Convention on the Protection of the Archaeological Heritage (CETS No. 66).

121. The recommendation of the Committee of Ministers could be published on the Treaty Office website.

**3.4.2 Adoption of an agreement whereby the States Parties to a convention would, unanimously, agree to terminate or to suspend the operation of certain Council of Europe conventions**

122. A small number of Council of Europe conventions provide for the possibility of suspension of their operation by a State Party. One example is the European Agreement on the Abolition of Visas for Refugees (CETS No. 31, Article 7).<sup>36</sup> More rarely, a clause on the termination of the treaty is present, like the one which appears in Article 13 of the European Agreement on the Protection of Television Broadcasts (CETS No. 34):

*"1. This Agreement shall remain in force indefinitely.  
2. Nevertheless, as from 1 January 1990, no State may remain or become a Party to this Agreement unless it is also a Party to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations signed in Rome on 26 October 1961."*

123. In the absence of specific rules in the great majority of Council of Europe conventions, it is the general rules as codified in the Vienna Convention on the Law of Treaties which are applicable, particularly Section 3 thereof on the termination and suspension of the operation of treaties.

124. Article 54 of the Vienna Convention provides that:

*"The termination of a treaty or the withdrawal of a party may take place:  
(a) in conformity with the provisions of the treaty; or  
(b) at any time by consent of all the parties after consultation with the other contracting States."*

125. Pursuing the same logic, Article 57 of the Vienna Convention states that:

*"The operation of a treaty in regard to all the parties or to a particular party may be suspended:  
(a) in conformity with the provisions of the treaty; or  
(b) at any time by consent of all the parties after consultation with the other contracting States."*

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<sup>36</sup> Also see the European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe (CETS No. 25) and the Convention on Insider Trading (CETS No. 130).

126. It should be specified that the States Parties may decide to terminate or suspend a treaty as a whole or just one or more parts of a treaty.<sup>37</sup> It should also be noted that a treaty may be suspended only among certain parties to it.

127. Where the legal consequences of the termination of a treaty are concerned, the Vienna Convention states that the fact that a treaty has been terminated releases the Parties from any obligation further to perform it, but does not affect any right, obligation or legal situation of the Parties created through the execution of the treaty prior to its termination (Article 70). Furthermore, if the operation of a treaty is suspended, the Parties are released from the obligation to perform the treaty in their mutual relations, but remain under an obligation to refrain from any acts tending to obstruct the resumption of the operation of the treaty (Article 72). This last provision highlights the temporary nature of suspension of a treaty, whereas termination of a treaty is irreversible.

128. Public international law does not require the act terminating a treaty or suspending its operation to be of the same nature as the treaty. The main legal condition is, in practice, the consent of all the Parties to the treaty and the consultation of any States which have ratified the treaty, but in respect of which it has not yet come into force.

129. A decision to terminate a treaty or suspend the operation of a Council of Europe convention, or of some of its provisions, could therefore be taken by unanimous consent of the States Parties to the convention concerned at a Conference of the Parties, on the model of the Madrid Agreement of May 2009 on provisional application of certain provisions of Protocol No. 14 pending its entry into force. This agreement would be followed by notification of a Secretary General's certificate to all member States.

130. It would be for States to ensure that their domestic legal order takes note of the termination of one or more of the Council of Europe conventions.

131. The advantage of such a solution is that it is based on a collective act which terminates the Convention concerned simultaneously in all the States which are parties to it, unlike denunciation, which is based on an individual act by each State Party.

### **3.4.3 Adoption of a recommendation of the Committee of Ministers inviting the Parties to denounce certain Council of Europe conventions**

132. In Council of Europe practice relating to conventions, the usual way of terminating the operation of a convention is for the States which are Parties to it

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<sup>37</sup> A. Aust, *Modern treaty law and practice*, 2nd edition, Cambridge University Press, 2007, p.288.

to denounce it. All Council of Europe conventions, with very few exceptions, contain a denunciation clause.<sup>38</sup>

133. In the past, member States have used the denunciation procedure to terminate the operation of obsolete conventions (for example, the revised European Convention on the Protection of the Archaeological Heritage, CETS No. 143, provides that the States which ratify it must denounce the 1969 convention, CETS No. 66) and of conventions whose follow-up had been transferred to another international organisation (such as CETS Nos. 16 and 17 relating to patents).

134. The Committee of Ministers could invite States to denounce certain Council of Europe conventions deemed to be particularly obsolete, especially those already denounced by a large number of States.<sup>39</sup> It should, however, be borne in mind that the decision to denounce a convention is made by each State Party on an individual basis. In most States denunciation implies the taking of a number of steps domestically. Furthermore, it would be for States to ensure that their legal order takes note of such a denunciation.

### **3.5 Measures relating to reservations**

135. Public international law allows the States and the international organisations to limit the extent of their commitment by formulating, when they sign, ratify, accept, approve or accede to a convention, reservations intended to exclude or restrict the application of certain provisions.

136. Council of Europe conventions deal with the subject of reservations in various ways. A number of them (such as the European Landscape Convention, CETS No. 176) contain no provisions on this subject, with the result that reservations formulated by States upon signature, ratification or accession are lawful unless they are incompatible with the object and purpose of the treaty (in accordance with Article 19.c of the Vienna Convention on the Law of Treaties). Other conventions expressly allow them (see the European Convention on Extradition, CETS No. 24, Article 26) or expressly forbid them (see the European Convention on the Exercise of Children's Rights, CETS No. 160, Article 24). Some others impose restrictions or conditions on the formulation of reservations (see the European Convention on Human Rights, CETS No. 5, as amended by Protocols Nos. 11 and 14, Article 57). Yet others allow reservations only if they concern certain provisions explicitly indicated, and to none of the others (see the Council of

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<sup>38</sup> The General Agreement on Privileges and Immunities of the Council of Europe does not contain a denunciation clause. This is due to the particular nature of this agreement, implementation of which is directly linked to the status of member State of the Organisation.

<sup>39</sup> In its Observations, the CAHDI underlined that "given the legal complexity of denouncing a convention, [it] encourages an analysis of different approaches" (§23).

Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, CETS No. 210, Article 78). Lastly, there are those which, while providing for the possibility of reservations on certain provisions of the convention, allow only reservations for a limited period of time, after which they have to be renewed if they are to remain valid, with the Contracting Party, in the event that it upholds its reservation, being required to explain the reasons for its continuance (see the Criminal Law Convention on Corruption, CETS No. 173, Articles 37 and 38).

