

COVER NOTE

from : Secretariat

to : Convention

Subject : **Note from the Council of Europe, forwarded by Mr Jacques Santer, member
of the Convention**

The Secretary-General of the Convention has received from Mr Jacques Santer, member of the Convention, the attached note from the Council of Europe, to which Mr Santer wishes to draw the attention of the members of the Convention.



Convention on the Future of Europe

Contribution from
the Secretary General of the Council of Europe,
Mr Walter Schwimmer

800 MILLION EUROPEANS

Involving the Greater Europe in responding to key Laeken questions

The purpose of this memorandum is to propose to the members of the Convention at an early stage of their work ways in which the Council of Europe can contribute to addressing certain key questions in the Laeken Declaration:

- ❶ by building the future European Union on the solid foundations of the Council of Europe's existing instruments and institutions;
- ❷ by the accession of the EC/EU to the European Convention on Human Rights as part of a coherent approach to the effective protection of human rights in Europe;
- ❸ by developing pan-European responses to major challenges (terrorism, organised crime, drug and human trafficking, etc.);
- ❹ by providing the forum for EU foreign policy towards its immediate neighbours.

Building Europe on solid foundations of freedom and equal partnership

1.1 Shared values and principles

Created in 1949 to "achieve a greater unity between its Members for the purpose of safeguarding and realising the ideals and principles which are their common heritage", the Council of Europe now unites 44 European states in a common adherence to the values and principles of pluralist democracy, human rights and the rule of law. These include all EU member and candidate countries, as well as all other European states which have committed themselves to the same concept of a democratic society.

1.2 SHARED OBJECTIVE

The Council of Europe shares with the European Union the objective of building a peaceful, stable, democratic and prosperous Europe.

1.3 Pan-european enlargement

The European Union is preparing itself for the most far-reaching enlargement in its history and, rightly, all the candidate states are full partners in the discussions on the future of the Union of which they will be members. The Council of Europe has practically achieved its own enlargement to become a truly pan-European organisation. By next year, all European states, except Belarus – where democratic reform is still needed – will be members.

1.4 Partnership with the European Union

The political criteria laid down by the European Council in 1993 in Copenhagen were modeled on those developed by the Council of Europe in the course of its enlargement process. Furthermore, in recent years, the partnership between the Council of Europe and the European Commission has developed considerably, to providing joint assistance to candidates on the path to EU accession, in particular in the fields of institution building, justice and home affairs.

1.5 All European States on an equal footing

Even after completion of the enlargement process currently under way, almost half of the states of Europe will remain outside the European Union. Therefore, the Council of Europe will continue to be the only truly European organisation in which all European states cooperate on an equal footing.

1.6 Best use of existing structures

Building the future enlarged EU is best done on solid foundations, on existing legal frameworks and institutions. With Laeken, there is a unique opportunity to ensure a coherent architecture of interlocking European institutions. To consider how the European Union – which is the centrepiece in the European construction – may best make use of existing structures should be one of the challenging tasks of the Convention.

The accession of the EC/EU to the European Convention on Human Rights as part of a coherent approach to the effective protection of human rights in Europe

2.1 Protection for 800 Million Europeans

The Council of Europe is the home of Europe's main human rights conventions, the European Convention on Human Rights (ECHR) being the prime example. Its rights and freedoms are common to all European states and its international control mechanism offers protection for 800 Million Europeans. It is significant that the ECHR was the principal reference point for the preparation of the EU Charter of Fundamental Rights as regards the human rights provisions. Social and economic rights developed within the Union were influenced by the Council of Europe's European Social Charter and the revised Social Charter.

2.2 Accession to the European Convention on Human Rights

I therefore welcome the fact that the Laeken Declaration has put the question of accession by the EC/EU to the ECHR on the agenda of this Convention. It is very appropriate that this is compared with the question of integration of the EU Charter of Fundamental Rights into the Treaties, because these issues go hand in hand. Accession to the ECHR has been repeatedly advocated by the European Commission¹ and the European Parliament². Therefore Laeken has provided the Convention with a unique opportunity to achieve a coherent mechanism for the protection of fundamental rights in the whole of Europe.

2.3 Why is accession so important?

First of all, it is vital if we are to ensure coherence and legal certainty between the legal systems of both the EU and the Council of Europe in the field of fundamental rights. In applying Community law, member states are indeed bound by both Community law *and* the ECHR. However, this may lead to genuine problems if the Community itself is not also legally bound by the ECHR and if its action is not subject to the same review by the European Court of Human Rights, as is applicable to the action of individual EU member states. Avoiding divergence between the interpretation of fundamental rights in Europe is therefore essential for the legislatures, governments and courts of Union member states, as it is, evidently, for the individual citizen. This can best be achieved by accession.

