



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 14 November 2002**

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COSCE 8**

### **OUTCOME OF PROCEEDINGS**

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Subject : Troika Meeting with the Council of Europe on 22 October 2002

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The twelfth consultation meeting between the Troika of the Article 36 Committee of the European Union (Presidency, Incoming Presidency – *Greece* –, European Commission and the General Secretariat of the Council) and the Council of Europe delegation took place in Strasbourg on 22 October 2002.

The list of participants and the agenda appear in Appendices I and II to this report.

#### **1. Opening of the meeting**

The Director General of Legal Affairs of the Council of Europe, Guy DE VEL, and the President of the Article 36 Committee, Jakob SCHARF, insisted on the need for continuing dialogue in a perspective of sustained co-operation between the two institutions as regards justice and home affairs issues.

## **2. Presentation of the objectives of the Danish Presidency in view of the Council meetings on 27 November and 20 December**

The President of Article 36 Committee underlined the main objectives of the Danish Presidency as regards justice and home affairs.

Concerning judicial cooperation, the implementation of the action plans against organised crime and terrorism, *inter alia*, would be pursued. On the last point, the Danish Presidency stressed that the actions would mainly be focused on operational issues.

The Danish Presidency also presented new initiatives regarding namely the implementation of the Schengen acquis, in view of the enlargement of the European Union.

Furthermore, they mentioned the negotiations to establish cooperation agreements with the United States of America in the criminal law field and a second agreement with EUROPOL. Negotiations were also going on with Canada. The Council of Europe urged the European Union to take into account the Observer Status to the Council of Europe of these two countries and underlined in particular the active participation of the United States of America in the cooperation against terrorism, corruption, money laundering and cybercrime.

The Danish Presidency also noted that priority was given to the relationships with the Russian Federation and Ukraine. The ministerial Troika meetings with these two countries would focus in particular on the fight against organised crime, trafficking in human beings and judicial reforms. It was agreed that special attention would be paid to the complementarity between the actions of the European Union and the Council of Europe.

The Danish Presidency informed that they wished to initiate discussions on similar action plans with Moldova and Belarus, but recognised that only improvement in the political situation in Belarus would allow making real steps forwards. The Council of Europe indicated that a Joint Programme European Commission – Council of Europe was being implemented, including in particular the implementation of an action plan for judicial reforms.

As regards police cooperation, the Danish Presidency insisted on information exchanges through electronic means.

Concerning judicial cooperation in criminal matters, the Danish Presidency wished to reinforce cooperation between European Union's Member States as regards mutual recognition of judicial decisions on disqualification, taking into account the Council of Europe's work. The implementation of the European arrest warrant would be pursued and proposals were introduced for mutual recognition of financial sanctions and confiscations orders. Information networks within the European Union would be reinforced to fight war crimes and crimes against humanity.

Concerning substantial criminal law, the Danish Presidency stressed that framework decisions on sexual exploitation, drug trafficking, environmental crimes and racism and xenophobia would be finalised. A framework decision on corruption in private sector had been proposed. They also informed that an initiative to protect truck drivers from crime had been launched.

The Council of Europe noted with satisfaction that formal reference was made to the relevant Council of Europe's instruments in this context. They informed the representatives of the European Union on the on going works to fight sexual exploitation of children, on the basis of Recommendation R (2001) 16, the Action Plan adopted in Budapest in November 2001 and taking into account the Explanatory Declaration adopted by all the European States and which was appended to the Global Commitment of the 2<sup>nd</sup> World Conference against sexual exploitation of children (Yokohama, December 2001). It mentioned in particular the feasibility study concerning the possible drafting of a European instrument as well as the LARA programme implemented in South-eastern European countries to reform criminal legislation against trafficking in human beings.

### **3. Terrorism (including financing); Information of the work accomplished or under way in the Multidisciplinary Group on Terrorism (GMT)**

The Council of Europe reported about the progress made by the GMT since the last meeting of the Article 36 Committee. The GMT had nearly completed its work. However, a few questions, mainly related to the follow-up mechanism to be set up in the context of the 1977 European Convention on the Suppression of Terrorism remained to be discussed by the Committee of Ministers at its ministerial session on 7 November 2002. The outstanding problems would most likely be settled at the political level. The last meeting of the GMT was scheduled for mid-December.