137. The possibility to formulate reservations is likely to facilitate certain States' signature or ratification of, or accession to, certain Council of Europe conventions. At the same time, reservations which are too broad or too numerous may undermine the solidity of the common legal basis which the treaty is intended to create, and make it less effective.<sup>40</sup> Striving for a balance in this area thus seems desirable when measures are taken in order to make Council of Europe conventions more relevant.

138. Within the Council of Europe, the Secretary General is the depositary of all the Organisation's conventions. The duties connected with the exercise of the depositary's functions are entrusted to the Treaty Office, which, *inter alia*, receives and registers ratifications, as well as possible declarations and reservations which accompany them, and any withdrawals or amendments of these. Thus, the Treaty Office acts within the Organisation as the interface with States on the formulation of reservations and declarations, and on amendments and possible withdrawals of these.

139. Furthermore, the CAHDI plays a vital role in the Organisation's work on reservations. Indeed, since 1998, the CAHDI functions, *inter alia*, as the European Observatory of Reservations to International Treaties, thus playing a unique role within the international community.

140. As part of this role, the CAHDI examines the list of potentially problematic reservations and declarations. The members of the CAHDI indicate whether their governments have objected, or consider to object, to these reservations/declarations or consider to make a declaration when the treaty is ratified. This is a practical activity very much appreciated by the national authorities, given that exchanges of information about States' reactions to reservations facilitate the co-ordination of States' positions in this field.<sup>41</sup>

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<sup>40</sup> Over the course of the Organisation's history, States have formulated 1,400 reservations to Council of Europe conventions, 1,230 of which remain in force. 170 reservations have been withdrawn by the States which had formulated them. Furthermore, among the other 3,600 declarations made by Contracting Parties to the conventions, there might be a number of interpretative declarations which could be regarded as reservations not declared as such.

<sup>41</sup> In accordance with the decision of the Committee of Ministers of 21 September 2001, the CAHDI has also continued its examination of possibly problematic reservations to international treaties relating to the fight

141. Furthermore, on the basis of the work of the CAHDI, the Committee of Ministers adopted, on 18 May 1999, a recommendation to member States on responses to inadmissible reservations to international treaties (Recommendation No. R(99)13). Appended to this recommendation are model response clauses to reservations, which States may use when they encounter reservations which give rise to doubts as to their admissibility.

142. In addition to the activity already carried out by the CAHDI, it may be useful to improve the framework of reservations to Council of Europe conventions, also taking into consideration the large number of reservations already formulated. It would thus be desirable, on a case-by-case basis, to envisage some additional measures, namely:

In respect of future conventions:

- include explicit provisions on reservations;<sup>42</sup>
- consider the possibility of including in conventions provisions for reservations to become invalid after a set period (such as five years from the time of their formulation), unless they are explicitly renewed.

In respect of conventions currently in force:

- instruct the competent steering or ad hoc committees to conduct, in the context of the management of the conventions within their respective fields of competence,<sup>43</sup> periodic examinations (for example, one every three years) of the reservations related to those conventions, especially when the said reservations are continued a long time after the convention came into force in respect of the State concerned;
- invite the bodies responsible for monitoring conventions, if need be, to raise with the national authorities, particularly on the occasion of on-the-spot visits, the question of the need to continue reservations already formulated, and the possibility of considering their withdrawal.

Other measure:

- promote Recommendation No. R(99)13 of the Committee of Ministers on responses to inadmissible reservations to international treaties, for example, by disseminating it following the adoption of conventions which provide scope for making reservations.

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against terrorism. At its 37th meeting (19-20 March 2009), the CAHDI forwarded the updated list to the Committee of Ministers, which took note of this CAHDI activity.

<sup>42</sup> The Model Final Clauses for Conventions and Agreements concluded within the Council of Europe, adopted by the Committee of Ministers in 1980, recalls that, when a treaty does not contain a clause on reservations, any reservation consistent with the purpose and aim of the treaty may be formulated. See also Article 19 of the Vienna Convention on the Law of Treaties.

<sup>43</sup> See Section 3.3, the proposals on the management of conventions.

## CHAPTER 4. CONCLUSIONS

143. Beyond their legal purpose, the Council of Europe's conventions are also tools for achieving the Organisation's policy objectives. Through the principles which they promote and the rights which they guarantee, they provide a view of our societies and the European construction process. Accordingly, the conventions are one of the main assets of the Council of Europe and underpin its reputation on the international scene. By their very nature, the legal effects of the conventions depend on the will of the Parties alone, which are in the first place responsible for their implementation. Nevertheless, the conventions retain close institutional ties with the Organisation.

144. The Council of Europe's action in the field of conventions has been central to its work from the outset. The Council has demonstrated its ability to develop in legal terms its priority areas of action as defined in the Statute, to respond to the challenges facing European societies and to offer States a harmonised legal framework for dealing with them in a co-ordinated manner. The result has been the development of a common pan-European legal heritage. The Council of Europe's conventional "acquis" therefore forms the basis of European law and a vital contribution to the development of international law.

145. This report analyses the conventions and classifies them on the basis of objective and neutral criteria. In drafting the report, account was taken, in particular, of the participation of States in existing conventions and of the views of the members of many relevant committees and bodies consulted. Moreover, the measures identified in this report are that many proposals for action for the attention of the member States. Ultimately, it is up to them to take the decisions on the matter. If they so desire, additional measures may be considered. The aim of this report is therefore to trigger debate and discussions among member States about the conventions' role in the future of a changing organisation and about the role of the new bodies in relation to existing or future conventions. In this connection, it is important that the streamlining of the various bodies and, in particular, the readjustment of the steering committees agreed upon under the reform facilitates a more systematic and structured monitoring of the operation of conventions, especially in the case of those identified as falling in the key and active categories.

146. The Secretary General believes that the measures proposed in this report are consistent with the Committee of Ministers' desire that "the Council of Europe should continue to play a major role in setting standards and developing international law in the areas of human rights' protection, democracy and the rule

of law”.<sup>44</sup> The proposals in this report could also be useful for the Organisation and the Parties to conventions in order to ensure the promotion of these norms and a suitable follow-up of their implementation at a national level.

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<sup>44</sup> CM/AS(2011)Rec1920final, “*Reinforcing the effectiveness of Council of Europe treaty law*” – Parliamentary Assembly Recommendation 1920(2010) (Reply adopted by the Committee of Ministers on 25 May 2011 at the 1114th meeting of the Ministers’ Deputies).

