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

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A. Draft Resolution

1. In October 2016, the European Parliament adopted a resolution proposing that the European Union establish a comprehensive, binding and permanent mechanism to monitor the situation of democracy, the rule of law and human rights in the 28 member States and to ensure compliance with the fundamental values of the European Union enshrined in Article 2 of the Treaty on European Union and the implementation of the European Treaties in the member States.
2. The Parliamentary Assembly recognises that such an initiative is legitimate and consistent from the European Union perspective, the European Parliament itself noting that the existing instruments implemented by both the European Commission and the European Council have limited scope.
3. The Assembly considers that the initiative of the European Parliament, which is still under discussion, needs serious reflection in that the proposed mechanism makes specific reference to the Council of Europe framework and aims to create synergies between the two organisations. The proposed mechanism would, on account of its substance and scope, have a clear impact on the Council of Europe, its standard-setting *acquis* and the implementing mechanisms of its conventions: this mechanism refers to the Council of Europe *acquis* and includes in its "legal basis" several Council of Europe conventions – in particular the European Convention on Human Rights (ETS No. 5) and the European Social Charter (revised) (ETS No. 163) – to which the European Union is not a Party; certain Council of Europe bodies will be called upon to collaborate with the European Union under this mechanism – the European Commission for Democracy through Law (Venice Commission), the Group of States against Corruption (GRECO), the Commissioner for Human Rights of the Council of Europe, the Congress of Local and Regional Authorities of the Council of Europe and the European Commission for the Efficiency of Justice (CEPEJ).
4. The Assembly recalls that the Council of Europe and the European Union rely on strong standards in the field of human rights, the rule of law and democracy to achieve their respective institutional goals. Since the 2007 Memorandum of Understanding, the Council of Europe and the European Union have developed a strategic partnership based on these common values, which make synergy and convergence of actions indispensable. Today, both organisations have a shared responsibility for upholding the effectiveness of their respective legal frameworks, ensuring that any overlapping of competences does not create conflict, and that this set of shared core values and principles is not interpreted independently either by the European Union or the Council of Europe, in order to avoid fragmentation of

Amendment 3 Tabled by the Committee on Legal Affairs and Human Rights

In the draft resolution, at the end of paragraph 1, insert the following sentence: "Following a lack of action by the competent European Union institutions, the European Parliament, in a resolution of 14 November 2018, reiterated its call for establishing such a mechanism without delay."

Amendment 4 Tabled by the Committee on Legal Affairs and Human Rights

In the draft resolution, paragraph 4, third sentence, replace the words: "that this set of shared core values and principles is not interpreted independently either by the European Union or the Council of Europe" with the following words: "ensuring that this set of shared core values and principles is interpreted in a coherent way".

understanding about what the fundamental values are and their implementation on the European continent.

5. On many occasions in recent years, the Assembly has taken a position on how to achieve complementarity of action between the two organisations, in particular in Resolution 1427 (2005) and Recommendation 1696 (2005) "Plans to set up a Fundamental Rights Agency of the European Union", Recommendation 1744 (2006) "Follow-up to the Third Summit: the Council of Europe and the Fundamental Rights Agency of the European Union", Resolution 1756 (2010) and Recommendation 1935 (2010) on the need to avoid duplication of the work of the Council of Europe by the European Union Agency for Fundamental Rights, Resolution 1836 (2011) and Recommendation 1982 (2011) on the impact of the Lisbon Treaty on the Council of Europe, Recommendation 2027 (2013) "European Union and Council of Europe human rights agendas: synergies not duplication", Resolution 2029 (2015) and Recommendation 2060 (2015) on the implementation of the Memorandum of Understanding between the Council of Europe and the European Union and Resolution 2041 (2015) and Recommendation 2065 (2015) on European institutions and human rights in Europe.
6. The Assembly strongly reaffirms that under the 2007 Memorandum of Understanding, "the European Union regards the Council of Europe as the Europe-wide reference source for human rights" and "the Council of Europe will remain the benchmark for human rights, the rule of law and democracy in Europe". It welcomes the fact that many Council of Europe conventions as well as Committee of Ministers' recommendations contain standards considered today as *acquis communautaires*, without the operational logic of the Organisation being called into question. The Memorandum of Understanding also invited the European Union institutions to cite the relevant Council of Europe norms "as a reference in European Union documents" and to take the decisions and conclusions of the Council of Europe bodies into account "where relevant".
7. The Council of Europe has a large number of bodies empowered to collect data from member States, evaluate member States' compliance with general obligations and specific or contractual commitments, or formulate observations and recommendations on democratic governance, the rule of law and human rights for the attention of member States. The Assembly notes that the Council of Europe acts as a partner of the European Union, providing the basis for the European Union decision-making process in respect of countries which are also member States of the Council of Europe. The Council of Europe's input in current European Union rule of law initiatives, especially with the Venice Commission opinions, has already proven substantial.

