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Harmonisation of regulatory and para-regulatory provisions of monitoring and post-monitoring dialogue procedures

Report¹

Committee on Rules of Procedure, Immunities and Institutional Affairs

Rapporteur: Mr Pedro AGRAMUNT, Spain, Group of the European People's Party

Summary

The Parliamentary Assembly is invited to approve some amendments to the monitoring procedure enabling it to check that Council of Europe member States honour their statutory and conventional obligations, as well as the specific commitments they may have entered into upon joining the Council of Europe. These include:

- setting a two-year time limit for the examination by the Monitoring Committee of an application to open or reopen a monitoring procedure (by analogy with the common deadline imposed on committees seized for a report);
- setting a unified time limit for the presentation of Monitoring Committee reports to the Assembly, requiring reports to be presented at least once every three years on each country being monitored or involved in post-monitoring dialogue;
- enlarging the competence of the Monitoring Committee, whose terms of reference shall clearly provide for the possibility of it preparing a report on the functioning of democratic institutions in a member State, on the basis of a motion for a resolution tabled by members of the Assembly;
- adding in the Monitoring Committee's terms of reference that member States must fully co-operate with the committee within the framework of any procedure.

1. Reference to committee: References 3673 of 30 April 2010 and 3890 of 1 October 2012.



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A. Draft resolution ²

1. Since the introduction, by [Resolution 1115 \(1997\)](#), of an ad hoc mechanism monitoring the obligations and commitments entered into by Council of Europe member States, implemented by a specific Parliamentary Assembly committee created by that document, the Assembly has taken the opportunity on several occasions to improve the procedure enabling it to check that Council of Europe member States honour the obligations contracted by them under the Statute of the Council of Europe (ETS No. 1), the European Convention on Human Rights (ETS No. 5) and all the other Council of Europe conventions to which they are Party, as well as the specific commitments they may have entered into upon joining the Council of Europe.
2. The Assembly refers to the recent progress reports presented by its Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), setting out various proposals for making monitoring and post-monitoring procedures more efficient and giving the committee's work greater impact.
3. In this connection, it considers that the frequency of presentation of monitoring and post-monitoring reports to the Assembly should be revised so that at least one report is presented to the Assembly at least once every three years on each country monitored or involved in post-monitoring dialogue.
4. Furthermore, where the examination of an application to open or reopen a monitoring procedure is concerned, within the framework of discussion on the establishing of a time limit for the Monitoring Committee to decide whether or not to open a monitoring procedure on a member State, the Assembly considers it expedient to endorse the methodology followed by the Monitoring Committee when examining such an application, insofar as this promotes constructive and substantial dialogue and the seeking of effective solutions to the political or legal problems signalled; it also considers that the duration of the committee's examination of an application to open or reopen a monitoring procedure must be in line with the common time limit laid down by the Rules of Procedure for ordinary references to committees in Rule 25.4, namely two years.
5. Finally, the Monitoring Committee must be able to express an opinion on institutional developments in all Council of Europe member States, where these cause concern over the honouring of their statutory and convention-based obligations. The Assembly considers that the Monitoring Committee's terms of reference must formally provide for the possibility of it preparing a report on the functioning of democratic institutions in a member State, on the basis of a motion for a resolution or for a recommendation examined in accordance with Rule 25 of the Rules of Procedure, concerning references to committees.
6. In this connection, the Assembly reiterates that it expects member States to fully co-operate with the Monitoring Committee, whether within the framework of a monitoring procedure or post-monitoring dialogue or in connection with the examination of an application to open or reopen a monitoring procedure, or the examination of the functioning of their democratic institutions.
7. In the light of the foregoing, the Assembly decides to amend [Resolution 1115 \(1997\)](#), amended, as follows:
 - 7.1. in [Resolution 1115 \(1997\)](#), paragraph 14, replace the words "at least once every two years on each country being monitored and at least once every four years on each country involved in a post-monitoring dialogue" with "at least once every three years on each country being monitored or involved in post-monitoring dialogue";
 - 7.2. in the terms of reference of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), after paragraph 1, add the following paragraph: "The member States shall fully co-operate with the Monitoring Committee within the framework of the present terms of reference";
 - 7.3. in the terms of reference of the Monitoring Committee, at the end of paragraph 3, add the following sentence: "References to the Monitoring Committee requesting examination of such applications under the procedure provided for in paragraph 4 shall lapse after two years, in accordance with Rule 25.4 of the Rules of Procedure of the Assembly";