## CHAPTER 5. APPENDICES

### **Appendix 1 Table of classification of Group 1 Conventions: Conventions with numerous ratifications and considered as key**

Reminder of the selected criteria:

- ratification by 40 or more member States, and
- convention considered as key.<sup>45</sup>

In its Observations, the CAHDI noted that “the link between a convention and its additional protocols should also be taken into consideration when including a convention or a protocol in a certain group”. It is, therefore, suggested that, if a protocol has been considered as key by the Parliamentary Assembly or by the competent steering committee, it should be classified with the parent convention, even if it has not been ratified by 40 or more member States. See, in particular, Protocol ETS No. 86 and the European Convention on Extradition (ETS No. 24), Protocol ETS No. 177 and the ECHR, Protocol ETS No. 181 and the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108), Protocol ETS No. 182 and the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30), Protocol No. 190 and the European Convention on the Suppression of Terrorism (ETS No. 90), and Protocol No. 191 with the Criminal Law Convention on Corruption (ETS No. 173).

The classification of the conventions by subject matter is only of indicative value.

<b>GROUP 1 – Conventions with numerous ratifications and considered as key</b>			
<b>No.</b>	<b>Title, year</b>	<b>Comments</b>	<b>Parties</b>
<b>Subject matter 1 : Human Rights</b>			
005	Convention for the Protection of Human Rights and Fundamental Freedoms - ECHR (1950)	Referred to in the Appendix to PACE Resolution 1732(2010).	47
009	Protocol to the ECHR (1954)	Referred to in the Appendix to PACE Resolution 1732(2010).	45
046	Protocol No. 4 to the ECHR, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto (1963)	Referred to in the Appendix to PACE Resolution 1732(2010).	43
108	Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (1981)	Referred to in the Appendix to PACE Resolution 1732(2010).	44

<sup>45</sup> See the explanations relating to this criterion in paragraphs 27 and 28 of this report.

<b>GROUP 1 – Conventions with numerous ratifications and considered as key</b>			
<b>No.</b>	<b>Title, year</b>	<b>Comments</b>	<b>Parties</b>
114	Protocol No. 6 to the ECHR concerning the Abolition of the Death Penalty (1983)	Referred to in the Appendix to PACE Resolution 1732(2010).	46
117	Protocol No. 7 to the ECHR (1984)	Referred to in the Appendix to PACE Resolution 1732(2010).	43
126	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987)	Referred to in the Appendix to PACE Resolution 1732(2010).	47
181	Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows (2001)	Considered as key by the Bureau of the CDCJ in its comments on the draft classification of conventions (6-7 July 2011).	32
177	Protocol No. 12 to the ECHR (2000)	Referred to in the Appendix to PACE Resolution 1732(2010).	18
187	Protocol No. 13 to the ECHR, concerning the abolition of the death penalty in all circumstances (2002)	Referred to in the Appendix to PACE Resolution 1732(2010).	43
<b>Subject matter 2 : Rule of Law and Judicial Co-operation</b>			
024	European Convention on Extradition (1957)	Referred to in the Appendix to PACE Resolution 1732(2010).	50
030	European Convention on Mutual Assistance in Criminal Matters (1959)	Referred to in the Appendix to PACE Resolution 1732(2010).	50
062	European Convention on Information on Foreign Law (1968)	Considered as key by the Bureau of the CDCJ in its comments on the draft classification of conventions (6-7 July 2011).	43
086	Additional Protocol to the European Convention on Extradition (1975)	Referred to in the Appendix to PACE Resolution 1732(2010).	39
090	European Convention on the Suppression of Terrorism (1977)	Referred to in the Appendix to PACE Resolution 1732(2010).	46
098	Second Additional Protocol to the European Convention on Extradition (1978)	Referred to in the Appendix to PACE Resolution 1732(2010).	42
099	Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (1978)	Referred to in the Appendix to PACE Resolution 1732(2010).	43
112	Convention on the Transfer of Sentenced Persons (1983)	Considered as key by the CDCP in its comments on the draft classification of conventions (CDPC(2011)13 of 7 July 2011).	64

<b>GROUP 1 – Conventions with numerous ratifications and considered as key</b>			
<b>No.</b>	<b>Title, year</b>	<b>Comments</b>	<b>Parties</b>
141	Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990)	Considered as key by the CDCP in its comments on the draft classification of conventions (CDPC(2011)13 of 7 July 2011).	48
173	Criminal Law Convention on Corruption (1999)	Referred to in the Appendix to PACE Resolution 1732(2010).	43
182	Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (2001)	Referred to in the Appendix to PACE Resolution 1732(2010).	27
190	Protocol amending the European Convention on the Suppression of Terrorism (2003)	Referred to in the Appendix to PACE Resolution 1732(2010).	31
191	Additional Protocol to the Criminal Law Convention on Corruption (2003)	Referred to in the Appendix to PACE Resolution 1732(2010).	28
<b>Subject matter 3 : Democracy - 1 : Local democracy</b>			
122	European Charter of Local Self-Government (1985)	Considered as key by the Bureau of the Congress in its comments on the draft classification of conventions (16 June 2011).	45
<b>Subject matter 3 : Democracy - 2 : Environmental and Social affairs</b>			
104	Convention on the Conservation of European Wildlife and Natural Habitats (1979)	Considered as key by the Bureau of the CDCULT in its comments on the draft classification of conventions (8 July 2011).	50
<b>Subject matter 3 : Democracy - 3 : Education, culture, medias and sport</b>			
018	European Cultural Convention (1954)	Considered as key by the Bureau of the CDCULT in its comments on the draft classification of conventions (8 July 2011).	50
147	European Convention on Cinematographic Co-Production (1992)	Considered as key by the Bureau of the CDCULT in its comments on the draft classification of conventions(8 July 2011).	43
165	Convention on the Recognition of Qualifications concerning Higher Education in the European Region (1997)	Considered as key by the Lisbon Convention Bureau (21 June 2011) and the Bureau of the CDESR in their comments on the draft classification of conventions (July 2011).	53

<b>GROUP 1 – Conventions with numerous ratifications and considered as key</b>			
<b>No.</b>	<b>Title, year</b>	<b>Comments</b>	<b>Parties</b>
<b>Subject matter 3 : Democracy - 4 : Quality of the living environment of citizens</b>			
143	European Convention on the Protection of the Archaeological Heritage (Revised) (1992)	Considered as key by the Bureau of the CDPATEP in its comments on the draft classification of conventions (22-23 June 2011).	42

**Appendix 2 Table of classification of Group 2 Conventions: Conventions with fewer ratifications but considered as key**

Reminder of the selected criteria:

- convention considered as key,<sup>46</sup>
- and
- recent convention (opened for signature after 2002), or
- regular ratifications (at least one every year or two), or
- replacement of numerous bilateral agreements, or
- influence outside Europe: requests for accession from non-member States.