Amendment 5
Tabled by the Committee on Legal Affairs and Human Rights

In the draft resolution, paragraph 6, first sentence, after the words "under the 2007 Memorandum of Understanding", insert the following words: "the cooperation between both organisations will be based on "the principles of indivisibility and universality of human rights, respect for the standards set out in this field by the fundamental texts of the United Nations and the Council of Europe, in particular the Convention for the Protection of Human Rights and Fundamental Freedoms, and the preservation of the cohesion of the human rights protection system in Europe". Moreover,".

Amendment 2
Tabled by the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

In the draft resolution, after paragraph 7, insert the following paragraphs:

"The Assembly recalls that since 1993 it has had a procedure for monitoring the obligations and commitments made by the member States upon their accession to the Council of Europe, the implementation of which is the responsibility of the Monitoring Committee. All member States can be submitted to this procedure. Furthermore, when closing a monitoring procedure, a post-monitoring dialogue is carried out with the State concerned. This procedure allows for the examination of questions relating to the

functioning of democratic institutions in the member States. Lastly, it ensures compliance with the obligations entered into by member States which are not the subject of specific monitoring procedures through periodic review reports carried out on a country-by-country basis. The Assembly invites the European Union to refer to the work of the Monitoring Committee as necessary."

Amendment 10

Tabled by Mr Tiny KOX, Mr Andreas NICK, Ms Stella KYRIAKIDES, Ms Ria OOMEN-RUIJTEN, Mr Andrej HUNKO

In the draft resolution, after paragraph 7, insert the following paragraph:

"The Assembly should ensure that its own relevant work is also a source of reference for the European Union in the framework of its various existing Rule of Law procedures or initiatives, including the work of the Assembly's Monitoring Committee and also relevant work by its general committees, in particular country specific findings and recommendations in country specific thematic reports and resolutions."

8. The Assembly recognises that the co-operation established between the Council of Europe and the European Union institutions and agencies, in particular the Fundamental Rights Agency, has been positive and has strengthened the European framework for the promotion of fundamental rights and the mutual trust on which co-operation between European States is based.
9. In response to increased concerns within the European Union over the democratic deficit in relation to several of its member States, various European Union rule of law monitoring and enforcement mechanisms have been established, involving different European Union institutions and based on different paradigms, differing in their nature and their coercive effects.
10. In reaction to previous initiatives of the European Union to set up mechanisms for monitoring respect for the rule of law or human rights, the Assembly has often expressed reservations and highlighted the risks of creating double mechanisms, double standards, fragmentation or inconsistency of applicable standards and "forum shopping", as well as the risk of wasting limited budgetary resources where such a mechanism already existed within the framework of the Council of Europe. It therefore considers it essential to maintain the primacy of the Council of Europe in the assessment of the respect by

Amendment 6

Tabled by the Committee on Legal Affairs and Human Rights

In the draft resolution, paragraph 9, replace the words "various European Union rule of law monitoring and enforcement mechanisms have been established", with the following words: "some European Union rule of law monitoring mechanisms have been triggered and other initiatives aimed at monitoring respect for the rule of law have been taken".

European Union member States, as well as non-European Union member States, of the common fundamental values.

11. The Assembly also recalls that the current enforcement and monitoring procedures aimed at upholding the values of human rights, the rule of law and democracy, set up by the Council of Europe or the European Union, rely on co-operation with national authorities and institutions. The Assembly therefore expresses concern that, if taken from the perspective of national authorities, the multiple recommendations produced by the various European bodies may result in institutional fatigue and compromise the ability to develop a sound public policy.
12. The Assembly considers that a sound political commitment has been expressed by the Council of Europe and the European Union to making more effective use of existing standards and procedures in order to create an enabling environment for the effective realisation of human rights and the freedoms of citizens. The Assembly believes, however, that a number of practical arrangements could usefully reinforce the above political commitments, clarify and optimise their respective roles and missions and, at the same time, remove or minimise the risk in the long term of double standards and duplication of mechanisms or action undertaken.
13. Therefore, the Assembly invites the European Union, in the framework of its existing procedures and its initiatives to ensure compliance with the values guaranteed in Article 2 of the Treaty on European Union, to:
 - 13.1. support the effective implementation of benchmarks at European level, using the Council of Europe's "rule of law standards", including the case law of the European Court of Human Rights, relevant recommendations of the Committee of Ministers, standards and opinions of the Venice Commission (including the "Rule of Law Checklist") and opinions and/or conclusions of the relevant Council of Europe advisory or monitoring bodies;
 - 13.2. use the available reports, opinions or recommendations of the Council of Europe's advisory or monitoring bodies, not only citing them as references in the documents produced by the European Union bodies, but taking into account the final conclusions of these bodies in the assessment by the institutions of the European Union to determine whether rule of law issues arise, as well as to guide proposals for any action to be taken;
 - 13.3. when assessing whether the rule of law deficiency has been remedied or has ceased to exist, liaise with the relevant Council of Europe bodies which issued the opinion or the recommendation to ensure consistency of views and conclusions. The initiative for political action in the event of alleged non-compliance with the European Union legal framework would remain with the European Union, with the Council of Europe offering legal and technical assessment in compliance with its monitoring or advisory bodies' competences;

Amendment 7
Tabled by the Committee on Legal Affairs
and Human Rights

In the draft resolution, at the end of paragraph 12, insert the following sentence: "It recalls, in line with its previous recommendations, that unnecessary duplication of work in the field of human rights, the rule of law and democracy shall be avoided."