2. Draft resolution adopted unanimously by the committee on 25 April 2013.

7.4. in the terms of reference of the Monitoring Committee, after paragraph 5, add the following paragraph: “The Monitoring Committee shall examine questions concerning the functioning of democratic institutions in Council of Europe member States, taking account of their statutory and convention-based obligations, in accordance with Rule 25 of the Rules of Procedure. Paragraph 11 of [Resolution 1115 \(1997\)](#) shall apply accordingly”.

8. The Assembly decides that these amendments shall enter into force upon the adoption of the present resolution.

B. Explanatory memorandum by Mr Agramunt, rapporteur

1. Introduction

1. On 30 April 2010, the Parliamentary Assembly referred the question of the harmonisation of regulatory and para-regulatory provisions of monitoring and post-monitoring dialogue procedures to the Committee on Rules of Procedure, Immunities and Institutional Affairs for report. That reference followed the adoption by the Standing Committee, on 12 March 2010, of [Resolution 1710 \(2010\)](#) on the term of office of co-rapporteurs of the Monitoring Committee and [Resolution 1698 \(2009\)](#) on amendment of various provisions of the Parliamentary Assembly's Rules of Procedure.

2. More recently, at its meeting on 3 September 2012, the Bureau of the Assembly decided to refer the issue of a possible modification of [Resolution 1115 \(1997\)](#) on the setting up of an Assembly committee on the honouring of obligations and commitments by member states of the Council of Europe (Monitoring Committee), aimed at introducing a time limit for the Monitoring Committee's deliberation on whether or not to open a monitoring procedure for a member State, to the Committee on Rules of Procedure, Immunities and Institutional Affairs for report and to the Monitoring Committee for opinion.

3. The latter decision was taken in the wake of the Presidential Committee's visit to Romania (18 and 19 July 2012) and the exchange of views held by the members of the Bureau on the question of reopening a monitoring procedure in respect of Romania. During that exchange of views, the case of the political situation in Hungary was raised, in view of the fact that the Monitoring Committee had been instructed, in March 2011, to examine the issue of the rule of law and human rights in Hungary, following the referral of a motion for a resolution requesting the initiation of a monitoring procedure for Hungary ([Doc. 12490](#)). This examination is still ongoing. Some members of the Bureau criticised the slowness of the procedure, which might raise questions about the Assembly's capacity to react and effectiveness; they concluded that the Assembly should tackle this question, possibly by envisaging an amendment to [Resolution 1115 \(1997\)](#), giving the Monitoring Committee a time limit to decide on whether or not to open a monitoring procedure for a member State.³

4. At its meeting on 4 October 2012, the Committee on Rules of Procedure decided to deal with this question in the framework of the present report on harmonisation of regulatory and para-regulatory provisions of monitoring and post-monitoring dialogue procedures.

2. Points for consideration

5. Since the creation, by [Resolution 1115 \(1997\)](#), of an ad hoc mechanism monitoring the obligations and commitments entered into by Council of Europe member States, implemented by a specific Parliamentary Assembly committee created by that document – the Monitoring Committee, which celebrated its fifteenth year of existence in April 2012 –, the Assembly has taken the opportunity on several occasions to improve the procedure enabling it to check that Council of Europe member States honour the obligations contracted by them under the Statute of the Council of Europe (ETS No. 1), the European Convention on Human Rights (ETS No. 5) and all the other Council of Europe conventions to which they are Party, as well as the specific commitments they may have entered into upon joining the Council of Europe:

- [Resolution 1431 \(2005\)](#) specified the procedure and conditions for opening or reopening a monitoring procedure in respect of a member State;
- [Resolution 1515 \(2006\)](#) set a time limit for the Bureau of the Assembly to refer a motion for a resolution requesting initiation of a monitoring procedure to the Monitoring Committee and also established the procedures governing the closure of post-monitoring dialogue with a member State;
- through [Resolution 1698 \(2009\)](#), it was decided to limit the number of members of a national delegation from a State under monitoring procedure or involved in a post-monitoring dialogue sitting on the Monitoring Committee and also that periodic reports (every four years) on each country involved in a post-monitoring dialogue would be presented to the Assembly;

3. Regarding the situation in Romania, a motion for a resolution on the functioning of democratic institutions in Romania has been tabled in the meantime ([Doc. 13052](#)) and was referred to the Committee on Political Affairs and Democracy in January 2013 for report.

- [Resolution 1710 \(2010\)](#) revised the term of office of Monitoring Committee rapporteurs involved in a monitoring procedure or post-monitoring dialogue (by allowing the appointment of rapporteurs for post-monitoring dialogue), set the duration of the rapporteurs' term of office and also codified the criteria for appointing rapporteurs;
- finally, [Resolution 1841 \(2011\)](#) amended the conditions for opening or reopening a monitoring procedure, increasing the number of signatures required for an application from “not less than ten members of the Assembly representing at least five national delegations and two political groups” to “not less than twenty members of the Assembly representing at least six national delegations and two political groups”.

6. In the context of the present report, it is obviously not for the Committee on Rules of Procedure to review the entire monitoring procedure, which, indeed, is not at all desirable in the eyes of the Monitoring Committee. The focus will therefore be on that committee's own considerations in the context of its last two progress reports (“The progress of the Assembly's monitoring procedure (June 2010 – May 2011)”, [Doc. 12634](#), rapporteur: Mr Dick Marty; and “The progress of the Assembly's monitoring procedure” (June 2011 – May 2012)”, [Doc. 12954](#), rapporteur: Mr Andres Herkel).

7. Accordingly, the Committee on Rules of Procedure is invited to consider more specifically the following questions:

- on the one hand, whether it is necessary to revise the current arrangements of the monitoring and post-monitoring procedures in the light of the Monitoring Committee's recent experience, for example regarding the rapporteurs' term of office or the frequency with which reports are presented to the Assembly;
- on the other hand, whether the Monitoring Committee should be set a time limit for deciding whether to open or reopen a monitoring procedure in respect of a member State;
- finally, whether it should be specified in the Monitoring Committee's terms of reference that it is competent to examine questions concerning the functioning of democratic institutions in Council of Europe member States, in connection with the honouring of their statutory and convention-based obligations.

2.1. Setting of a time limit for examining an application to open or reopen a monitoring procedure

8. The mechanism for opening or reopening a monitoring procedure in respect of a member State, as set out in the terms of reference of the Monitoring Committee, is fairly complex.⁴ The process of examining an application, as it involves the Monitoring Committee and the Bureau of the Assembly and is not governed by a fixed time frame, may be lengthy.