The classification of the conventions by subject matter is only of indicative value.

<b>GROUP 2 – Conventions with fewer ratifications but considered as key</b>			
<b>No.</b>	<b>Title, year</b>	<b>Comments</b>	<b>Parties</b>
<b>Subject matter 1 : Human Rights</b>			
035	European Social Charter (1961)	Referred to in the Appendix to PACE Resolution 1732(2010).	27
128	Additional Protocol to the European Social Charter (1988)	Referred to in the Appendix to PACE Resolution 1732(2010).	13
142	Protocol amending the European Social Charter (1991)	Referred to in the Appendix to PACE Resolution 1732(2010).	23
157	Framework Convention for the Protection of National Minorities (1995)	Referred to in the Appendix to PACE Resolution 1732(2010).	39
158	Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (1995)	Referred to in the Appendix to PACE Resolution 1732(2010). Regular ratifications.	13
163	European Social Charter (Revised) (1996)	Referred to in the Appendix to PACE Resolution 1732(2010). Regular ratifications.	32
166	European Convention on Nationality (1997)	Considered as key by the Bureau of the CDCJ in its comments on the draft classification of conventions (6-7 July 2011). Regular ratifications.	20
197	Council of Europe Convention on Action against Trafficking in Human Beings (2005)	Referred to in the Appendix to PACE Resolution 1732(2010). Recent convention; regular ratifications.	35

<sup>46</sup> See the explanations relating to this criterion in paragraphs 27 and 28 of this report.

<b>GROUP 2 – Conventions with fewer ratifications but considered as key</b>			
<b>No.</b>	<b>Title, year</b>	<b>Comments</b>	<b>Parties</b>
201	Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007)	Referred to in the Appendix to PACE Resolution 1732(2010). Recent convention; regular conventions.	18
<b>Subject matter 2 : Rule of Law and Judicial Co-operation</b>			
174	Civil Law Convention on Corruption (1999)	Referred to in the Appendix to PACE Resolution 1732(2010). Regular ratifications.	34
185	Convention on Cybercrime (2001)	Referred to in the Appendix to PACE Resolution 1732(2010). Regular ratifications; requests for accession from non-member States.	33
189	Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (2003)	Referred to in the Appendix to PACE Resolution 1732(2010). Recent protocol; regular ratifications.	20
196	Council of Europe Convention on the Prevention of Terrorism (2005)	Referred to in the Appendix to PACE Resolution 1732(2010). Recent convention; regular ratifications.	29
198	Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005)	Referred to in the Appendix to PACE Resolution 1732(2010). Recent convention; regular ratifications.	22
<b>Subject matter 3 : Democracy - 1 : Local democracy : None</b>			
<b>Subject matter 3 : Democracy - 2 : Environmental and Social affairs : None</b>			
<b>Subject matter 3 : Democracy - 3 : Education, culture, medias and sport</b>			
148	European Charter for Regional or Minority Languages (1992)	Referred to in the Appendix to PACE Resolution 1732(2010). Regular ratifications.	25
<b>Subject matter 3 : Democracy - 4 : Quality of the living environment of citizens : none</b>			

### **Appendix 3 Table of classification of Group 3 Conventions: Other Active Conventions**

Reminder of the selected criterion: active convention which is not considered as key.

The classification of the conventions by subject matter is only of indicative value.

<b>GROUP 3 – Other Active Conventions</b>			
<b>No.</b>	<b>Title, year</b>	<b>Comments</b>	<b>Parties</b>
<b>Subject matter 1 : Human Rights</b>			
043	Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality (1963)	Last ratification in 2002.	12
048	European Code of Social Security (1964)	Last ratification in 2009. Monitoring.	21
048 A	Protocol to the European Code of Social Security (1964)	Last ratification in 1985.	7
095	Protocol amending the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality (1977)	Last ratification in 2002.	8
096	Additional Protocol to the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality (1977)	Last ratification in 1991.	4
149	Second Protocol amending the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality (1993)	Last ratification in 1996.	2
160	European Convention on the Exercise of Children's Rights (1996)	Regular ratifications.	17
161	European Agreement relating to persons participating in proceedings of the European Court of Human Rights (1996)	Regular ratifications.	36
164	Convention for the protection of Human Rights and dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (1997)	Regular ratifications. Monitoring (DH-BIO).	29
168	Additional Protocol to the Convention on Human Rights and Biomedicine, on the Prohibition of Cloning Human Beings (1998)	Regular ratifications.	21

<b>GROUP 3 – Other Active Conventions</b>			
<b>No.</b>	<b>Title, year</b>	<b>Comments</b>	<b>Parties</b>
186	Additional Protocol to the Convention on Human Rights and Biomedicine, concerning Transplantation of Organs and Tissues of Human Origin (2002)	Regular ratifications.	12
195	Additional Protocol to the Convention on Human Rights and Biomedicine, concerning Biomedical Research (2005)	Recent Protocol.	7
200	Council of Europe Convention on the avoidance of statelessness in relation to State succession (2006)	Recent Convention. Regular ratifications.	6
203	Additional Protocol to the Convention on Human Rights and Biomedicine concerning Genetic Testing for Health Purposes (2008)	Recent Protocol.	2
205	Council of Europe Convention on Access to Official Documents (2009)	Recent Convention.	5
210	Council of Europe Convention on preventing and combating violence against women and domestic violence (2011)	Recent Convention. Monitoring (GREVIO).	1
<b>Subject matter 2 : Rule of Law and Judicial Co-operation</b>			
023	European Convention for the Peaceful Settlement of Disputes (1957)	Some appeals before the ICJ based on this convention. Last ratification in 2001.	14
025	European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe (1957)	Last ratification in 2006.	16
029	European Convention on Compulsory Insurance against Civil Liability in respect of Motor Vehicles (1959)	Limited application (6 States Parties members of the EEA which are bound by EU directives on motor insurance, including Directive 2009/103/EC). Last ratification in 2000.	7
031	European Agreement on the Abolition of Visas for Refugees (1959)	Replaces bilateral agreements Last ratification in 2009.	23
061	European Convention on Consular Functions (1967)	Convention which remained inactive for a long time but entered into force in June 2011.	5
063	European Convention on the Abolition of Legalisation of Documents executed by Diplomatic Agents or Consular Officers (1968)	Replaces bilateral agreements Last ratification in 2011.	22