Amendment 8
Tabled by the Committee on Legal Affairs
and Human Rights

In the draft resolution, paragraph 13.1, replace the words: "opinions and/or conclusions of the relevant Council of Europe advisory or monitoring bodies" with the following words: "recommendations, opinions and/or conclusions of other relevant Council of Europe bodies".

- 13.4. provide for safeguards in any mechanism of the European Union, to ensure that the assessment or action of the European Union will not affect existing procedures arising from Council of Europe advisory or monitoring mechanisms, along similar lines to Article 53 of the Charter of Fundamental Rights of the European Union.
14. The Assembly welcomes the increased participation of the European Union in the work of a number of Council of Europe bodies, which contributes to strengthening consistency in the respective organisations' approaches in the fields addressed and in relation to the countries concerned. This sound co-operation must continue without necessarily leading to formal institutional arrangements. However, in a number of cases, establishing a formal basis would not only help to reinforce the concept of shared values in the field of human rights, the rule of law and democracy, but would also avoid the risk of fragmentation and dividing lines in the application of standards in Europe.
15. Therefore, with a view to developing the European Union's participation in the Council of Europe's monitoring bodies, the Assembly calls on the European Union to:
 - 15.1. resume the negotiation process of accession to the European Convention on Human Rights in order to ensure the convergence of human rights standards all over Europe;
 - 15.2. accede to the Criminal Law Convention on Corruption (ETS No. 173) and speed up the negotiations on its participation in GRECO, with a view to contributing to more co-ordinated anti-graft policies in Europe.
16. In addition, the Resolution of the European Parliament on a European Union mechanism for democracy, rule of law and fundamental rights gives national parliaments an important role in the envisaged mechanism and calls for a reinforced interparliamentary dialogue between the European Parliament and national parliaments. Like the European Parliament, the Assembly is convinced that national parliaments are, upstream, well-positioned to identify shortcomings and frame indicators to measure compliance with the shared values. However, it also considers that, downstream, the lack of information in national parliaments on recommendations made by the various European institutions in the context of rule of law compliance mechanisms is detrimental to the consolidation of the system of protection of human rights and the rule of law in Europe.
17. The Assembly considers that, as a pan-European forum for interparliamentary dialogue whose adopted texts provide guidance to national governments and parliaments on the standards to be promoted in Europe, it could be the privileged place for regular interaction between the European Union institutions and the national parliamentary delegations which sit in the Assembly. Thus, it stands ready to hold an annual parliamentary debate on the rule of law, which would provide a timely

Amendment 1

Tabled by Mr Andrej HUNKO, Mr Michel BRANDT, Mr George LOUCAIDES, Ms Felekna UCA, Ms Ioanneta KAVVADIA, Ms Elissavet SKOUFA, Ms Nina KASIMATI

In the draft resolution, before paragraph 16, insert the following paragraph:

"Furthermore, with a view to the accession of the European Union to the European Social Charter (revised) (ETS NO. 163) that has been repeatedly called for by the European Parliament, the Assembly calls on the European Union to increase the convergence of European Union law with the European Social Charter and calls on the member States to introduce an accession clause into the European Social Charter to allow for the accession by the European Union."

opportunity to bring European decision-makers and monitoring bodies closer to national parliaments.

18. Therefore, the Assembly decides to invite the European Union to co-operate on establishing an annual parliamentary debate on the rule of law, using the Parliamentary Assembly platform to:
 - 18.1. better inform national parliaments about the conclusions and recommendations of the various reports on member States' compliance with the standards of human rights, the rule of law and democracy produced by the Council of Europe and the European Union, and by doing so to contribute to converting recommendations, advice and conclusions into national compliance policies;
 - 18.2. enable national parliaments to inform the European institutions about their priority issues;
 - 18.3. help to create a common feeling that a country's situation is not unique and that the same problems are shared by others.
19. The Assembly calls on the European Parliament to reinforce their mutual co-operation in order to further strengthen the parliamentary dimension of rule of law-related matters.
20. Finally, the development of European Union rule of law mechanisms, ongoing initiatives and their implications for the Council of Europe deserve further analysis and reflection at the level of the Assembly itself with regard to the potential impact on its own mode of operation in terms of compatibility with its own procedure for monitoring the obligations and commitments entered into by the member States.

B. Draft Recommendation

1. The Parliamentary Assembly, referring to its Resolution ... (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 of 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, based on enhanced partnership and complementarity and 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 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 complementary 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, on the basis of standards common to both organisations, 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, since 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. In so far 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

Amendment 9 Tabled by the Committee on Legal Affairs and Human Rights

In the draft recommendation, paragraph 5, fourth sentence, delete the words: ", on the basis of standards common to both organisations,".

by the chairmanship of the Committee of Ministers and the Secretary General of the Organisation, no longer makes itself 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.

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, and the complementarity and efficiency of mechanisms in upholding the shared values of human rights, democracy and the rule of law which exist at the level of both 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, 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.