

Strengthening cooperation with the Council of Europe¹

ABSTRACT

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the AFCO Committee, assesses the possible strengthening of the cooperation of the European Union with the Council of Europe. It examines, on the one side, the participation of Council of Europe bodies in the EU Mechanism on Democracy, the Rule of Law and Fundamental Rights, and, on the other, the accession of the European Union to Council of Europe Treaties, and particularly to the European Convention on Human Rights.

Background and aim of the study

1. There has been constant cooperation between the Council of Europe and the European Union in the attainment and promotion of their common goals of defending democracy, human rights and the rule of law throughout the two organisations' existence. This cooperation is underpinned not only by the existence of those common goals, but also by the experience and specialisation of the CoE in these matters, as well as by the added legitimacy that the CoE affords as an international organisation of recognised prestige comprising a broad number of member states beyond the ambit of the EU. This cooperation is even more necessary in the face of fresh challenges to the rule of law both inside and outside the EU.
2. This study aims to examine the adequacy and efficiency of existing cooperation mechanisms between the European Union and the Council of Europe, and analyse how to improve synergies between EU institutions and CoE bodies, considering how the Council of Europe can effectively contribute to the EU mechanism to protect and strengthen democracy, rule of law and fundamental rights. Thus, it explores how to address the objections raised in the CJEU Opinion 2/2013 of December 14 stressing the incompatibility of the draft accession agreement to the ECHR with EU law.

¹ Full study in English:

[https://www.europarl.europa.eu/RegData/etudes/STUD/2021/689275/IPOL_STU\(2021\)689275_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/689275/IPOL_STU(2021)689275_EN.pdf)



Key findings

3. As the two organisations have developed and evolved, so too have the forms of cooperation between them, and the legal instruments governing them. Prominent among these instruments is the Memorandum of Understanding of 2007, as well as, for the EU's external action, the Declaration of Intent of 2014. Still, they are documents of a general nature that need to be complemented by agreements for joint action on specific issues.
4. Cooperation between the CoE and EU has had to take into consideration the complexity of the CoE organisation, which along with its organisational structure includes a series of very diverse agencies and bodies, such as the Venice Commission, GRECO, CEPEJ, GREVIO, HELP or GRETA, among many others.
5. Cooperation between the CoE and EU is carried out through two types of procedures. On the one hand, through instrumental support from CoE bodies in the attainment of the EU's goals, particularly in the establishment of internal controls to promote and guarantee the values of democracy, human rights and the rule of law. On the other, and to a lesser extent so far, through the establishment of external controls by bodies in the ambit of the CoE over respect for those values by the EU and its member states.
6. On an internal level, the instruments of cooperation have been of a political nature (among governing bodies), in the shape of legal support (through the establishment of standards and assessments), or through the implementation of joint programmes.
7. On this internal level, the strengthening of these cooperation instruments would benefit if, in relations between the CoE and the EU, the principle of strategic partnership between the two organisations were accentuated, beyond the action of the CoE bodies as instrumental agencies of support for the CoE's goals. That would not only favour synergies between the two organisations, but also greater legitimacy for the internal controls of the EU.
8. An initial channel for that strategic partnership could be greater EU integration into the various bodies of the CoE, such as the GRECO, CEPEJ, GREVIO, or MONEYVAL, among others. In some cases, that would require EU inclusion into CoE treaties.
9. A second way, and particularly relevant to the mechanism for the defence of the rule of law, would be the formal establishment, beyond the general provisions deriving from the Memorandum of Understanding, of a global and more precise partnership, specifying the role of the CoE agencies in the various pillars of the mechanism and its different phases.
10. EU accession to the ECHR is particularly important as far as cooperation deriving from the establishment of external controls is concerned. While the objections raised by the CJEU in its Opinion 2/13 pose a considerable challenge to accession, they do not preclude it. It is possible to make changes to the initial draft agreement that overcome those objections, respecting the principle of autonomy of EU law.
11. Also in the area of external control, EU integration into the various CoE treaties, such as the Istanbul Convention or the European Social Charter, and the control and assessment bodies established in them, would strengthen the strategic partnership between the two organisations.
12. Lastly, and in the long-term, EU integration into the CoE would ensure the fullest cooperation between the two organisations.

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External Author: Luis María LOPEZ GUERRA, Universidad Carlos III de Madrid

Research Administrator responsible: Alessandro DAVOLI Editorial assistant: Ginka TSONEVA

Contact: poldep-citizens@europarl.europa.eu

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