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DRAFT REPORT

on the institutional relations between the EU and the Council of Europe
(2022/2137(INI))

Committee on Constitutional Affairs

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the institutional relations between the EU and the Council of Europe (2022/2137(INI))

The European Parliament,

- having regard to Article 6 of the Treaty on European Union (TEU)¹, to Articles 165(3), 167(3) and 220(1) of the Treaty on the Functioning of the European Union (TFEU)² and to the Protocol relating to Article 6(2) of the Treaty on European Union on the accession of the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),
- having regard to opinion 2/2013 of the Court of Justice of the European Union (CJEU) of 18 December 2014,
- having regard to the Memorandum of Understanding between the Council of Europe and the European Union of 11 May 2007,
- having regard to the Agreement on the strengthening of cooperation between the Parliamentary Assembly of the Council of Europe (PACE) and the European Parliament of 28 November 2007,
- having regard to the Council conclusions on EU priorities for cooperation with the Council of Europe 2020-2022 of 13 July 2020,
- having regard to Resolution 2430 (2022) of the Parliamentary Assembly of the Council of Europe of 26 April 2022 entitled ‘Beyond the Lisbon Treaty: strengthening the strategic partnership between the Council of Europe and the European Union’,
- having regard to its resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights³,
- having regard to its resolution of 7 October 2020 on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights⁴,
- having regard to its resolution of 24 June 2021 on the Commission’s 2020 Rule of Law Report⁵,
- having regard to its resolution 19 May 2022 on the Commission’s 2021 Rule of Law Report⁶,

¹ OJ C 326, 26.10.2012, p. 13.

² OJ C 326, 26.10.2012, p. 47.

³ OJ C 215, 19.6.2018, p. 162.

⁴ OJ C 395, 29.9.2021, p. 2.

⁵ OJ C 81, 18.2.2022, p. 27.

⁶ Texts adopted, P9_TA(2022)0212.

- having regard to Rule 225 of its Rules of Procedure,
 - having regard to Rule 66 of the Rules of Procedure of the PACE,
 - having regard to the report on the final outcome of the Conference on the Future of Europe of 9 May 2022, in particular point 2 of proposal 48 entitled ‘Culture and exchanges’,
 - having regard to Rule 54 of its Rules of Procedure,
 - having regard to the report of the Committee on Constitutional Affairs (A9-0000/2022),
- A. whereas the European Union and the Council of Europe (CoE) are natural allies in promoting and monitoring human rights, democracy and the rule of law on the European continent;
 - B. whereas the persisting challenges to the rules-based multilateral order, democracy and the rule of law, as well as the Russian war of aggression against Ukraine and the impact these have on the human rights situation in Europe provide strong arguments for further strengthening the institutional cooperation between the EU and the CoE;
 - C. whereas 2022 marked the 15th anniversary of the signing of the Memorandum of Understanding between the Council of Europe and the European Union and of the Agreement on the strengthening of cooperation between the Parliamentary Assembly of the Council of Europe and the European Parliament;
 - D. whereas the current framework for cooperation between the EU and the CoE does not take into account the entry into force of the Treaty of Lisbon on 1 December 2009 or the strategic cooperation partnership on the rule of law, democracy and human rights that that the two organisations have so far consolidated;
 - E. whereas Article 220(1) of the TFEU lays down that the Union must establish all appropriate forms of cooperation with the Council of Europe; whereas Article 6(2) of the TEU provides that the Union must accede to the ECHR;
 - F. whereas the negotiations on the EU’s accession to the ECHR, suspended following the CJEU’s opinion of 18 December 2014 on the incompatibility with the EU treaties of the draft agreement on the EU’s accession, were resumed in September 2020 and have reached the final stage;
 - G. whereas the EU already relies to a great degree on the CoE for the monitoring of the rule of law in its Member States; whereas information sources used by the Commission when establishing benchmarks to measure the situation of the rule of law and the functioning of judicial systems in the Member States include the Venice Commission’s Rule of Law Checklist, reports commissioned from the CoE agencies by the EU, such as the annual study on the functioning of judicial systems commissioned by the EU from the European Commission for the Efficiency of Justice as part of the EU Justice Scoreboard and regular reports on topics linked to the rule of law drawn up by the CoE agencies, particularly on the independence of the judiciary and the fight against corruption;