The mandate of the GMT was twofold. On the one hand, the GMT was asked to prepare a report on the action which the Council of Europe could usefully carry out in the field of the fight against terrorism, on the other hand it was asked to review the operation and examine the possibility of updating the relevant Council of Europe international instruments, in particular the 1977 Convention on the suppression of terrorism.

The work on the proposals for further action had resulted in a comprehensive progress report that was presented to the Committee of Ministers at its 110<sup>th</sup> ministerial session in Vilnius in May 2002. The progress report contained a large number of specific proposals for further action.

These questions were addressed in a document finalised by the GMT, entitled "Proposals for follow up to the 110<sup>th</sup> session of the Committee of Ministers in Vilnius". Among the various proposals contained in the progress report, the following ones were identified as priorities:

- further study of the concept of "apology of terrorism" and of "incitement to terrorism";
- developing guidelines to facilitate the use of special investigative techniques and to increase their effectiveness;
- preparing guidelines or a convention on the protection of witnesses and "pentiti";
- developing measures to enhance international law enforcement cooperation;
- strengthening the work of the Council of Europe in the fight against the financing of terrorism; and
- preparing a report on possible legal or practical problems related to identity documents in relation to terrorism.

The document also made proposals of the appropriate Council of Europe bodies who may implement and develop these actions, and proposed a timetable for each area. As for the follow-up, the GMT proposed convening of an “expert meeting” on terrorism towards the end of 2003. Such a meeting could make proposals for any new activities, taking into account the priorities mentioned as well as the other proposals in the progress report.

As for the updating of the 1977 Convention, it was recalled that the Convention was an instrument of “depolitisation” for the purposes of extradition. Unlike many other counter-terrorist Conventions, the 1977 Convention did not oblige States Parties to criminalize the offences defined therein but states that none of the offences in question shall be regarded as a political offence for the purposes of extradition. While the GMT had agreed from the outset that it was necessary to introduce changes in this Convention in order to increase its effectiveness, it had also agreed that it would not aim at changing the nature of the Convention. The Convention would be updated by means of an amending Protocol, which would enter into force simultaneously for all parties to the Convention so that the problem of creating different treaty regimes for different States parties would be avoided.

The draft Protocol elaborated by the GMT would be presented to the Committee of Ministers in its 111<sup>th</sup> ministerial session on 7 November 2002. The main features of the draft Protocol are the following;

- the list of offences to be "depoliticised" had been extended considerably to cover all the offences described in the relevant UN anti-terrorist Conventions and Protocols; similarly, the provisions on accessory crimes had been updated taking into account the latest developments in the UN;
- a simplified amendment procedure had been introduced; it would allow new offences to be added to the list in the future, and a general amendment procedure so that future revisions do not necessarily have to be in the form of an amending Protocol;
- the Convention had been opened to the observers of the Council of Europe. The Committee of Ministers may decide on a case-by-case basis to invite other states as well to join the Convention;
- While the Convention as such did not regulate issues of extradition - apart from the political offences ground for refusal - the classical discrimination clause (which was a necessary corollary to depoliticisation) had been expanded to include a clause authorising the refusal to extradite to a country where there was a risk of applying a death sentence, or a risk of being subject to torture, or to life imprisonment without parole.

One of the most difficult questions that the GMT was confronted with was the reservation regime. Article 13 of the Convention allows reservations in respect of the core obligation that the offences listed in article 1 cannot be regarded as political offences for the purposes of extradition. A vast majority of delegations were in favour of the deletion of this article, while a few delegations wanted to retain it. A middle ground had been occupied by those delegations that had tried to find a solution in reformulating article 13 so as to reduce its scope. The compromise which was reached after long discussions, was fairly complicated. It contained four main elements:

- the possibility to make a reservation concerning political offences is retained, but it was limited to present States parties. When making such a reservation, a state party would have to indicate the offences to which it applies;
- reservations would be valid for three years, after which they may be renewed for a period of the same duration. Renewal required a notification from the State Party concerned;
- The obligation "extradite or prosecute" had been strengthened so that whenever a State party refuses extradition on the basis of a reservation, it will have to submit the case for its competent authorities for the purpose of prosecution, and to communicate the final outcome of the proceedings to the Council of Europe;

- There would be an active follow-up so that the requesting state may take the issue of refusal to a follow-up committee and eventually to the Committee of ministers which may issue a declaration on whether the refusal to extradite was in conformity with the Convention.

