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

**Reply to Recommendation**[1]: Recommendation 2151 (2019)
Committee of Ministers

1. The Committee of Ministers has taken note with interest of Parliamentary Assembly Recommendation 2151 (2019) entitled "Establishment of a European Union mechanism on democracy, the rule of law and fundamental rights", which it forwarded to the European Commission for Democracy through Law (Venice Commission) and to the Group of States against Corruption (GRECO) for information and possible comments.

2. The Committee of Ministers underlines, in general, the importance of ensuring coherence and complementarity between the pan-European Council of Europe and the European Union, as provided for in the 2007 Memorandum of Understanding (MoU) between the Council of Europe and the European Union. This Memorandum of Understanding, which continues to guide the co-operation between the two organisations, also provides that "the European Union regards the Council of Europe as the Europe-wide reference source for human rights" and that "the Council of Europe will remain the benchmark for human rights, the rule of law and democracy in Europe".

3. The Committee of Ministers recalls that the issue of co-operation between the Council of Europe and the EU in the context of EU rule of law initiatives has been regularly addressed in the annual reports on co-operation between the Council of Europe and the EU submitted to the annual Session of the Committee of Ministers. It allows the Committee of Ministers to 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 MoU.

4. At its 129th Session held in Helsinki on 17 May 2019, the Committee of Ministers took note with satisfaction of the development in the co-operation between the Council of Europe and the European Union and welcomed in particular the enhancement of programmatic co-operation on rule of law-related issues and the shared commitment to effective multilateralism. The Committee of Ministers also expressed its determination to further strengthen co-operation between the Council of Europe and the European Union, in accordance with the Memorandum of Understanding, in order to better protect and promote human rights, democracy and the rule of law in Europe.[2]

5. As to developing further the institutionalised co-operation between the two organisations, the Committee of Ministers recalls that, in practice, co-operation between the Council of Europe and the European Union has developed through political dialogue, legal co-operation and joint co-operation programmes. As indicated in the report submitted to the Helsinki Ministerial Session in May 2019,[3] as concerns developments in EU member States, co-operation has increased in the context of rule of law initiatives and assessments from the EU institutions, notably the European Commission's "Framework to

1. Adopted at the 1363rd meeting of the Ministers' Deputies (11 December 2019).
2. See 129th Session of the Committee of Ministers (Helsinki, 17 May 2019) – 4. Co-operation between the Council of Europe and the European Union https://search.coe.int/cm/pages/result_details.aspx?ObjectId=0900001680947866.
3. 129th Session of the Committee of Ministers (Helsinki, 16-17 May 2019) – Summary report on co-operation between the Council of Europe and the European Union https://search.coe.int/cm/pages/result_details.aspx?ObjectId=0900001680943482.

strengthen the Rule of Law" and the annual rule of law dialogue in the Council of the EU (General Affairs).[4] In 2018, such a dialogue was devoted to the topic "Trust in public institutions and the rule of law" and the Council of Europe was invited to take an active part in the preparatory discussions of the dialogue. The Council of Europe has continued to provide a valuable input in view of its well-established experience in this field, in particular through the case law of the European Court of Human Rights, the expertise provided by the Venice Commission,[5] GRECO, the European Commission for the Efficiency of Justice (CEPEJ), MONEYVAL, the Consultative Councils of European Judges (CCJE) and of European Prosecutors (CCPE), as well as directly through co-operation projects. The report also notes that "contacts between EU institutions and Council of Europe bodies, in particular monitoring and advisory bodies, have intensified. The latter, as well as the outcomes of their monitoring proceedings, have also been regularly referred to by EU institutions, confirming the benchmarking role of the Council of Europe and its unique expertise. In addition, CEPEJ has continued to provide data on the functioning of judicial systems in the 28 EU member States for the European Commission's annual "Justice Scoreboard". This exemplary co-operation is based on a multi-year contract between the European Commission and the Council of Europe (renewed in 2017 for a four-year period). Such an arrangement avoids duplication, confirms CEPEJ's status as a common reference point for justice evaluation and increases its visibility, as well as that of the Council of Europe."