- H. whereas Parliament has repeatedly called for the establishment of an EU mechanism on democracy, the rule of law and fundamental rights covering all aspects of Article 2 of the TEU; whereas the establishment of such a mechanism would create an opportunity for formalised, structured and comprehensive cooperation between the EU and the CoE on the defence of these values by means of a dedicated partnership agreement;
- I. whereas the CoE is the only pan-European intergovernmental organisation which offers legal instruments and mechanisms for protecting minorities across Europe; whereas the CoE Framework Convention for the Protection of National Minorities (FCNM) is the most comprehensive legally binding multilateral instrument to date designed to protect the rights of persons belonging to national minorities; whereas the monitoring process under the FCNM has a good reputation;
- J. whereas the European Charter for Regional or Minority Languages (ECRML) is the only European convention for the protection and promotion of historical regional and minority languages in Europe; whereas the overriding aim of this instrument is to preserve minority and regional languages as an essential part of European cultural heritage;
- K. whereas the conclusions of the Conference on the Future of Europe underline that minority and regional languages require additional protection and take note of the Council of Europe Convention on Minority Languages and the FCNM;
- L. whereas the parliamentary relations between both institutions have not yet exploited the full potential of the Agreement on the strengthening of cooperation between the PACE and Parliament and could be further enhanced;

Further strengthening of institutional relations

- 1. Acknowledges that the institutional relations between the EU and the CoE, as two organisations of equal international standing, have evolved significantly over time into a strategic partnership;
- 2. Considers it necessary to further strengthen the institutional cooperation between the EU and the CoE and give new impetus to bilateral cooperation in the promotion and defence of democracy, the rule of law and fundamental rights, including the rights of minorities;

The EU's accession to the ECHR

- 3. Reaffirms its strong commitment to the EU's accession to the ECHR; calls on the negotiating parties to invest every effort into resolving the outstanding issues and addressing all of the CJEU's concerns expressed in its opinion 2/2013 of 18 December 2014 with a view to concluding negotiations successfully;
- 4. Stresses that the EU's accession to the ECHR would have numerous benefits, including strengthened coherence between EU law and the CoE conventions system, harmonisation in human rights legislation and case law between the EU and the CoE and the protection of EU citizens against the actions of the Union's institutions and bodies;

The EU's accession to other CoE conventions

5. Advocates the EU's broadest possible alignment with the CoE convention system through the finalisation of its accession to other CoE treaties, such as the Istanbul Convention and the Convention against Torture and Inhuman and Degrading Treatment or Punishment; calls on the Commission to look into what steps are needed for the European Union to accede to the European Social Charter and to propose a timeframe for achieving that objective;

Review of the legal cooperation framework

6. Considers that the existing framework for cooperation between the EU and the CoE should be reviewed in order to take stock of the changes brought by the Lisbon Treaty and the evolving relations between the two organisations; suggests, in this regard, revisiting the 2007 Memorandum of Understanding with a view to upgrading it into the main legal instrument coordinating EU-CoE cooperation in a comprehensive way; proposes, furthermore, complementing the Memorandum with agreements for action on specific issues;

Partnership on the mechanism on democracy, the rule of law and fundamental rights

7. Reiterates the position expressed in its resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights and its resolution of 7 October 2020 on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights on the need to establish a mechanism on democracy, the rule of law and fundamental rights covering all the values set out in Article 2 of the TEU; stresses that this should draw on the experience and expertise of the CoE; recalls that Parliament has also expressed the need to closely involve the CoE and its relevant bodies in this mechanism, including through a more structured partnership, in its resolutions on the Commission's Rule of Law Report for 2020 and 2021 of 24 June 2021 and 19 May 2022;
8. Is of the opinion, given this, that the EU and the CoE should establish a dedicated agreement on the mechanism on democracy, the rule of law and fundamental rights covering all the values set out in Article 2 of the TEU;
9. Stresses that the EU should also draw on the extensive expertise and recognised processes of the CoE bodies on human rights and the rights of persons belonging to minorities;
10. Acknowledges the important role which the FCNM has played in the European integration process; recalls that during the process of evaluating candidate countries' progress towards accession on the basis of the Copenhagen criteria, the Commission's systematic monitoring of minority protection in candidate countries has relied to a great extent on the standards developed by the CoE; recalls that the EU considers candidate countries' implementation of the FCNM an important element in the accession criteria for minority protection;
11. Stresses that the FCNM should continue to be a major reference for the democratic life

of the Union; firmly believes that for reasons of consistency, the maintenance and fostering of democratic standards, as well as commitment to minority protection as an EU-wide common general principle of law, the European Union should incorporate the standards of the FCNM into its monitoring of the rule of law and fundamental rights in the EU;