With this in mind, the Bureau of the GMT tabled a proposal for a follow-up committee responsible for implementing the procedure provided for in article 13 as revised and other specific follow-up tasks in relation to the Convention. This proposal safeguarded the classical follow-up role of the European Committee on Crime Problems (CDPC) in relation to European Conventions in the penal field and brought in exchange sets up a specific follow-up mechanism as it was asked by the Committee of Ministers at its 110<sup>th</sup> ministerial session and by the Parliamentary Assembly of the Council of Europe.

Concerning the fight against the financing of terrorism, the Council of Europe informed the meeting about the recent amendment to the terms of reference of the Council of Europe anti-money laundering governmental committee (formerly PC-R-EV) which had been renamed Moneyval and whose mandate currently covers the fight against terrorism financing. The work of this committee is complementary to that of the FATF and built on the specific guidelines adopted by the later. The Council of Europe referred to the speech of Commissioner Vitorino at the Seminar organised by the Belgian Ministry of Justice on "*La Justice en mouvement*" (Brussels, 16 September 2002) where an appeal was launched to finalise this Protocol as soon as possible.

The Council of Europe also informed on the "Guidelines on human rights and the fight against terrorism" (document H(2002)004) adopted by the Committee of Ministers at their 804<sup>th</sup> meeting on 11 July 2002. The Guidelines were made available to the participants of the meeting.

The Danish Presidency welcomed the progress made by the Council of Europe in this area and highlighted the importance that they attach to the fight against terrorism. The Presidency further referred to developments at EU level including the 2455<sup>th</sup> Council–Justice, Home Affairs and Civil Protection- meeting held in Luxembourg 14-15 October 2002 at which the Council, subject to some parliamentary reservations, reached a general approach on a Decision establishing a mechanism for evaluating the legal systems and their implementation at national level in the fight against terrorism. The Presidency also referred to the recent adoption by the Council of a Decision *on the implementation of specific measures for police and judicial co-operation to combat terrorism in accordance with Article 4 of Common Position 2001/931/CFSP*.

#### **4. Additional Protocol to the Convention on cybercrime concerning the criminalisation of acts of a racist or xenophobic nature committed through computer systems**

The Council of Europe gave information on the progress of completion of the Additional Protocol to the Convention on cybercrime concerning the criminalisation of acts of a racist or xenophobic nature committed through computer systems. He pointed out in particular that the Additional Protocol had been approved by the Ministers' Deputies on 16 October 2002 and was going to be adopted by the Committee of Ministers, at its 111th Session on 6-7 November 2002 and opened to signature on the occasion of the January 2003 Part-Session of the Parliamentary Assembly. The Council of Europe suggested including this Protocol into the European Union acquis, as the Convention itself was already part of it.

The Danish Presidency indicated that the EU was following with great interest and has participated very actively in the negotiations on the Additional Protocol and that this text will (as the Convention on cybercrime) "pave the way" for the work of the EU in this area, in particular as regards the negotiations on the draft Framework Decision on combating racism and xenophobia.

During the discussions, reference was made to the EU Data Protection Directive and the Council of Europe Cybercrime Convention. It was agreed to organise an informal working meeting between the EU and the Council of Europe to discuss data protection issues in relation to law enforcement needs.



## **5. Conference in Santiago de Compostela on the Council of Europe's contribution to the EU acquis**

The Council of Europe, reported about the organisation of an international Conference on "The Council of Europe's Contribution to the European Union's Acquis" in Santiago De Compostela (Galicia – Spain), 3 - 4 June 2002. This conference was organised by the Council of Europe in collaboration with the Spanish authorities and the Xunta de Galicia, the Parliamentary Assembly of the Council of Europe and the European Parliament. The Conclusions of the Conference appear in Appendix III to this report. Further information about this event can be obtained at [www.legal.coe.int/santiago](http://www.legal.coe.int/santiago).