<b>GROUP 3 – Other Active Conventions</b>			
<b>No.</b>	<b>Title, year</b>	<b>Comments</b>	<b>Parties</b>
074	European Convention on State Immunity (1972)	Last ratification in 1990.	8
074	Additional Protocol to the European Convention on State Immunity (1972)	Last ratification in 1986.	6
076	European Convention on the Calculation of Time-Limits (1972)	Last ratification in 1984.	4
077	Convention on the Establishment of a Scheme of Registration of Wills (1972)	Last ratification in 2010.	12
082	European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes (1974)	Last ratification in 2011.	7
085	European Convention on the Legal Status of Children born out of Wedlock (1975)	Last ratification in 2009.	23
088	European Convention on the International Effects of Deprivation of the Right to Drive a Motor Vehicle (1976)	Last ratification in 2001.	12
092	European Agreement on the Transmission of Applications for Legal Aid (1977)	Last ratification in 2009.	31
097	Additional Protocol to the European Convention on Information on Foreign Law (1978)	Last ratification in 2006.	39
101	European Convention on the Control of the Acquisition and Possession of Firearms by Individuals (1978)	Replaces bilateral agreements Last ratification in 2005.	15
102	European Convention for the Protection of Animals for Slaughter (1979)	Existence of other international instruments, including EU's (see Rule EC n°1099/2009), with higher standards.	25
105	European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children (1980)	Last ratification in 2011.	37
124	European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (1986)	Last ratification in 2007.	11
127	Convention on Mutual Administrative Assistance in Tax Matters (1988)	Regular ratifications. Monitoring (co-ordinating body – OECD). Requests for accession from non-member States.	20
130	Convention on Insider Trading (1989)	Last ratification in 2000.	8
167	Additional Protocol to the Convention on the Transfer of Sentenced Persons (1997)	Regular ratifications.	35

<b>GROUP 3 – Other Active Conventions</b>			
<b>No.</b>	<b>Title, year</b>	<b>Comments</b>	<b>Parties</b>
179	Additional Protocol to the European Agreement on the Transmission of Applications for Legal Aid (2001)	Last ratification in 2005.	9
180	Convention on Information and Legal Co-operation concerning "Information Society Services" (2001)	EU Party to the Convention. Last ratification in 2010.	3
192	Convention on Contact concerning Children (2003)	Recent Convention. Regular ratifications.	7
202	European Convention on the Adoption of Children (Revised) (2008)	Recent Convention (entry into force in 2011).	6
208	Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters (2010)	Recent Protocol (entry into force in 2011); regular ratifications. Monitoring (co-ordinating body – OECD). Requests for accession from non-member States.	14
209	Third Additional Protocol to the European Convention on Extradition (2010)	Recent Protocol.	3
211	Council of Europe Convention on the counterfeiting of medical products and similar crimes involving threats to public health	Recent Convention	0
<b>Subject matter 3 : Democracy - 1 : Local democracy</b>			
106	European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (1980)	Regular ratifications.	37
144	Convention on the Participation of Foreigners in Public Life at Local Level (1992)	Last signature in 2006.	8
159	Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (1995)	Regular ratifications.	23
169	Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation (1998)	Regular ratifications.	22

<b>GROUP 3 – Other Active Conventions</b>			
<b>No.</b>	<b>Title, year</b>	<b>Comments</b>	<b>Parties</b>
206	Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs) (2009)	Recent Protocol.	2
207	Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (2009)	Recent Protocol.	8
<b>Subject matter 3 : Democracy - 2 : Environmental and Social affairs</b>			
012 012 A	European Interim Agreement on Social Security Schemes relating to Old Age, Invalidity and Survivors, and Protocol thereto (1953)	Application limited to the relations between the 20 States Parties members of the EEA (bound by EU rules covering the subject – particularly Rule (EC) n° 883/2004) and Turkey (Last ratification in 2002).	21
013 013 A	European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors, and Protocol thereto (1953)	Application limited to the relations between the 20 States Parties members of the EEA (bound by EU rules covering the subject – particularly Rule (EC) n° 883/2004) and Turkey (Last ratification in 2002).	21
014	European Convention on Social and Medical Assistance (1953)	Application limited to the relations between the 17 States Parties members of the EEA (bound by EU rules covering the subject) and Turkey (Last ratification in 2004).	18
014 A	Protocol to the European Convention on Social and Medical Assistance (1953)	Application limited to the relations between the 16 States Parties members of the EEA (bound by EU rules covering the subject) and Turkey (Last ratification in 2004).	17
026	European Agreement on the Exchange of Therapeutic Substances of Human Origin (1958)	Limited application due to EU rules, developed on the basis of this Agreement and Council of Europe recommendations. EU Party to the Agreement (Last ratification in 2001).	22

<b>GROUP 3 – Other Active Conventions</b>			
<b>No.</b>	<b>Title, year</b>	<b>Comments</b>	<b>Parties</b>
033	Agreement on the Temporary Importation, free of duty, of Medical, Surgical and Laboratory Equipment for use on free loan in Hospitals and other Medical Institutions for purposes of Diagnosis or Treatment (1960)	EU Party to the Agreement (Last ratification in 2002).	24
038	European Agreement on Mutual Assistance in the matter of Special Medical Treatments and Climatic Facilities (1962)	Last ratification in 1966. 6 States Parties are EU members and bound by EU rules covering the subject (Rules No. 1408/71 and 574/72).	8
039	European Agreement on the Exchanges of Blood-Grouping Reagents (1962)	EU rules developed on the basis of this Agreement and Council of Europe recommendations. EU Party to the Agreement (Last ratification in 2003).	22
040	Agreement between the Member States of the Council of Europe on the issue to Military and Civilian War-Disabled of an International Book of Vouchers for the repair of Prosthetic and Orthopaedic Appliances (1962)	Last ratification in 1967.	8
050	Convention on the Elaboration of a European Pharmacopoeia (1964)	Founding text of the Partial Agreement establishing a European Pharmacopoeia.	37
059	European Agreement on the Instruction and Education of Nurses (1967)	Last ratification in 2002.	11
064	European Agreement on the Restriction of the Use of certain Detergents in Washing and Cleaning Products (1968)	Last ratification in 1980.	10
068	European Agreement on "Au Pair" Placement (1969)	Last ratification in 1990.	5
078 078 A	European Convention on Social Security, and Supplementary Agreement for the Application of the European Convention on Social Security (1972)	Last ratification in 1990. Application limited to the relations between the 7 States Parties members of the EU (bound by EU rules covering the subject – particularly Rule (EC) n° 883/2004) and Turkey.	8
080	Agreement on the Transfer of Corpses (1973)	Regular ratifications. Replaces bilateral agreements.	23
083	European Convention on the Social Protection of Farmers (1974)	Last ratification in 1987. 2001 ILO Convention No. 184 on Safety and Health in Agriculture.	9