12. Reiterates, therefore, its call for the European Union to accede to the FCNM and the ECRML⁷ and calls for closer legal ties between the EU and the CoE on minority rights, not least in view of the enlargement process for the Western Balkans, Turkey, Ukraine, Moldova and Georgia;

Cooperation in education and culture

13. Points out that Articles 165(1) and 167(3) of the TFEU expressly give the EU a mandate to establish all appropriate forms of cooperation with the CoE in education, sport and culture;
14. Stresses the importance of cooperation, in particular, in promoting and protecting regional and minority languages and cultures and points out that the Union cannot effectively pursue this aim without proper coordination with the CoE bodies; highlights that the most relevant monitoring in Europe in this area is carried out under the ECRML, which is the key Europe-wide legal frame of reference;
15. Stresses that the Commission should take account of this monitoring when determining aims, financial guidelines and priorities; stresses also that to that end there should be regular consultation between the appropriate Commission and CoE departments; believes that stronger cooperation between the Commission and the Committee of Experts of the ECRML would allow for better horizontal identification of EU-wide problem areas affecting several countries, as well as find possible remedies with EU support;

Parliamentary cooperation

16. Recognises the importance of the PACE as its partner, which, despite its lack of legislative powers, has inspired many of the CoE conventions that have laid the legal foundations for the protection of human rights in Europe and beyond (including the ECHR) and which continues to play an important role in upholding democracy and fundamental rights by scrutinising other organisations and supporting Member States in complying with human rights standards;
17. Concludes that, in view of the rising importance of the parliamentary democracy provided for by the Lisbon Treaty, the parliamentary cooperation between the EU and the CoE could be deepened, building on the existing ‘Agreement for strengthened cooperation between Parliament and the PACE’;

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⁷ European Parliament resolution of 13 November 2018 on minimum standards for minorities in the EU (OJ C 363, 28.10.2020, p. 13).

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18. Instructs its President to forward this resolution to the Council, the Commission, the European Union Agency for Fundamental Rights and the Council of Europe.

EXPLANATORY STATEMENT

In 2022 the European Union (EU) celebrates the 15th anniversary of the signing of the Lisbon Treaty, which imposed a legal obligation on the EU to accede to the ECHR. It also marks the 15th anniversary of the signing of the Memorandum of Understanding between the EU and the CoE. These anniversaries provide a good opportunity to reflect on the state of mutual relations between the two institutions, with a view to identifying further opportunities for strengthening cooperation.

By means of this resolution, the European Parliament aims to take stock of the institutional relations between the EU and the CoE, which have been evolving for more than 65 years and have developed considerably since the signing of the 2007 Memorandum of Understanding and the entry into force of the Lisbon Treaty in 2009.

Legal framework for cooperation between the European Union and the Council of Europe.

The legal basis for cooperation between the EU and the CoE is the Treaty of Lisbon. Article 220(1) of the TFEU stipulates that the Union must establish all appropriate forms of cooperation with the Council of Europe. Moreover, Articles 165(1) and 167(3) of the TFEU aim at fostering this cooperation in education, sport and culture. The Treaty of Lisbon also imposed a legal obligation on the EU to accede to the ECHR under Article 6(2) of the TEU and lays down the conditions for an agreement relating to this accession under the Protocol on Article 6(2) of the TEU. Furthermore, under Article 6(3) of the TEU, the Lisbon Treaty recognised fundamental rights as guaranteed by the ECHR as general principles of Union law.

In substance, the cooperation between the EU and the CoE is governed by the provisions of the CoE conventions to which the EU has acceded. So far, the EU has ratified 13 and signed a further 4 out of the 22 CoE conventions that were open to it. The most important is the European Convention for the Protection of Human Rights and Fundamental Freedoms. The EU's accession to this convention is still under negotiation.

At operational level, the partnership between the EU and the CoE is framed mainly by the Memorandum of Understanding of 11 May 2007, which sets out general arrangements for strengthened cooperation between the two institutions in priority areas and is based on the three pillars of political dialogue, legal cooperation and joint cooperation projects and programmes.