The Conference brought together representatives of the Council of Europe (Parliamentary Assembly, Committee of Ministers and Secretariat General) and the European Union institutions (European Parliament, Secretariat General of the Council of the European Union and European Commission), Governmental and Parliamentary representatives from Council of Europe member States, in particular from countries that have applied to join the European Union and members of the scientific community.

The purpose of the conference was to promote co-operation and coordination between the Council of Europe and the European Union, as well as the coherence of their activities, through the analysis of their relations from an inter-institutional point of view, the interchange and the pooling of information on themes for which they are competent and the formulation of proposals for projects involving co-operation between the two.

Participants discussed the following themes: the Council of Europe and European integration; the enlargement of the European Union and its impact in the areas of justice and home affairs; the European Convention on Human Rights and the EU Charter of Fundamental Rights in search for coherence; the normative complementarity between Council of Europe and European Union in the field of criminal law; and European and pan-European legal co-operation, the perspective of candidate countries to European Union accession.

At the close of proceedings, the participants adopted the conclusions which appear in Appendix III. These conclusions deal with three main topics, namely: Effective cooperation between the Council of Europe and the European Union, Consistency and effectiveness in judicial cooperation in criminal matters all over Europe, and Coherence in the protection of fundamental rights and freedoms all over Europe and called on the Council of Europe and the European Union *inter alia* to use all possible synergies, to enhance the complementarity of their activities and to avoid duplication of work in order to ensure maximum benefit for all countries concerned, and to join forces in order to prepare the successful accession of new member States to the European Union, notably through the realisation of joint programmes, to establish contacts between Eurojust and the Council of Europe with a view to exploring the possibility of concluding a cooperation agreement, as provided for in Article 27 § 3 of Eurojust's constituent text. They also called on *the Convention* to take this contribution into account, seizing the opportunity of outlining a comprehensive and coherent architecture for the protection of fundamental rights and freedoms for the whole of Europe.

The Council of Europe concluded stressing the success of the event and the call by participants on organising institutions to hold in the future similar events.

The Danish Presidency and the Secretariat General of the Council thanked the Council of Europe for the initiative of organising this conference which proved very useful for both the European Union and the Council of Europe and called upon the Council of Europe to pursue in the near future.

Similarly, the European Commission expressed its appreciation for the event to which it contributed together with representatives from the Secretariat General of the Council of the European Union and the European Commission and which represented a step forward in the co-operation between the European Union and the Council of Europe which should be continued.

## 6. Assistance programmes in Russia and Ukraine<sup>1</sup>

The Council of Europe underlined the acceleration process of the reform of the judicial system which took place in Russia. Draft laws (including the Code of criminal procedure, the federal law on the Status of Judges, the law on the Bar and the Code of Civil Procedure) prepared by the Reform Commission chaired by the Deputy Head of the Presidential Administration, D. Kozak, with the cooperation of the Council of Europe, had been adopted or were being adopted at the Parliament. Several laws were already entered into force. Furthermore, another cooperation project was being implemented for the reform of the legislation regarding the repartition of powers between the various levels (federal, regional, local) in the Russian Federation. Cooperation with Russia was being pursued namely through joint programmes European Commission – Council of Europe, which concern *inter alia* the development of the Justice Academy for the training of judges.

Cooperation for criminal law reforms, judicial organisation, prison reforms and the fight against corruption and organised crime was also going on in Ukraine within the framework of a Joint Programme European Commission – Council of Europe.

Furthermore, the European Commission requested the Council of Europe to implement within the framework of the TACIS programme projects to fight money laundering in the Russian Federation and Ukraine.

The Council of Europe recalled that they remained at the European Union's disposal for any information which could help the EU deepening their relationships with these two countries.

The Danish Presidency indicated their appreciation for the Council of Europe's work in the judicial field and insisted on the necessary coordination between respective actions.

The European Commission noted that the Russian Federation fully participated in the action plans implemented in the justice and home affairs field. They stressed that negotiations would start soon with Ukraine.

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<sup>1</sup> see also point 2 above

## 7. EUROJUST

The Danish Presidency recalled that EUROJUST had been functioning on permanent basis since February 2002 and would be based in The Hague as from December 2002. The operational activities should concern namely drug trafficking, trafficking in human beings, pedo-pornography on Internet and the fight against terrorism. Contacts would be developed with third countries.

