COOPERATION BETWEEN THE EUROPEAN UNION
AND THE COUNCIL OF EUROPE:
A CHALLENGE FOR THE WHOLE OF EUROPE

The first of May 2004 will certainly enter into the history books as one of
the most important days in the modern history of Europe. I am sure that 2004
will be put on one line of importance with “anni mirabiles” as 1814, 1848,

The territory of the European Union widened considerably and covers now
large parts of the European continent. Nevertheless, we must realise that even
after the accession of ten new Member States there still is Europe outside the
European Union: in Scandinavia (Iceland and Norway), on the Balkan and in
particular in central and eastern Europe. The 25 Member States of the
European Union should constantly be aware of that and should avoid not to
create a huge gap between the Member States of the Union and the European
non-Member States.

We do not only have a wider Union. In the past years we also got a closer
Union and this tendency towards an ever closer Union will certainly continue
in the future. In the fifties and sixties of the past century the European
Community was nearly exclusively active in fields with an obvious economic,
financial relevance. Only in respect of those subject-matters directives and
regulations were enacted in order to harmonise or unify the rules in force in
the Member States.¹ Since then, this has changed quite fundamentally.

Considerable more issues are linked to the internal market which we want
to create. This happened in particular since the Maastricht and Amsterdam
treaties came in force.² Nowadays, the European Union is dealing with
numerous subject matters. It is almost difficult to find issues where legislative
acts of the European Union and the case law of the European Court of Justice
do not have influence.

As a consequence, the European Union is now also active in fields, where
traditionally other international institutions were and still are active, for
example the Hague Conference of Private International Law, the Commission

¹ See on these developments Hildegard Schneider and Gerard-Rene de Groot, in: Albert
² On the 1st of November 1993 and 1st of May 1999 respectively. A first step was already
made in 1987 by the so-called Single European Act.
Internationale d'État Civile (=International Commission of Civil Status) and most importantly the Council of Europe.

Since the Amsterdam Treaty changing the EC-Treaty came in force the European Union can enact directives and regulations in the field of Private International Law, based on the new art. 65 (b) EC:

"Measures in the field of judicial cooperation in civil matters having cross border implications, to be taken in accordance with Article 67 and insofar as necessary for the proper functioning of the internal market, shall include: .... (b) promoting the compatibility of the rules applicable in the Member States concerning the conflicts of laws and of jurisdiction; ...

In the past few years it became more and more obvious that this new competence leads to collisions, to a competition with the Hague Conference. It will be necessary to find ways of a fruitful collaboration.\(^3\)

In respect of the International Commission of Civil Status we could observe in the past view months, that attempts of that organisation to come to a new international treaty were confronted with important developments in the legal order of the European Union. Only a couple of days after the day when a draft treaty on the recognition of the consequences of marriage and divorce on the family name was finalised during a session in Madrid, the Court of Justice of the European Communities came to an important decision in the field of family names in the case Garcia Avello.\(^4\) I can now not elaborate on that decision now, but I want to stress that the draft treaty is in part incompatible with the ruling of the Court of Justice in Garcia Avello. Therefore, the work in the International Commission of Civil Status has to start again. Without a revision of the draft Treaty twenty-five European States will not be able to ratify the Convention because of the fact that it is contrary to the "acquis communautaire" (= the rules in force in the European Union).\(^5\)

In respect of the activities of the Council of Europe, the European Convention for the Protection of Human Rights and Fundamental Freedoms\(^6\) and the Protocols to this Convention are of great importance. The European Union recognises this in Art. 6 (2) of the Treaty of the Union and also in the

---


\(^4\) ECJ 2 October 2003, C 148/02.


\(^6\) European Treaty Series (ETS) 5.
Draft Constitutional Treaty for Europe. This respect for Human Rights can be described as one of the core values of both the European Union and the Council of Europe.

But the Council of Europe initiated also many other treaties in several fields of the law. In November 2003 the 193th Council of Europe-Treaty was opened for signature: the European Convention for the Protection of Animals during International Transport\(^7\).