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4. “2. An application to initiate a monitoring procedure may originate from:
- i. the general committees of the Assembly by reasoned written application to the Bureau;
 - ii. the Monitoring Committee by a written opinion prepared by two co-rapporteurs containing a draft decision to open a monitoring procedure; in case the application aims at reopening a monitoring procedure in respect of a country involved in the post-monitoring dialogue, the written opinion will be prepared by the Chairperson or, if appropriate, a Vice-Chairperson of the Monitoring Committee;
 - iii. not less than 20 members of the Assembly representing at least 6 national delegations and 2 political groups, through the tabling of a motion for a resolution or recommendation;
 - iv. the Bureau of the Assembly.
3. The Bureau shall refer applications tabled in accordance with paragraphs 2.i and iii above to the Monitoring Committee at one of its next two meetings following their tabling.
4. Applications, other than those originating from the Monitoring Committee itself, shall be considered by the Monitoring Committee. Two co-rapporteurs or, in the case of a country involved in a post-monitoring dialogue, the rapporteur, shall carry out the necessary investigations and prepare a written opinion containing a draft decision proposing:
- the opening (or reopening) of a monitoring procedure and to instruct the Monitoring Committee to carry out this procedure,
 - not to open (or not to reopen) such a procedure.
- In the light of the Monitoring Committee's written opinion, the Bureau shall express itself on whether to open (or reopen) a monitoring procedure.
- Subsequently, with regard to all the applications referred to in paragraph 2:
- if both the Monitoring Committee and the Bureau agree to open (or reopen) the monitoring procedure or take divergent positions, the written opinion adopted by the Monitoring Committee shall be transformed, by way of derogation from Rule 49.2 of the Rules of Procedure, into a report containing a draft resolution and the Bureau shall include this item

9. The Monitoring Committee has been tasked, in fifteen years, with examining six applications for the opening of a monitoring procedure, in respect of: Latvia (1997), Austria (2000), Liechtenstein (2003), the United Kingdom (2006), Italy (2006) and Hungary (2011) – the latter application is still being examined.⁵ Only the first application (concerning Latvia) resulted in the opening of a monitoring procedure. There has never been an application to reopen a monitoring procedure in respect of a member State for which a monitoring procedure has been closed.

10. As Andres Herkel points out in the last progress report of the Monitoring Committee, the amendments made in 2005 to the rules governing the opening of a monitoring procedure clearly sought to strengthen the position of the Monitoring Committee, *inter alia* by preventing the Bureau of the Assembly from blocking the committee's recommendation to open or reopen a monitoring procedure, and by then allowing the Assembly to debate it.

11. In the penultimate progress report of the Monitoring Committee, the rapporteur, Dick Marty, took the view that “the future of this committee lies in reacting – by means of motions for reopening or opening of a procedure – to concrete concerns of democracy in all Council of Europe member States”. However, in practice, no decision to open or reopen a monitoring procedure in respect of a member State has been implemented since 1997. The methodology itself used by the Monitoring Committee to examine an application clearly places the emphasis on forging constructive dialogue and seeking solutions to the political or legal problems signalled, prior to any proposal that the Assembly open or reopen a monitoring procedure. As Mr Marty points out, this approach has very often yielded results.

12. At its meeting on 24 January 2013, the Monitoring Committee held an exchange of views at the initiative of the rapporteur of the Committee on Rules of Procedure, Mr Agramunt, who is also a member of the Monitoring Committee. The vast majority of the members who spoke were in favour of maintaining the status quo in the existing procedure and were very much against the period of investigation by the committee being placed within a strict time frame. In particular, they pointed out that the examination of an application to open or reopen a monitoring procedure enabled the committee, via its co-rapporteurs, to engage in substantial political dialogue with the talking partners concerned – national authorities, political opposition, etc. – and that exercise had proved particularly fruitful.

13. It is understandable that work in the Monitoring Committee on applications referred to it for the opening or reopening of a monitoring procedure prompts a degree of restiveness in the Bureau of the Assembly and more generally impatience on the part of Assembly members, borne of an eagerness to hear the committee's conclusions as soon as possible. However, confining the committee's work to a very short time frame (a deadline of six months was mentioned in discussions within the Bureau) could result in its assessment being truncated, precluding action on any recommendations or solutions it might put forward.