The Danish Presidency supported the contacts between EUROJUST and the Council of Europe, and in particular with the Conference of the European Prosecutors General, and proposed that Council of Europe' s delegation pays a visit to EUROJUST in The Hague.

The Council of Europe stressed the need for establishing direct contacts between EUROJUST and the Conference of Prosecutors, this possibly being provided for by the EUROJUST Status.

## 8. Corruption

The Council of Europe recalled that its instruments for fighting corruption were part of the EU acquis. Moreover a draft Protocol on arbitrators and juries was being examined by the Parliamentary Assembly and that a draft Recommendation on the financing of political parties and campaigns was being discussed at the Committee of Ministers.

He stressed the need for ensuring the coherence between the Council of Europe's instruments and the on going works within the United Nations, in particular as concerns *monitoring*; he noted that these procedures could be delegated to the regional mechanisms already in place, such as GRECO, to which the United States of America were full party.

The Danish Presidency recalled that they had taken the initiative of preparing a framework decision on corruption in the private sector, under negotiation, and which would then be forwarded to the European Parliament. Furthermore they indicated that the European Union had taken three common positions as regards the United Nations' works. The Danish Presidency declared that they would raise the issue of coordinating monitoring procedures at the United Nations level, so that GRECO's works would be fully taken into consideration.

The Council of Europe invited the European Union to join the GRECO. The European Commission noted that the European Community could soon become a party to the Criminal Convention on corruption. Furthermore, they underlined that within the framework of the projects implemented by the DG Enlargement with candidate States GRECO's recommendations were fully taken into account.

## **9. Any other business**

The Council of Europe stressed its great interest in the **European Union Conference on organised crime in South-eastern European countries** which would take place in London on 25 November, to which he would participate. The Danish presidency indicated that the Danish Minister of Justice would participate, together with Mr Solana.

The Council of Europe requested the support of the European union delegation so that the European Union internal procedures regarding the signature of the **Convention on personal contacts with children** are completed quickly in order to decide as soon as possible on a date for the opening for signature of the Convention.

The delegations said they wished to continue the tradition of inter-institutional consultation one another. The future Greek Presidency stressed that its priorities would be in line with those discussed at the current meeting.

## LIST OF PARTICIPANTS

### EUROPEAN UNION

#### Presidency of the European Union

Mr Jakob SCHARF, Chairman of CATS, Director General, Ministry of Justice, Denmark

Mrs Mette Lyster KNUDSEN, Head of the Presidency Secretariat, Denmark

Mr Michael SÖRENSEN, Counsellor, The Permanent Representation of Denmark to the European Union

Mr Carsten Christian VOLLMER, Head of Section, Ministry of Justice

#### Incoming Presidency of the European Union

Mr Antony VGONTZAS, Special Advisor to the Minister of Justice, Greece

Mr Gerasimos FOURLANOS, Judge, Athens, Greece

#### European Union Council Secretariat

Mr Gilles DE KERCHOVE, Director, DG H, Justice and Home Affairs

#### European Commission

Mr Diederik PAALMAN, Administrator, DG JHA “External relations, Enlargement Questions”

### CONCIL OF EUROPE

#### European Committee on Crimes Problems (CDPC)

Mr Esa VESTERBACKA, Member of the Bureau, the European Committee on Crimes Problems (CDPC),  
Director General, Head of Criminal Policy Department, Ministry of Justice, Finland

### **Multidisciplinary Group on International Action against Terrorism (GMT)**

Mrs Marja LEHTO, Member of the Bureau, Multidisciplinary Group on International Action against Terrorism (GMT), Director, Unit for Public International Law, Ministry of Foreign Affairs, Finland

### **Secretariat of the Council of Europe**

Mr Guy DE VEL, Director General of Legal Affairs (DGI)

Mr Thomas OUCHTERLONY, Director of the Council of Europe-European Union Liaison Office in Brussels

Mr Hans-Jürgen BARTSCH, Head of Department of Crime Problems, Directorate General I-Legal Affairs

Mr Rafael A. BENITEZ, Deputy Head of Public Law Department, Directorate General I-Legal Affairs

Mr Gianluca ESPOSITO, Deputy Head of Private Law Department, Directorate General I-Legal Affairs