Several of the Council of Europe-Treaties are Human rights related. That is of course the case in respect of the fourteen Protocols to the Convention on Human Rights\(^8\), but also with several other Treaties, e.g. the European Charter for Regional or Minority Languages of the 5th of December 1992.\(^9\) In addition to the human rights issues, the Council of Europe is particularly active in the fields of:

- family law
- criminal law
- culture related issues of law
- nationality law.

All these fields of law did not play originally an important role in the legislative activities of the European Union. But that is changing rapidly. Therefore, also in respect of the Council of Europe the question is justified, how the relationship should be between the legislative activities of the European Union, in particular in those fields just mentioned, at the one side, and the activities of the Council of Europe at the other side. It is – in my opinion – very important that the European Union takes into account the achievements already realised by the Council of Europe and also the activities scheduled by the Council of Europe. It does not make sense that the European Union tries to reinvent the wheel again.

But there is also another argument. The legislative activities of the European Union are binding for twenty-five European States, the Conventions of the Council of Europe are addressed to the forty-five Member States of the Council of Europe. Therefore, the potential geographical scope of application of the treaties of the Council of Europe is considerably wider than the geographical scope of the legal instruments of the European Union. A cooperation between the European Union and the Council of Europe is therefore not only desirable in order to avoid double work and collisions between the activities of both institutions, but is also recommendable given the fact that the Council of Europe reaches many European countries outside the European Union.

\(^7\) ETS 193.
\(^8\) ETS 9, 44, 45, 46, 55, 114, 117, 118, 140, 146, 148, 155, 177, 187, 194.
\(^9\) ETS 148.
A close cooperation between the both organisations, therefore, will contribute to reduce the gap between the European states outside the European Union and the twenty-five Member States of the Union. This does not imply that the European Union has to keep hands off completely regarding all issues touched already by the Council of Europe. But the legislative actions of the European Union should be compatible with the rules codified in treaties of the Council of Europe.

Let me give an example:

If the European Union would decide to take some influence on the grounds for acquisition and loss of the nationality of the Member States (because all these nationalities entitle to European citizenship\textsuperscript{10}, it would be desirable that the European Union pays precise attention to the European Convention on Nationality of 6 November 1997 initiated by the Council of Europe\textsuperscript{11} and the activities of the Council of Europe Committee of Experts on Nationality. If the European Union would like to harmonise the grounds for acquisition and loss of nationality, the European Union should encourage the Member States to ratify this European Convention on Nationality.\textsuperscript{12} The European Union could in addition enact rules, but has to create those rules with a content compatible with the rules of the European Convention on Nationality.\textsuperscript{13} To create additional rules could prove necessary in matters related to the the guarantee of freedom of movement of persons within the territory of the Union. In perspective of that guaranteed right it will be necessary that the European Union prescribes its Member States to take into account – at least to some extent – periods of residence of an applicant for naturalisation in other Member States to meet residence requirements for naturalisation. Similarly, the European Union will have to prescribe that the requirement of residence in


\textsuperscript{11} ETS 166; see on this convention: Gerard-René de Groot, *The European convention on nationality, a step towards a ius commune in the field of nationality law*, Maastricht Journal of European and Comparative Law 2000, 117-157.

\textsuperscript{12} Of the Member States of the European Union eight States ratified this Convention already, eight other Member States signed the Convention.

the country of application for naturalisation has to be waived, if the applicant recently moved to another Member State.\textsuperscript{14}

At the end of this contribution, I would like to stress again that a good cooperation between the European Union and the Council of Europe is a challenge for both institutions and of great importance for Europe. A good and fruitful cooperation between both organisations will reduce the gap between the twenty-five Member States of the European Union and the other European States. Therefore, this cooperation will contribute considerably to the realisation of the Idea of Europe.

\textit{Prof. Dr. Gerard-René de Groot}

Expert of the Council of Europe

University of Maastricht

\footnote{14 The same holds true for the language requirements and the requirement of basic knowledge of the country's society and constitution.}