<b>GROUP 3 – Other Active Conventions</b>			
<b>No.</b>	<b>Title, year</b>	<b>Comments</b>	<b>Parties</b>
084	European Agreement on the Exchange of Tissue-Typing Reagents (1974)	EU rules developed on the basis of this Agreement and Council of Europe recommendations. EU Party to the Agreement (Last ratification in 2005).	17
087	European Convention for the Protection of Animals kept for Farming Purposes (1976)	Reference text for the sector with many binding recommendations adopted by the monitoring committee (T-AP).	33
107	European Agreement on Transfer of Responsibility for Refugees (1980)	Replaces numerous bilateral agreements.	13
115	Protocol amending the European Agreement on the Restriction of the Use of certain Detergents in Washing and Cleaning Products (1983)	Last ratification in 1988.	5
123	European Convention for the Protection of Vertebrate Animals used for Experimental and other Scientific Purposes (1986)	Regular ratifications.	22
125	European Convention for the Protection of Pet Animals (1987)	Regular ratifications.	22
193	European Convention for the Protection of Animals during International Transport (Revised) (2003)	Recent Convention. Regular ratifications.	11
<b>Subject matter 3 : Democracy - 3 : Education, culture, medias and sport :</b>			
120	European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches (1985)	Last ratification in 2005.	41
135	Anti-Doping Convention (1989)	Ratified by all member States.	51
178	European Convention on the Legal Protection of Services based on, or consisting of, Conditional Access (2001)	Regular ratifications.	9
183	European Convention for the protection of the Audiovisual Heritage (2001)	Regular ratifications.	8
184	Protocol to the European Convention for the Protection of the Audiovisual Heritage, on the protection of Television Productions (2001)	Last ratification in 2010.	4
188	Additional Protocol to the Anti-Doping Convention (2002)	Regular ratifications. Recent Protocol.	26

<b>GROUP 3 – Other Active Conventions</b>			
<b>No.</b>	<b>Title, year</b>	<b>Comments</b>	<b>Parties</b>
<b>Subject matter 3 : Democracy - 4 : Quality of the living environment of citizens</b>			
121	Convention for the Protection of the Architectural Heritage of Europe (1985)	Regular ratifications.	41
176	European Landscape Convention (2000)	Regular ratifications.	37
199	Council of Europe Framework Convention on the Value of Cultural Heritage for Society (2005)	Recent Convention.	12

### **Appendix 4 Table of classification of Group 4 Conventions: Inactive Conventions**

Reminder of the selected criteria:

- conventions which have not yet entered into force, in particular 20 years after being opened for signature (although this may not be an absolute criterion and an examination case by case will be necessary), or
- superseding of a convention by more recent conventions, including revised conventions, or
- existence of legislation or instruments of the EU or other international organisations which set higher standards superseding or updating those of the Council of Europe convention concerned, or
- entry into force of protocols of amendment which are thus incorporated into the parent Council of Europe convention, or
- protocols having fulfilled their purposes and lost their *raison d'être*.

The classification of the conventions by subject matter is only of indicative value.

<b>GROUP 4 – Inactive Conventions</b>			
<b>No.</b>	<b>Title, year</b>	<b>Comments</b>	<b>Parties</b>
<b>Subject matter 1 : Human Rights</b>			
044	Protocol No. 2 to the ECHR, conferring upon the European Court of Human Rights competence to give advisory opinions (1963)	Incorporated into the Convention since its entry into force in 1970.	47
045	Protocol No. 3 to the ECHR, amending Articles 29, 30 and 34 of the Convention (1963)	Incorporated into the Convention since its entry into force in 1970.	47
055	Protocol No. 5 to the ECHR, amending Articles 22 and 40 of the Convention (1966)	Incorporated into the Convention since its entry into force in 1971.	47
067	European Agreement relating to Persons participating in Proceedings of the European Commission and Court of Human Rights (1969)	Has lost its purpose since the entry into force of Protocol No. 11 to the ECHR (CETS 155).	26
118	Protocol No. 8 to the ECHR (1985)	Incorporated into the Convention since its entry into force in 1990.	47
140	Protocol No. 9 to the ECHR (1990)	Repealed as from the entry into force of Protocol No. 11 to the ECHR (CETS 155).	24
146	Protocol No. 10 to the ECHR (1992)	Has lost its purpose since the entry into force of Protocol No. 11 to the ECHR (CETS 155).	25

<b>GROUP 4 – Inactive Conventions</b>			
<b>No.</b>	<b>Title, year</b>	<b>Comments</b>	<b>Parties</b>
151	Protocol No. 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1993)	Incorporated into the Convention since its entry into force in 2002.	47
152	Protocol No. 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1993)	Incorporated into the Convention since its entry into force in 2002.	47
155	Protocol No. 11 to the ECHR, restructuring the control machinery established thereby (1994)	Incorporated into the Convention since its entry into force in 1998.	47
194	Protocol No. 14 to the ECHR, amending the control system of the Convention (2004)	Incorporated into the Convention since its entry into force in 2010.	47
204	Protocol No. 14bis to the ECHR (2009)	Has lost its purpose since the entry into force of Protocol No. 14 (CETS 194) in 2010.	12
<b>Subject matter 2 : Rule of Law and Judicial Co-operation</b>			
016	European Convention relating to the Formalities required for Patent Applications (1953)	Subject covered by WIPO.	5
017	European Convention on the International Classification of Patents for Invention (1954)	Subject covered by WIPO. Denounced by all States Parties to it, in accordance with the 1971 Strasbourg Agreement on the International Classification of Patents for Inventions.	0
041	Convention on the Liability of Hotel-keepers concerning the Property of their Guests (1962)	Last ratification in 2004. Largely out of date (Bureau of the CDCJ's comments, 6-7 July 2011).	17
042	Agreement relating to Application of the European Convention on International Commercial Arbitration (1962)	Existence of instruments from other international organisations on this matter, in particular UNICITRAL.	8
047	Convention on the Unification of Certain Points of Substantive Law on Patents for Invention (1963)	Subject covered by WIPO.	13
056	European Convention providing a Uniform Law on Arbitration (1966)	Not entered into force 20 years after its opening (Last ratification in 1973).	1
058	European Convention on the Adoption of Children (1967)	Existence of a Revised version (CETS 202).	16
060	European Convention on Foreign Money Liabilities (1967)	Not entered into force 20 years after its opening (Last ratification in 1981).	1