Mr Stéphane LEYENBERGER, Administrator, Division of Co-ordination, Directorate General I-Legal Affairs

**AGENDA**

1. Opening of the meeting
2. Presentation of the objectives of the Danish Presidency in view of the Council o meetings on 27 November and 20 December
3. Terrorism
4. Additional Protocol to the Convention on cybercrime concerning the criminalisation of acts of a racist or xenophobic nature committed through computer systems
5. Conference in Santiago de Compostela on the Council of Europe's contribution to the EU acquis
6. Assistance Programmes with Russia and Ukraine
7. EUROJUST
8. Corruption
9. AOB



Santiago de Compostela, 4 June 2002

SdC (2002) Concl

THE COUNCIL OF EUROPE'S CONTRIBUTION  
TO THE EUROPEAN UNION'S ACQUIS

SANTIAGO DE COMPOSTELA (GALICIA) - SPAIN

3 - 4 JUNE 2002

CONCLUSIONS

The Council of Europe, in collaboration with the Spanish authorities and the Xunta de Galicia, the Parliamentary Assembly of the Council of Europe and the European Parliament, organised a Conference on the Council of Europe's contribution to the European Union's acquis in Santiago de Compostela, 3-4 June 2002.

The Conference was opened by the President of the Xunta de Galicia.

It brought together representatives of the Council of Europe and the European Union institutions, Governmental and Parliamentary representatives from Council of Europe member States, in particular from countries that have applied to join the European Union and members of the scientific community.

The purpose of the conference was to promote co-operation and coordination between the Council of Europe and the European Union, as well as the coherence of their activities, through the analysis of their relations from an inter-institutional point of view, the interchange and the pooling of information on themes for which they are competent and the formulation of proposals for projects involving co-operation between the two.

Participants discussed the following themes:

- the Council of Europe and European integration;
- the enlargement of the European Union and its impact in the areas of justice and home affairs;
- the European Convention on Human Rights and the EU Charter of Fundamental Rights in search for coherence;
- the normative complementarity between Council of Europe and European Union in the field of criminal law;
- European and pan-European legal co-operation, the perspective of candidate countries to European Union accession.

At the close of proceedings, they adopted the following

## CONCLUSIONS

### **I. Effective cooperation between the Council of Europe and the European Union**

The participants,

*Recalling* the outstanding achievements of the Council of Europe in the pursuance of its statutory aim to achieve greater unity between its members for the purpose of safeguarding and realising the ideals of pluralist democracy, human rights and the rule of law;

*Emphasising* the standard-setting role of the Council of Europe, which has found its expression in almost 200 European treaties, thus contributing to the creation of a common European legal space;

*Recalling* that the Council of Europe and the European Union share the same values and pursue common aims with regard to the protection of democracy, respect for human rights and fundamental freedoms and the rule of law;

*Recalling* that cooperation between the European Union and the Council of Europe is expressly mentioned in several provisions of the EC Treaty (Articles 149 § 3, 151 § 3 and 303);

*Recalling* in particular Article 303 of the EC Treaty which stipulates that “the Community shall establish all appropriate forms of cooperation with the Council of Europe”;

*Recalling* that the European Council in Dublin (December 1996) recognised the Council of Europe’s crucial role in upholding human rights standards and supporting pluralist democracy;

*Convinced* that cooperation between the Council of Europe and the European Union should be extended to all areas where it brings added value to both sides and strengthens complementarity of action;

Recalling the *Joint Declaration on Cooperation and Partnership between the Council of Europe and the European Commission* of 3 April 2001, which emphasised the importance of close cooperation between the two organisations;

*Emphasising* the important role of the Council of Europe assisting countries applying for European Union membership in meeting in particular the standards in the areas of justice and home affairs required by EU membership;

*Recalling* the European Union's Joint Action of 29 June 1998 (OJEC L 191) establishing a mechanism for collective evaluation of the enactment, application and effective implementation by the applicant countries of the *acquis* of the European Union in the field of justice and home affairs, this evaluation being based *inter alia* on reports of the Council of Europe;

*Recalling* the successful realisation by the Council of Europe and the European Union of a number of joint programmes for cooperation with countries which have joined the Council of Europe since 1989, or have applied for membership,