6. In this context, the Committee of Ministers recalls its decision of 10 July 2019 to grant the EU observer status with the GRECO and notes that the vast majority of EU member States favours the EU's full membership of GRECO. In addition, on 24 July 2019, the Council of Europe and the European Commission signed a contract for using the Council of Europe's undeniable expertise to assess the concrete implementation and effective application of the 4th Anti-money Laundering Directive in the EU member States.[6] The Committee of Ministers considers that these two developments should further facilitate co-operation in the context of EU rule of law initiatives. It recalls that the EU could also consider becoming a Party to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198), signed by the EU on 2 April 2009, to strengthen the coherence of common action against money laundering and terrorist financing even more.

7. The Committee of Ministers underlines the need to ensure coherence of the human rights protection system in Europe in the context of EU rule of law initiatives and recalls that existing technical consultation mechanisms offer an appropriate co-ordination framework to address this issue. It has been, for example, on the agenda of the annual Senior Officials' meetings, designed for planning and co-ordinating co-operation at the technical level. This annual meeting allows them to keep co-operation under review and make proposals for further action. Senior Officials also act as focal points in this respect. In addition, the Council of Europe Secretariat regularly meets the representative of the EU Council Presidency through the chair of its competent Committee ("CATS").[7] Such meetings take place during each EU Presidency, i.e. twice a year.[8] At these meetings, discussions towards the harmonious development of standard-setting and policies on legal issues and strategic topics, such as rule of law-related issues, are taking place. Council of Europe/CATS consultation meeting reports are examined by the Committee of Ministers' Rapporteur Group on External Relations (GR-EXT).

8. The Committee of Ministers notes that the communication of the European Commission of 17 July 2019[9] makes prominent references to the Council of Europe. In particular, the European Commission intends to "strengthen co-operation" with the Council of Europe and "explore further support to [the Council of Europe] in relation to EU priorities on the rule of law". There is also a will to "increase EU participation in the Council of

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4. The initiative of the Council of the EU on ensuring respect for the rule of law and establishing a dialogue among all member States within the Council to promote and safeguard the rule of law (Conclusions of the Council of the EU and the member States, meeting within the Council on ensuring respect for the rule of law, document 17014/14, 16 December 2014).

5. See the "Check list on the Rule of Law", adopted by the Venice Commission on 11-12 March 2016, formally endorsed by the Committee of Ministers in September 2016 and by the Parliamentary Assembly in October 2017 (Resolution 2187 (2017)).

6. See CM/Del/Dec(2019)1339/10.6 Co-operation with the European Commission in assessing the implementation and effective application of the 4th Anti-money Laundering Directive (EU) 2015/849, 6 March 2019. https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680933f76

7. EU "Committee of Article Thirty-Six", the "CATS", is a committee of member States' representatives provided for in former Article 36 of the Treaty on the EU, the role of which is to co-ordinate the competent working groups in the field of police and judicial co-operation in criminal matters.

8. Meetings between the CoE Secretariat and the CATS (Presidency, future Presidency, the General Secretariat of the Council, the European Commission and EEAS). See meeting reports on DER website: https://www.coe.int/en/web/der/european-union-documents

9. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019DC0343&from=EN

Europe bodies, making co-operation at service level stronger and more systematic". The communication acknowledges that "the institutional and political responsibilities of both institutions" has to be "full[y] respected". The Communication also refers to the EU obligation to accede to the European Convention on Human Rights (ECHR).

9. The Committee of Ministers considers that implications of the above-mentioned developments would be of a political, legal and financial nature and will require further reflections and exchanges in due time. The Committee of Ministers will meanwhile continue to follow this question closely.

10. Recalling the benchmarking role of the Council of Europe in the field of human rights, rule of law and democracy in Europe, the Committee of Ministers welcomes the intention of the Secretary General to deepen co-operation with the EU and to consider EU accession to the ECHR as one of the highest priorities. In this respect, the Committee of Ministers takes note of the letter from Mr Jean-Claude Juncker, President of the European Commission, and Mr Frans Timmermans, First Vice-President of the European Commission, addressed to the Secretary General of the Council of Europe on 31 October 2019, informing her about the readiness of the European Union to resume the negotiations on its accession to the ECHR. EU accession to the ECHR would reinforce our common values, improve the effectiveness of EU law and enhance the coherence of fundamental rights' protection in Europe.

11. The Committee of Ministers considers that the Council of Europe Liaison Office in Brussels and the EU Delegation in Strasbourg have significantly contributed to the developments of the partnership at all levels and shall continue to play a key role in reinforcing the dynamics of co-operation and its visibility.