14. Finally, it is to be noted that the Rules of Procedure provide for a swift means for the Assembly to decide whether to open or reopen a monitoring procedure in respect of a given State, simply by adopting a clause along these lines in a resolution, a recommendation or the opinion on accession itself. So it is the case that two procedures co-exist: one allowing the Monitoring Committee to carry out a full and substantial investigation of a member State's situation regarding the honouring of its obligations, and another, more immediate one, enabling the Assembly to directly exercise its political prerogatives. It may be assumed that this latter procedure could be implemented in an emergency, where an alarming situation of extremely grave violations of standards of democracy, human rights and the rule of law arose in a member State.

in the agenda and order of business of the next Assembly part-session for debate and adoption of the draft resolution. A representative of the Bureau may speak in its name in this debate. The Assembly may decide, if appropriate, to refer the matter to one or more committees for an opinion;

– in the case that both the Monitoring Committee and the Bureau consider that there is no need to open (or to reopen) a monitoring procedure, such decision should be recorded in the Progress Report of the Bureau and the Standing Committee. The Assembly shall confirm this decision by a vote during the discussion of the Progress Report of the Bureau. However, during that discussion the Assembly may decide by a majority vote following a request by at least ten members, that a debate be held during the next part-session on the written opinion of the Monitoring Committee, which shall then be transformed into a report containing a draft resolution.

The Assembly or Standing Committee itself may decide, when adopting a resolution, a recommendation or an opinion on accession, to initiate a monitoring procedure and entrust it directly to the Monitoring Committee. In such a case, the procedure provided for in paragraphs 2 and 3 shall not be applicable.”

5. In March 2011, the Monitoring Committee appointed two co-rapporteurs, who carried out three fact-finding visits to that country (in July 2011, February 2012 and February 2013, as well as a visit to Brussels in May 2012); the committee also requested legal opinions from the experts of the Venice Commission on several pieces of legislation.

2.2. Frequency of submitting monitoring rapports to the Assembly

15. In the last of the aforementioned Monitoring Committee progress reports, the rapporteur, Andres Herkel, raises the question of the efficiency of monitoring and post-monitoring procedures and the impact of the committee's procedures. He proposes, *inter alia*, to reconsider the questions of the frequency of monitoring reports and the duration of co-rapporteurs' terms of office, which are both dealt with in [Resolution 1710 \(2010\)](#) on the term of office of co-rapporteurs of the Monitoring Committee.

16. In the aforementioned penultimate progress report of the Monitoring Committee, the rapporteur, Dick Marty, stressed that "the two-year deadline for the presentation of a report for each country under monitoring has not been systematically respected. In the most extreme case, the Russian Federation, six years have elapsed since the last full report was debated in the Assembly". The Monitoring Committee comes back to this question in the next progress report, with Andres Herkel noting that "the deadline of two years for the preparation of a report on monitoring (four years for post-monitoring) is sometimes difficult to respect".

17. Naturally, the Monitoring Committee has regularly reported on the political situation in countries under monitoring, submitting reports as a matter of political urgency to the Assembly as and when needed on topics such as the functioning of democratic institutions or constitutional reform, demonstrating its ability to react quickly to political crisis situations. Although, in most cases, such an approach is fully justified, in enabling the Assembly to react speedily to a conflict situation in a member State, it may be damaging if, under the procedural logic intended by the Assembly in 1997, it pushes back a full report to a later date.

18. On the basis of progress of the monitoring procedures concerning 10 member States to date, the fact is that, over the last eight years, the requirement to present a (full) report every two years for the member States subject to a monitoring procedure has hardly ever been complied with (only in the case of Montenegro). As for the four member States engaged in post-monitoring dialogue, while the presentation of a report every four years has been required only since 2009, the Monitoring Committee has produced only one report within the deadline (Bulgaria in 2010). Yet that does not mean that the committee and its co-rapporteurs or rapporteurs have not been active: on the contrary, fact-finding visits are carried out, for all countries, at very regular intervals (one to two each year, plus visits in connection with the observing of elections), and exchanges of views are held within the committee.