*Call* on the Council of Europe and the European Union

- to use all possible synergies, to enhance the complementarity of their activities and to avoid duplication of work in order to ensure maximum benefit for all countries concerned;
- to join forces in order to prepare the successful accession of new member States to the European Union, notably through the realisation of joint programmes;

*Call* on the European Community

- to participate as actively as possible in the work of the Council of Europe, both at the level of the Committee of Ministers and its subsidiary bodies and in committees of governmental experts;
- to become a Party to Council of Europe treaties open for signature or accession by the European Community;

*Call* on the member States of the European Union not only to preserve Art. 303 of the EC Treaty, but also to extend its scope of application to include all matters falling within the competence of the European Union, notably those dealt with under the present second and third pillars.

## **II. Consistency and effectiveness in judicial cooperation in criminal matters all over Europe**

The participants,

Recalling the importance of the *acquis* of the Council of Europe in the field of criminal law and judicial cooperation in criminal matters which is composed of more than 20 international treaties and numerous recommendations adopted by the Committee of Ministers;

*Convinced* of the importance of follow-up mechanisms for the effectiveness of international treaties, particularly in the criminal field;

*Noting* with satisfaction, in this connection, the successful work of mechanisms of mutual evaluation established within the Council of Europe, notably the Group of States against Corruption (GRECO) and the Select Committee of Experts on the evaluation of anti-money laundering measures (PC-R-EV);

*Convinced* that effective responses to crime require the realisation of a European area of shared justice within which the fundamental justice-related rights of all can effectively be safeguarded and respected;

*Acknowledging* that cooperation within the Council of Europe allows a common approach to crime and judicial cooperation on a pan-European level;

*Recognising* that the Council of Europe and the European Union, while using different methods and means, share the same values and pursue common aims with regard to the fight against crime in general and terrorism in particular;

*Acknowledging* that many of the Council of Europe treaties are part of the European Union's own *acquis* on the basis of which closer cooperation within the Union is being developed;

*Recalling* that the importance of Council of Europe treaties has been reaffirmed *inter alia* in the Pre-Accession Pact on Organised Crime between the Member States of the European Union and the Applicant Countries (OJEC C 220);

*Recalling* that the European Union is committed to the creation of an area of freedom, security and justice;

*Recalling* that the terrorist attacks of 11 September 2001 have tragically emphasised the necessity of further coordination and harmonisation in standard setting and action in the field of criminal law and procedures, in particular in order to ensure effective protection of the right to life;

*Convinced* that measures to fight terrorism must be reasonable and proportionate, and that effective prevention and prosecution are possible with full respect of the obligation to protect fundamental human rights and freedoms;

*Welcoming* the measures already taken by the European Union in the fight against terrorism, in particular the common definition of terrorism and the European arrest warrant;

*Welcoming* the work of the Multidisciplinary Group on International Action against Terrorism (GMT) of the Council of Europe;

*Welcoming* the creation of Eurojust,

*Call* on the Council of Europe and the European Union

- to improve the knowledge of and access to all existing European instruments relevant for the fight against crime in general and terrorism in particular;
- to ensure better coordination and consistency in the drafting of new instruments, using wherever possible harmonised language;
- to revise the existing rules and practices whereby States may refuse or otherwise hold back cooperation for non-legal reasons with a view to abolishing them or reducing their effects;
- to strengthen their respective arsenal of counter-terrorist measures, while fully respecting human rights and complying with the demands of democracy and the rule of law;
- to improve the protection of victims within the criminal justice system;
- to improve the training of national judges, prosecutors and investigators in all questions relating to the judicial cooperation in criminal matters and to promote such training in candidate countries for EU membership;
- to establish contacts between Eurojust and the Council of Europe with a view to exploring the possibility of concluding a cooperation agreement, as provided for in Article 27 § 3 of Eurojust's constituent text.

*Call* on the Council of Europe

- actively to pursue its intergovernmental work, both in the fields of standard-setting and mutual evaluation, with a view in particular to the realisation of a European area of shared justice;
- to step up its assistance to candidate countries for EU membership and to other countries not candidates for EU membership, in particular in the field of justice and home affairs;
- to ensure that countries not candidates for EU membership remain fully integrated into effective pan-european mechanisms of judicial cooperation.