<b>GROUP 4 – Inactive Conventions</b>			
<b>No.</b>	<b>Title, year</b>	<b>Comments</b>	<b>Parties</b>
061A	Protocol to the European Convention on Consular Functions concerning the Protection of Refugees (1967)	Not entered into force 20 years after its opening (Last ratification in 2011).	3
061B	Protocol to the European Convention on Consular Functions in respect of Civil Aircraft (1967)	Not entered into force 20 years after its opening (Last ratification in 1990).	2
071	European Convention on the Repatriation of Minors (1970)	Not entered into force 20 years after its opening (Last ratification in 1995).	2
072	Convention relating to Stops on Bearer Securities in International Circulation (1970)	Denounced by all the States which were Parties to it.	0
075	European Convention on the Place of Payment of Money Liabilities (1972)	Not entered into force 20 years after its opening (Last signature in 1972).	0
079	European Convention on Civil Liability for Damage caused by Motor Vehicles (1973)	Not entered into force 20 years after its opening (Last signature in 1973).	0
091	European Convention on Products Liability in regard to Personal Injury and Death (1977)	Not entered into force 20 years after its opening (Last signature in 1977).	0
133	Protocol to the Convention on Insider Trading (1989)	Incorporated into the Convention since its entry into force in 1991.	8
136	European Convention on Certain International Aspects of Bankruptcy (1990)	Not entered into force 20 years after its opening (Last ratification in 1994).	1
<b>Subject matter 3 : Democracy - 1 : Local democracy : None</b>			
<b>Subject matter 3 : Democracy - 2 : Environmental and Social affairs</b>			
019	European Convention on Establishment (1955)	Last ratification in 1990. 11 States Parties bound by EU texts covering the subject.	12
020	Agreement on the Exchange of War Cripples between Member Countries of the Council of Europe with a view to Medical Treatment (1955)	Last ratification in 1979.	17
037	European Agreement on Travel by Young Persons on Collective Passports between the Member Countries of the Council of Europe (1961)	Last ratification in 1998. 17 States Parties bound by EU texts covering the subject.	19
057	European Convention on Establishment of Companies (1966)	Not entered into force 20 years after its opening (Last ratification in 1968).	1

<b>GROUP 4 – Inactive Conventions</b>			
<b>No.</b>	<b>Title, year</b>	<b>Comments</b>	<b>Parties</b>
065	European Convention for the Protection of Animals during International Transport (1968)	Existence of an autonomous revised version (CETS 193).	15
089	Additional Protocol to the European Agreement on the Exchange of Tissue-Typing Reagents (1976)	Incorporated into the Agreement since its entry into force in 1977.	16
103	Additional Protocol to the European Convention for the Protection of Animals during International Transport (1979)	Incorporated into the Convention since its entry into force in 1989.	23
109	Additional Protocol to the European Agreement on the Exchange of Therapeutic Substances of Human Origin (1983)	Incorporated into the Agreement since its entry into force in 1985.	21
110	Additional Protocol to the Agreement on the Temporary Importation, free of duty, of Medical, Surgical and Laboratory Equipment for Use on free loan in Hospitals and other Medical Institutions for Purposes of Diagnosis or Treatment (1983)	Incorporated into the Agreement since its entry into force in 1985.	20
111	Additional Protocol to the European Agreement on the Exchanges of Blood-Grouping Reagents (1983)	Incorporated into the Agreement since its entry into force in 1985.	21
129	Arrangement for the Application of the European Agreement of 17 October 1980 concerning the Provision of Medical Care to Persons during Temporary Residence (1988)	Not entered into force 20 years after its opening.	0
134	Protocol to the Convention on the Elaboration of a European Pharmacopoeia (1989)	Incorporated in the Convention since its entry into force in 1992.	37
139	European Code of Social Security (Revised) (1990)	Not entered into force 20 years after its opening (Last ratification in 2009).	1
145	Protocol of Amendment to the European Convention for the Protection of Animals kept for Farming Purposes (1992)	Not entered into force 20 years after its opening (Last ratification in 2008).	18
150	Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment (1993)	Not entered into force 20 years after its opening.	0
154	Protocol to the European Convention on Social Security (1994)	Not entered into force 20 years after its opening (Last ratification in 2002).	1

<b>GROUP 4 – Inactive Conventions</b>			
<b>No.</b>	<b>Title, year</b>	<b>Comments</b>	<b>Parties</b>
170	Protocol of Amendment to the European Convention for the Protection of Vertebrate Animals used for Experimental and other Scientific Purposes (1998)	Incorporated into the Convention since its entry into force in 2005.	20
172	Convention on the Protection of Environment through Criminal Law (1998)	Not entered into force 20 years after its opening (Last ratification in 2002).	1
175	European Convention on the Promotion of a Transnational Long-Term Voluntary Service for Young People (2000)	Preference of member States for a co-operation in the framework of EU initiatives for the young (Last ratification in 2007).	1
<b>Subject matter 3 : Democracy - 3 : Education, culture, medias and sport</b>			
015	European Convention on the Equivalence of Diplomas leading to Admission to Universities (1953)	Replaced by the Lisbon Convention (CETS 165).	37
021	European Convention on the Equivalence of Periods of University Study (1956)	Replaced by the Lisbon Convention (CETS 165).	29
027	European Agreement concerning Programme Exchanges by means of Television Films (1958)	Obsolete for most States Parties, but could be updated for some delegations.	16
032	European Convention on the Academic Recognition of University Qualifications (1959)	Replaced by the Lisbon Convention (CETS 165).	28
034	European Agreement on the Protection of Television Broadcasts (1960)	Has lost its purpose following the entry into force of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations.	7
049	Protocol to the European Convention on the Equivalence of Diplomas leading to Admission to Universities (1964)	Replaced by the Lisbon Convention (CETS 165).	27
053	European Agreement for the Prevention of Broadcasts transmitted from Stations outside National Territories (1965)	Obsolete.	19
054	Protocol to the European Agreement on the Protection of Television Broadcasts (1965)	Incorporated into the Protocol to the Agreement since its entry into force in 1965.	6
081	Additional Protocol to the Protocol to the European Agreement on the Protection of Television Broadcasts (1974)	Incorporated into the Protocol to the Agreement since its entry into force in 1974.	10