2.3. Duration of rapporteurs' term of office

19. The term of office of the Monitoring Committee's co-rapporteurs is limited to a duration of five years (the time normally required to prepare two reports; this period may be extended by six months depending on circumstances, at the discretion of the committee). This was a positive measure, intended to ensure the regular renewal of rapporteurs, combining "the advantages of continuity and, at the same time, ensur[ing] that a 'fresh look' is given to the situation in a given country", and involve more and more committee members. However, Andres Herkel considered, in the aforementioned progress report, that "given the complex situation in many countries under the monitoring procedure, five years may be too short to prepare at least two reports on one country. Past experience shows that a political crisis ... may prevent co-rapporteurs from preparing a report for almost half of the duration of their terms of reference". Accordingly, he proposed extending the term of office of (co-)rapporteurs to seven years.

20. As previously mentioned, during the exchange of views on 24 January 2013, the Monitoring Committee held that, in the light of the positive experience recorded since 2011, when the rapporteurs' term of office was set at five years, it was not desirable to modify the existing procedure in this respect. It is proposed, therefore, that the Committee on Rules of Procedure take its consideration of this question no further.

2.4. Terms of reference of the Monitoring Committee with regard to the functioning of democratic institutions in member States

21. The Monitoring Committee is "responsible for seeking to ensure the fulfilment of the obligations assumed by the member States under the terms of the Council of Europe Statute, the European Convention on Human Rights and all other conventions concluded within the Organisation to which they are parties", in addition to the honouring of the commitments entered into by the authorities of member States on their accession. Under these specific terms of reference it must therefore be able to express an opinion on institutional developments in all Council of Europe member States, where these cause concern over the honouring of their statutory and convention-based obligations, particularly where such matters are the subject of a motion for a resolution or for a recommendation tabled by Assembly members.

22. Accordingly, the Monitoring Committee's terms of reference should formally stipulate that it is competent for examining questions concerning the functioning of democratic institutions in Council of Europe member States, in connection with the honouring of their statutory and convention-based obligations, in accordance with Rule 25 of the Rules of Procedure concerning references to committees.

3. Proposals to amend the para-regulatory provisions in force

23. The observations gathered prompt the following proposals:

- concerning the duration of the examination of an application to open or reopen a monitoring procedure as provided for in paragraph 4 of the Monitoring Committee's terms of reference, the Committee on Rules of Procedure proposes that this be limited to the common time limit laid down by the Rules of Procedure for ordinary references to committees in Rule 25.4, namely two years;
- concerning the frequency of presenting reports to the Assembly, in the light of the pattern actually followed by the Monitoring Committee in the last ten years, it is proposed that the different time limits currently applying to monitoring procedures (presentation of a report at least once every two years for each country monitored) and to post-monitoring dialogue (presentation of a report at least once every four years) be replaced with a unified time limit requiring reports to be presented at least once every three years on each country being monitored or involved in post-monitoring dialogue;
- concerning the Monitoring Committee's competence, it is proposed that the Monitoring Committee's terms of reference clearly provide for the possibility of it preparing a report on the functioning of democratic institutions in a member State, on the basis of a motion for a resolution tabled by members of the Assembly and examined in accordance with Rule 25 of the Rules of Procedure.

24. Finally, it should be formally stipulated in the Monitoring Committee's terms of reference that member States must fully co-operate with the Monitoring Committee in the implementation of those terms of reference, whether within the framework of a monitoring procedure or post-monitoring dialogue or in connection with the examination of an application to open or reopen a monitoring procedure, or the examination of the functioning of their democratic institutions.

4. Other observations

25. In addition, in [Directive 585 \(2003\)](#) on progress of the Assembly's monitoring procedure, the Assembly instructed its Monitoring Committee to define the criteria used to determine the opening or reinstatement of a monitoring procedure. In the Monitoring Committee's last progress report, the rapporteur suggests defining the criteria for the closing of a procedure (see paragraphs 186 and following), pointing out that "a recapitulation of the criteria for closing the procedure, which would apply to all member States under monitoring, would contribute to the transparency of the whole process and would ward off premature requests for closure".

26. The Committee on Rules of Procedure notes that the Monitoring Committee might hold more substantial discussion in 2013 on the question of defining criteria governing the closure of a monitoring procedure, which is clearly not a matter falling within the competence of the Committee on Rules of Procedure.