### **III. Coherence in the protection of fundamental rights and freedoms all over Europe**

The participants,

*Acknowledging* the work accomplished in Europe over the last fifty years with regard to the protection and development of human rights;

*Stressing* the unique and crucial role played by the Convention for the Protection of Human Rights and Fundamental Freedoms ("the ECHR"), opened for signature in Rome on 4 November 1950, as a constitutional instrument of European public order on which the democratic stability of the continent depends;

*Emphasising* the impact of the ECHR, its Protocols and the case-law of the European Court of Human Rights on the law and practice of States Parties and the resulting unification of human rights standards all over Europe;

*Recalling* that the ECHR remains a minimum standard (Article 53 of the ECHR), which allows for national 'margins of appreciation' in respect of several of its rights and freedoms;

*Recognising* that the European Court of Human Rights exercises its supervisory role subject to the principle of subsidiarity, it being fundamental to the machinery of protection established by the ECHR that the national systems themselves prevent and provide redress for breaches of its provisions;

*Recognising* that protection of fundamental rights is a founding principle of the European Union and an indispensable prerequisite for her legitimacy;

*Considering* that the fundamental and human rights of the ECHR are also of direct relevance for the European Union's legal order;

*Taking into account* that the Court of Justice of the European Communities (the "Court of Justice") ensures respect for human rights "as laid down in particular in the European Convention on Human Rights", using the ECHR as a source of inspiration for the purposes of identifying general principles of Community law;

*Considering* that the Court of Justice has repeatedly shown its willingness to respect not only the provisions of the ECHR, but also the constantly evolving case-law of the European Court of Human Rights, an approach confirmed by Article 6 § 2 of the EU Treaty, thus contributing to a certain degree of uniformity in European fundamental rights standards;

*Welcoming* the proclamation of the EU Charter of Fundamental Rights on 7 December 2000 ("the Charter"), which brings together in a single instrument the rights found hitherto in the case-law of the Court of Justice and a range of national and international instruments, as a further step in the affirmation of human rights within the European Union;

*Noting* with satisfaction that the Charter contains provisions intended to ensure a harmonised approach to the interpretation of rights which correspond to rights guaranteed by the ECHR;

*Concerned* that the differences of content and formulation between the Charter and the ECHR nevertheless could create difficulties in the application of the two instruments to identical cases, in particular if the Charter was formally given normative or even constitutional validity;

*Convinced* that a situation must be avoided in which there are competing and potentially conflicting systems of human rights protection, with the risk of weakening the overall protection of human rights in Europe;

*Noting* that the Laeken Declaration of 15 December 2001 has put the questions of integration of the EU Charter of Fundamental Rights into the EU Treaties and of accession by the EC/EU to the ECHR on the agenda of the Convention on the future of Europe;

*Recalling* that accession by the EC/EU to the ECHR has repeatedly been advocated not only by the Parliamentary Assembly of the Council of Europe, but also by the European Commission and the European Parliament;

*Convinced* that the credibility of the European Union's human rights policy would be strengthened if its institutions were subjected to the same of external scrutiny by the European Court of Human Rights as all the institutions of its member States,

*Agree* that possible integration of the Charter into the EU Treaties and accession by the EC/EU to the ECHR and its Protocols are fully complementary steps;

*Agree* that accession by the EC/EU to the ECHR would constitute an effective means of achieving coherence in fundamental rights protection all over Europe;

*Invite* the Convention on the future of Europe to take into account the forthcoming report by the Steering Committee for Human Rights (CDDH) on the legal and technical issues of a possible accession by the EC /EU to the ECHR;

With a view to ensuring as informed a debate as possible on the protection of fundamental human rights, *invite*:

- the Council of Europe, building on its experience and expertise, to contribute, as appropriate, to the Convention on the future of Europe;
- the Convention to take this contribution into account, seizing the opportunity of outlining a comprehensive and coherent architecture for the protection of fundamental rights and freedoms for the whole of Europe.

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The participants thank the Council of Europe and the Spanish authorities for the perfect organisation of the conference and wish to express their gratitude to the Xunta de Galicia for its valuable contribution and generous hospitality  
and call upon the participating institutions to hold in the future similar events.

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