<b>GROUP 4 – Inactive Conventions</b>			
<b>No.</b>	<b>Title, year</b>	<b>Comments</b>	<b>Parties</b>
113	Additional Protocol to the Protocol to the European Agreement on the Protection of Television Broadcasts (1983)	Incorporated into the Protocol to the Agreement since its entry into force in 1985.	10
119	European Convention on Offences relating to Cultural Property (1985)	Not entered into force 20 years after its opening.	0
131	Third Additional Protocol to the Protocol to the European Agreement on the Protection of Television Broadcasts (1989)	Not entered into force before its date of effect : has lost its purpose.	7
138	European Convention on the General Equivalence of Periods of University Study (1990)	Replaced by the Lisbon Convention (CETS 165).	16
153	European Convention relating to questions on Copyright Law and Neighbouring Rights in the Framework of Transfrontier Broadcasting by Satellite (1994)	Not entered into force (Last ratification in 1998). EU text covering the subject (Rule 93/83/EC)	2
171	Protocol amending the European Convention on Transfrontier Television (1998)	Incorporated in the Convention since its entry into force in 2002.	26
<b>Subject matter 3 : Democracy - 4 : Quality of the living environment of citizens</b>			
066	European Convention on the Protection of the Archaeological Heritage (1969)	Existence of an autonomous revised version (CETS 143).	4

**Appendix 5 References to Council of Europe conventions in the decisions and judgments of the European Court of Human Rights (up to 30 June 2011)**

The following list sets out those Council of Europe conventions to which reference is made in any part of the Court's judgments and decisions, including the facts part (when, for example, they have been taken into account by the domestic authorities), the parties' submissions or dissenting opinions (56 in total).

Conventions which the Court itself has described as international law relevant to a particular case and/or on which it has relied in its reasoning form a large majority in this list (at least 40) and fall generally into the category of key or active conventions. The European Social Charter is the convention referred to the most often.

Some conventions have been referred to only in passing or indirectly through other international instruments or decisions. Such conventions include, for example, the European Convention on Social and Medical Assistance, the European Cultural Convention, the European Convention on Establishment, the European Convention for the Peaceful Settlement of Disputes, the European Agreement on Regulations Governing the Movement of Persons between Member States of the Council of Europe, the European Convention on Information on Foreign Law, the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody to Children, and the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities.

- 1) Statute of Council of Europe - ETS 001
- 2) General Agreement on Privileges and Immunities of the Council of Europe – ETS 002
- 3) Protocol to the General Agreement on Privileges and Immunities – ETS 010
- 4) European Convention on Social and Medical Assistance – ETS 014
- 5) European Cultural Convention – ETS 018
- 6) European Convention on Establishment – ETS 019
- 7) European Convention for the Peaceful Settlement of Disputes – ETS 023
- 8) European Convention on Extradition – ETS 024
- 9) European Agreement on Regulations Governing the Movement of Persons between Member States of the Council of Europe - ETS 025

- 10) European Convention on Mutual Assistance in Criminal Matters – ETS 030
- 11) European Social Charter – ETS 035
- 12) European Code of Social Security – ETS 048
- 13) European Convention on the Adoption of Children – ETS 058
- 14) European Convention on Information on Foreign Law – ETS 062
- 15) European Agreement relating to Persons participating in Proceedings of the European Commission and Court of Human Rights – ETS 067
- 16) European Convention on the International Validity of Criminal Judgments – ETS 070
- 17) European Convention on the Transfer of Proceedings in Criminal Matters – ETS 073
- 18) European Convention on State Immunity – ETS 074
- 19) European Convention on the Non-applicability of Statutory Limitation to Crimes against Humanity and War Crimes - ETS 082
- 20) European Convention on the Legal Status of Children Born Out of Wedlock - ETS 085
- 21) European Convention on the Suppression of Terrorism - ETS 090
- 22) Second Additional Protocol to the European Convention on Extradition – ETS 098
- 23) European Convention for the Protection of Animals for Slaughter – ETS 102
- 24) European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody to Children – ETS 105
- 25) European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities – ETS 106
- 26) Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data – ETS 108
- 27) Convention on the Transfer of Sentenced Persons – ETS 112
- 28) Convention for the Protection of the Architectural Heritage of Europe - ETS 121
- 29) European Charter of Local Self-Government – ETS 122
- 30) European Convention for the Protection of Torture and Inhuman or Degrading Treatment or Punishment – ETS 126

- 31) European Convention on Transfrontier Television – ETS 132
- 32) European Code of Social Security (revised) – ETS 139
- 33) Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime – ETS 141
- 34) European Charter for Regional or Minority Languages – ETS 148
- 35) Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment – ETS 150
- 36) Framework Convention for the Protection of National Minorities – ETS 157
- 37) European Convention on the Exercise of Children’s Rights – ETS 160
- 38) European Agreement relating to persons participating in proceedings of the European Court of Human Rights - ETS 161
- 39) European Social Charter (revised) – ETS 163
- 40) Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine – ETS 164
- 41) Convention on the Recognition of Qualifications concerning Higher Education in the European Region– ETS 165
- 42) European Convention on Nationality – ETS 166
- 43) Additional Protocol to the Convention on the Transfer of Sentenced Persons – ETS 167
- 44) Convention on the Protection of Environment through Criminal Law – ETS 172
- 45) Criminal Law Convention on Corruption - ETS 173
- 46) Civil Law Convention on Corruption – ETS 174
- 47) Convention on Cybercrime – ETS 185
- 48) Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin – ETS 186
- 49) Protocol Amending the European Convention on the Suppression of Terrorism – ETS 190
- 50) Additional Protocol to the Convention on Human Rights and Biomedicine concerning Biomedical Research – CETS 195
- 51) Council of Europe Convention on the Prevention of Terrorism – CETS 196

52) Council of Europe Convention on Action against Trafficking in Human Beings – CETS 197

53) Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism – CETS 198

54) Council of Europe Framework Convention on the Value of Cultural Heritage for Society – CETS 199

55) Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession – CETS 200

56) European Convention on the Adoption of Children (revised) – CETS 202

A detailed analysis of references to the Council of Europe conventions in the case-law of the European Court of Human Rights is available at the following address:

[http://www.echr.coe.int/NR/rdonlyres/FE35FFDC-6FFC-458E-A2E4-5FE51767A4E2/0/RAPPORT\\_RECHERCHE\\_CoE\\_Treaties\\_EN.pdf](http://www.echr.coe.int/NR/rdonlyres/FE35FFDC-6FFC-458E-A2E4-5FE51767A4E2/0/RAPPORT_RECHERCHE_CoE_Treaties_EN.pdf)