2.4 Increase legal accountability

In addition, by extending to the EU the *external* control mechanism of the ECHR to which the member states are already subject, accession would confer upon the action of the EU institutions the same level of legitimacy, credibility and legal accountability now enjoyed by the member states' authorities.

¹ Communication on the accession of the Community to the ECHR and the Community legal order, Commission Communication of 19.10.1990, SEC(90)2087 final; Memorandum on the Accession of the European Communities to the Convention for the Protection of Human Rights and Fundamental Freedoms, adopted by the Commission on 4 April 1979, *Bulletin of the EC*, supp. 2/79.

² Most recently in European Parliament Resolution A5-0064/2000 on the drafting of a European Union Charter of Fundamental Rights (Plenary Session, 16 March 2000).

2.5 No subordination between Courts

The Presidents of both the European Court of Human Rights and the Court of Justice of the European Communities, at the opening of the judicial year in Strasbourg on 31 January 2002, expressed support for the idea of accession to the ECHR. They concluded that there was no question of perceived or real “subordination” between the two courts ¹.

2.6 No major obstacles to accession

The Committee of Ministers of the Council of Europe has asked governmental experts to undertake a technical examination of the changes to the ECHR required to make EC/EU accession possible. Preliminary results indicate that there are no major obstacles to accession that cannot be overcome by the necessary political will. A full report is expected by the end of June this year.

2.7 A common legal area for the Greater Europe

How fundamental rights in the European Union should best be protected in the future is undoubtedly one of the most important questions that the Convention will have to examine. I trust that the Convention will conclude that accession to the ECHR is essential for the effective protection of fundamental rights in the Union. This will also be a significant step in bringing the Union closer to its citizens by providing them with the same means of redress as the ECHR gives them at national level. However, accession of the EU/EC to the ECHR would be a major step forward in the construction of a common legal area for the Greater Europe.

¹ The text of the speech can be found on the website of the Strasbourg Court (<http://www.echr.coe.int>).

Developing pan-European responses to major challenges

3.1 All-European challenge

Many treaties concluded within the Council of Europe have contributed to the creation of an area of freedom, security and justice which is a common goal of our institutions. They are part of the European Union's *acquis* on the basis of which closer cooperation within the Union has been developed. Meeting the challenges to our democratic societies cannot stop at the borders of the European Union. These include:

- fighting against terrorism;
- combating corruption, organised crime and human trafficking;
- preventing drug abuse and drug trafficking;
- responding to violence;
- fighting against racism and xenophobia.

3.2 Multilateral solutions

The best way of taking effective action in these areas is not by a series of bilateral agreements with each of the Union's immediate neighbours, but by the adoption of pan-European multilateral solutions which are coherent with the European Union's own internal measures. The conclusions of the European Council in Tampere rightly foresee cooperation with the Council of Europe in this area. We have already created an effective interface between Council of Europe and European Union activities, in particular through the presence of the European Commission in all intergovernmental structures, including ministerial sessions. An increasing number of Council of Europe conventions and agreements are open to accession by the European Community¹. We should develop this further.

¹ See my annual reports on relations and co-operation between the Council of Europe and the EU: www.coe.int/sg/e (Documents SG/Inf(2002)7 and SG/Inf(2002)12)

A forum for EU foreign policy towards its immediate neighbours

4.1 A Europe without dividing lines

This steadily developing common legal area for the 800 million Europeans within the Council of Europe's borders, from Reykjavik to Vladivostok, presents a solid basis for our joint vision of building a Europe without dividing lines and consolidating it through a network of interlocking institutions.

4.2 Extending Article 303 of the EC Treaty

The Convention could give its political support to this joint task by recommending in its review of the present Treaties that the European Union make full use of the structures of the Council of Europe. To this end, it would seem desirable not only to preserve Art. 303 of the EC Treaty, which stipulates that the *Community* shall establish all appropriate forms of cooperation with the Council of Europe, 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.

