Parliamentary Assembly
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Recommendation 2151 (2019)[1]

Establishment of a European Union mechanism on democracy, the rule of law and fundamental rights

Parliamentary Assembly

1. The Parliamentary Assembly, referring to its Resolution 2273 (2019) on the establishment of a European Union mechanism on democracy, the rule of law and fundamental rights, welcomes the fruitful co-operation between the European Union and the Council of Europe aimed at ensuring greater respect for the shared values of human rights, democracy and the rule of law.

2. It recalls that the Memorandum of Understanding concluded in 2007 between the two organisations establishes common priorities for institutional co-operation, which are based on enhanced partnership and complementarity and are meant to be achieved by using common strategies. In addition, the memorandum contains a firm commitment by both organisations to "establish common standards" for promoting a Europe without dividing lines.

3. The Assembly notes that the areas of co-operation outlined by the Memorandum of Understanding have been progressively grouped together under the pillars of political dialogue, joint activities and legal co-operation. As regards the legal co-operation on rule of law related matters, the Assembly notes that a number of co-operation arrangements have been made by the European Commission and various Council of Europe expert bodies to intensify the exchange and sharing of information, knowledge and experience, thereby preserving the consistency of rule of law standards and complementarity of action.

4. However, the Assembly considers that, given the political and institutional context in which the European Union rule of law initiatives are being drawn up or implemented, rule of law related matters require, in addition to legal co-operation at a technical level, intensified political action by the Committee of Ministers.

5. Several European Union initiatives and mechanisms to ensure that European Union member States comply with rule of law standards have emerged in recent years. They involve different institutions, are based on different paradigms and differ in their nature and coercive effects. Article 7 of the Treaty on European Union was recently triggered by the European Commission in respect of Poland and by the European Parliament with regard to Hungary. The assessments provided by various Council of Europe expert bodies were extensively used to back both proposals.

6. The Assembly notes that the Lisbon Treaty has modified the basis of the political dialogue between the two organisations, as the European Union's relations with the Council of Europe have since been under the competence of the High Representative of the Union for Foreign Affairs and Security Policy. Insofar as it is not directly involved in the drawing up and implementation of European Union rule of law related initiatives, the Assembly regrets that, with the end of the quadripartite meetings, the voice of the Council of Europe, represented by the chairmanship of the Committee of Ministers and the Secretary General of the Organisation, is no longer heard directly on these issues at the highest political and institutional level by the Presidency of the European Union and the Presidency of the European Commission.

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1. *Assembly debate* on 9 April 2019 (13th Sitting) (see Doc. 14850, report of the Committee on Rules of Procedure, Immunities and Institutional Affairs, rapporteur: Ms Petra De Sutter; Doc. 14862, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Lord Richard Balfe; Doc. 14860, opinion of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), rapporteur: Mr Andrej Šircelj). *Text adopted by the Assembly* on 9 April 2019 (13th Sitting).

7. Given the current context and notwithstanding the sound basis of the existing legal co-operation, the Assembly is concerned that, in the long run, the variety of the rule of law related initiatives involving different European Union institutions may jeopardise both the Memorandum of Understanding's declared objective of ensuring the coherence of the standard-setting system in Europe, and the complementarity and efficiency of mechanisms in upholding the shared values of human rights, democracy and the rule of law which exist within the two institutions with regard to States which are members of both the Council of Europe and the European Union.

8. The Assembly reaffirms the terms of its Recommendation 2060 (2015) on the implementation of the Memorandum of Understanding between the Council of Europe and the European Union, in which it stressed that "the ultimate goal of the partnership between the two organisations, based on each other's *acquis* and comparative advantages, is to pursue further the building of a common space for human rights protection and to ensure coherence of standards and the monitoring of their implementation in Europe" and, "[w]ith a view to ensuring in-depth legal co-operation, enhancing complementarity and coherence of legal standards and providing a unique framework for human rights, democracy and the rule of law in Europe … [asked the Committee of Ministers to] ensure active co-operation with the European Union in the implementation of the new framework to strengthen the rule of law in European Union member States; [and] continue developing appropriate synergies between Council of Europe monitoring mechanisms and bodies and any new evaluation mechanisms to be set up by the European Union".

9. As the Assembly considers it essential to maintain the primacy of the Council of Europe in the assessment of the European Union member States' compliance with common fundamental values, it recommends that the Committee of Ministers:

9.1. take stock, on a regular basis, of the current state of various European Union rule of law initiatives and assess them in the context of the Memorandum of Understanding and its objectives to maintain common standards and complementarity;

9.2. establish a specific co-ordination body to report to the Committee of Ministers on a regular basis on the above issue;

9.3. create, bearing in mind the respective organisations' competences, a more integrated approach regarding political decision making, which would directly involve dialogue with the European Union institution concerned every time an assessment of a Council of Europe/European Union member State is carried out as to whether a risk of a serious breach of the common rule of law standards exists or whether the deficiency has been remedied or has ceased to exist;

9.4. promote safeguards along similar lines to Article 53 of the Charter of Fundamental Rights of the European Union, according to which any European Union rule of law mechanism shall ensure that the assessment or action of the European Union will not affect existing procedures arising from Council of Europe advisory or monitoring mechanisms.