The Memorandum of Understanding is complemented by several specific bilateral agreements, which include the Agreement between the European Community and the Council of Europe on cooperation between the European Union Agency for Fundamental Rights of 2018 and the Statement of Intent between the Council of Europe and the European Commission of 2014 laying down the foundations for cooperation in the EU enlargement and neighbourhood regions.

At parliamentary level, relations between the European Parliament and the PACE are set out in Rule 225 of Parliament's Rules of Procedure and Rule 66 of the PACE's Rules of Procedure, which have given rise to the Agreement on the strengthening of cooperation between the PACE and Parliament of 28 November 2007. This agreement sets out a number

of general objectives for cooperation and proposes measures for achieving them.

The priorities for cooperation are also defined individually by the governing bodies of the EU and the CoE. This Parliament resolution, as well as PACE resolution 2430 (2022) entitled ‘Beyond the Lisbon Treaty: strengthening the strategic partnership between the Council of Europe and the European Union’ are examples of documents defining these priorities, as are the Council conclusions on EU priorities for cooperation with the Council of Europe, which have been adopted every two years since 2012.

Current state of institutional relations between the EU and the CoE.

Relations between the EU and the CoE are based on the shared values of human dignity, equality and respect for human rights. The CoE, its conventions system and the European Court of Human Rights remain the principal instruments for the EU to defend human rights in Europe. While cooperation between the EU and the CoE has been a constant feature of the history of the two organisations, the areas where their interests overlap, as well as their interaction, have increased significantly as the Union has gradually transformed from what was originally an economic and trade body into a values-based political union. Although more formal links between the two organisations started to develop through joint efforts to spread democracy in Central and Eastern European countries after 1989, their cooperation only gained a solid formal footing with the signature of the 2007 Memorandum of Understanding.

Their institutional cooperation is based on the three pillars set out in the Memorandum of Understanding:

1. Political dialogue (high-level consultations for coordinating positions and policies between the heads of the governing bodies of the two organisations and Members of Parliament and the PACE);
2. Legal cooperation (between the EU and the CoE monitoring and advisory bodies, which in recent years has mainly concentrated on the expertise of the Venice Commission and the Group of States against Corruption); and
3. Cooperation projects (joint programmes aimed at promoting respect for human rights, democracy and the rule of law, which are funded by the EU and implemented by the CoE).

The EU is the biggest donor for implementing CoE programmes on democracy, human rights and the rule of law. In 2021, the global volume of EU-CoE joint programme cooperation reached EUR 207.4 million, with the annual receipts for these programmes accounting for 57 % of the annual receipts from all extra-budgetary resources.

The most significant aspects of the institutional relations between the EU and the CoE from Parliament’s point of view are:

- Democratic dialogue

Cooperation between the EU and the CoE on defending and promoting their shared values in human rights, democracy and the rule of law in Europe has intensified in the past few years. It has mainly taken the form of the CoE bodies providing the EU institutions with expertise and

instruments to monitor and evaluate the rule of law in the EU. The Commission's 2020 and subsequent reports on the rule of law and the European Parliament resolution of the same year on the establishment of a Mechanism on Democracy, Fundamental Rights and the Rule of Law might give fresh impetus to the EU-CoE democratic dialogue.

- EU accession to the European Convention on Human Rights

The EU's accession to the ECHR is not only a desirable objective but also a legal obligation stemming from the treaties and constitutes a priority for both organisations. Since the adoption of its resolution of 19 May 2010 on the institutional aspects of accession to the ECHR, Parliament has, on numerous occasions, reiterated the importance of speeding up the process. Accession negotiations resumed in September 2020, after having stalled following the CJEU's adoption of negative opinion 2/2013 of 18 December 2014. This opinion raised objections on the grounds that the agreement did not provide for the sufficient protection of the autonomy of EU law, the EU's specific legal arrangements and the Court's exclusive jurisdiction. Negotiations are, however, in their final stage and the overwhelming majority of the issues identified by the CJEU have already been addressed. The outstanding issues currently under negotiation are the judicial review of the common foreign and security policy (arising from the CJEU opinion) and the matters covered by Article 7 of the draft agreement on the accession of the EU to the ECHR, which are unrelated to the CJEU opinion.