4.3 Discuss questions of common concern on an equal footing

The Laeken Declaration underlines that the relations between the Union and the other European states which are its immediate neighbours are of particular importance, both for the Union itself and for those states. The European Union, with its common external borders, its internal market and freedom of movement, runs the risk of creating a sense of exclusion among those states which will remain for the time being outside the Union. There is therefore a legitimate common interest in having a meeting place where representatives from the whole of Europe at parliamentary, government, local or regional level can come together to discuss questions of common concern on an equal footing - a Europe without dividing lines¹. The Council of Europe provides such a framework. The European Union is already an important actor in the Council of Europe. There is nonetheless scope for a much more active participation of the EU institutions in the various bodies of the Council of Europe in order to reinforce the dialogue and cooperation between representatives of the whole of Europe.

4.4 EU accession to the Council of Europe?

I therefore invite the European Commission to step up its participation in the Council of Europe at the level of the Committee of Ministers and its subsidiary bodies. This will be of mutual benefit to both partners. The same applies to committees of governmental experts. This would enable the European Union to pursue further the recent experience of extending rules in Community legislation to the whole of Europe by transposing such provisions into Council of Europe conventions or agreements. The political option of the Union's future membership of the Council of Europe merits closer consideration.

¹ For a greater Europe without dividing lines – The Budapest Declaration of the Committee of Ministers (7 May 1999) on the occasion of the Council of Europe's 50th anniversary

4.5 Develop parliamentary cooperation

The Parliamentary Assembly with its representatives of 44 national parliaments offers a unique framework for promoting the common European project. Existing cooperation with the European Parliament can be developed further. Members of the European Commission could address the Assembly much more frequently than is at present the case.

4.6 Develop CFSP within the Council of Europe

The High Representative/Secretary General of the EU Council could at regular intervals address the Assembly and the Committee of Ministers. This would be one way to promote synergies between the Common Foreign and Security Policy of the EU and the enlarged political dialogue amongst all European democracies. The Council of Europe thus provides a platform on which to develop the European Union's foreign policy with regard to its immediate neighbours.

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In conclusion

I am convinced that:

- The instruments and activities of the Council of Europe assist the EU enlargement process
- Together we need a coherent approach to the protection of human rights in Europe
- The Council of Europe provides a forum for the Greater democratic Europe

The Council of Europe is following with the greatest interest the ambitious plans for the future of the Union expressed in the Laeken Declaration and is keen to contribute, at both intergovernmental and parliamentary level, to the discussions in the Convention, as appropriate, during the completion of its important mandate.

I wish the Convention every success in its historic task.

Strasbourg, 31 May 2002.



Walter Schwimmer



Council of Europe Key Dates

- 5 May 1949, London
Ten States (Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden and the United Kingdom) sign the Treaty of London, setting up the Council of Europe
- 4 November 1950, Rome
Signature of the Council's Convention for the Protection of Human Rights and Fundamental Freedoms – the first international legal instrument safeguarding human rights. Signature of the European Cultural Convention, forming the framework for the Council's work in education, culture, youth and sport
- 19 March 1958, Strasbourg
The European Communities meet for the first time at the headquarters of the Council of Europe, in Strasbourg
- 18 October 1961, Turin
The Council's European Social Charter is signed as the economic and social counterpart of the European Convention on Human Rights
- 5 May 1972, Strasbourg
The Committee of Ministers adopts, as the European Anthem, the prelude to the Ode to Joy from Beethoven's Ninth Symphony
- 29 May 1986
The European Community adopts the flag of the Council of Europe
- 8 June 1989
The Parliamentary Assembly introduces the Special guest status to forge closer links with the parliaments of new member states moving towards democracy
- 6 November 1990, Rome
A year after the fall of the Berlin Wall, Hungary is the first former communist country to join the Council of Europe.
- 8-9 October 1993, Vienna
First Council of Europe summit of heads of State and government. Adoption of a declaration confirming the Organisation's pan-European vocation and setting new political priorities in protecting national minorities and combating all forms of racism, xenophobia and intolerance.
- 17 January 1994, Strasbourg
The Congress of Local and Regional Authorities of Europe (CLRAE) is set up by the Committee of Ministers to replace the Standing Conference of Local and Regional Authorities of Europe.
- 10 – 11 October 1997, Strasbourg
Second Summit of the Heads of State and Government of the Council of Europe member States. Adoption of a declaration and plan of action "to strengthen democratic stability in the member States". Creation of the Office of the Commissioner for Human Rights.
- 1 November 1998
Single permanent European Court of Human Rights established in Strasbourg under Protocol No. 11 to the Council's European Convention on Human Rights.
- 4 November 2000
50th Anniversary of the European Convention on Human Rights
- 24 April 2002
Bosnia & Herzegovina becomes the 44th member State of the Council of Europe.

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