- Relations between parliamentary assemblies

For Parliament, the Council of Europe and its Parliamentary Assembly are natural allies in monitoring and promoting human rights, democracy and the rule of law on the European continent. Political dialogue between the two assemblies and their governing bodies takes place regularly. At administrative level, the European Centre for Parliamentary Research and Documentation, established in 1977, successfully promotes the exchange of information, ideas, experience and good practice among parliament administrations in Europe. However, mutual relations have not yet fully exploited the 'Agreement on strengthening cooperation between Parliament and the PACE'. This was highlighted in the recent PACE resolution of 26 April 2022 entitled 'Beyond the Lisbon Treaty: strengthening the strategic partnership between the Council of Europe and the European Union'.

Further avenues for strengthening institutional cooperation between the two institutions.

Institutional relations between the EU and the CoE need to be further strengthened in view of persisting challenges to human rights, democracy and the rule of law, including the effects of Russia's aggression against Ukraine. Strengthening relations would also improve coordination, increase synergies and prevent the duplication of work.

Key to enhancing these relations is the completion of the EU's accession to the ECHR. This would represent an important step in the democratic life of the EU, as it would add an external control by the European Court of Human Rights (ECtHR) to the EU's internal control mechanism for defending the rule of law. It would also limit the possibility of conflicting case law on human rights between the CJEU and the ECtHR.

EU-CoE cooperation in defending democracy, the rule of law and fundamental rights could also be significantly improved. Parliament has for a long time advocated the extension of the

EU's monitoring of the rule of law to cover all of the EU's values as set out in Article 2 of the TEU. While the Commission already relies heavily on the benchmarks developed and the monitoring activity carried out by the CoE on the rule of law and the functioning of the judicial system, it should also draw on the expertise and processes of the CoE bodies in human rights, including minority rights.

While the EU definitely needs to improve its expertise and benchmarks in minority rights, a sensible and desirable option would be to build on the efforts already undertaken by the CoE, which has developed the most comprehensive standards and monitoring system in Europe.

When assessing the compliance of the EU and its Member States with the values set out in Article 2 of the TEU concerning minority protection, the Union should use the standards established by the CoE, in particular those developed through the implementation of the FCNM. In its enlargement and neighbourhood policy, the Union has already been relying extensively on the CoE's expertise (alongside that of the Organisation for Security and Cooperation in Europe) in order to foster the rule of law and minority protection in the Member States. This proved successful during the 'post-Iron Curtain' accession process. Building on this positive experience, acceding to the FCNM in the areas of EU competence, intensifying institutional dialogue between the parties and formalising interinstitutional links on minority rights would be beneficial not only for the EU, but also for the CoE, which would gain from the political visibility and the political backing provided by the EU.

Similarly, it is important for the EU to accede to other CoE treaties, such as the Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention), the European Social Charter, the European Committee on Social Rights and the Convention against Torture and Inhuman and Degrading Treatment or Punishment. This would increase the EU's legitimacy, and the presence of EU representatives on supervisory bodies for these treaties would further strengthen cooperation between the two organisations and help achieve the treaties' goals.

Existing cooperation and synergies should also be strengthened in education, sport and culture, where there are many important areas of cooperation which could be explored further. An area of particular relevance for the EU's cultural and linguistic diversity is the ECRML, which focuses on preserving minority and regional languages as a part of Europe's cultural heritage. Although the EU has clear competences to support Member States in the teaching and dissemination of the Member States' languages (Article 165(2) of the TFEU) and has an obligation to respect, safeguard and enhance cultural and linguistic diversity, it has not yet made use of the extensive expertise within the ECRML when developing its policies and actions. Parliament has for a long time advocated meaningful action to protect regional and minority languages and has identified the ECRML as the main benchmark in this area. In the light of a sharp decline in regional and minority languages, as attested, for example, by the UN Educational, Scientific and Cultural Organization (UNESCO), the EU should engage more in this area and establish institutional ties with the Committee of Experts of the ECRML in order to develop its own objectives, policies and programmes.

To further guide relations between the EU and the CoE, the 2007 Memorandum of Understanding should be revised in order to take account of the Lisbon Treaty, as well as to formalise the strategic partnership of cooperation which the two institutions have consolidated since it was signed in 2007, in particular on the rule of law, democracy, fundamental rights

and the rights of minorities. Furthermore, this document, which is general in character, could be acted upon and complemented by the adoption of additional agreements for joint action on specific issues.

There is also room for improvement of EU-CoE relations at parliamentary level following the increased importance of parliamentary democracy provided for by the Lisbon Treaty. Raising awareness of each other's activities and functioning and more systematic dissemination of information could enhance cooperation. This could be complemented by more structured and regular contact between the governing bodies, the committees and the administration of both Parliament and the PACE.