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## Swedish Presidency of the European Union

**Human Dimension Implementation Meeting  
Warsaw, 28 September 2009**

### **EU Statement, Working Session 1: Rule of Law I**

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Mr/Ms Moderator,

As illustrated by the 1992 Treaty on European Union and the 2000 EU's Charter of Fundamental Rights, the principles of democracy, rule of law and Human Rights are core to the European Union, its institutions and Member States. Principles, however, remain in vain as long as they are not put into practice. And while principles are timeless, their application must be in line with the needs of an ever evolving democratic society. It is a work in perpetuum mobile and this is why the EU is convinced that meetings such as these or the seminar organized in May serve to put the finger on democracy's pulse in the OSCE area, guided by our dialogue with civil society and in keeping with commitments made by all 56 participating states present today.

As much as democracies progress, they are equally faced with challenges that may undermine their founding principles. The rule of law serves as a lifeline of democracy and, as such, any threats to its basic components such as the independence and transparency of

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*Postal address*  
Obere Donaustrasse 49-51  
1020 Vienna, Austria

*Telephone*  
+43 (0) 1 217 53 0

*E-mail:* osse-del.wien@foreign.ministry.se  
euoffice@osce.org

*Visitor's address*  
Obere Donaustrasse 49-51  
1020 Vienna, Austria

*Fax*  
+43 (0) 1 217 53 380

the judiciary must be countered. The EU wishes today to highlight a few of these challenges:

- **A)** Access to justice must be facilitated to a maximum, both in terms of offering the possibility of legal redress, as well as with regards to inclusion of the stakeholders throughout the proceedings. No access to an otherwise efficiently functioning justice is useless;
- **B)** There must be an absolute respect for the 'Trias Politica'. In particular, the link between the executive and the judiciary either makes or breaks public confidence in the rule of law, the separation of powers, and its system of checks and balances. If these principles are not upheld we risk sliding into a system of 'judgment on command'. In so far as justice must not only be done, but also be seen to be done, the EU wishes to stress that this also applies to the nature and image of the judicial decision. Moreover, in so far as the citizen has an obligation towards society to abide by a judgment, politicians and judges have an obligation towards the citizen to deliver respectively objective judicial procedures and objective judicial decisions;
- **C)** The integrity of the judicial bodies must be pristine. This requires investment in training of judges, ensuring the highest of qualities and standards in the recruitment and appointment of judges, and a fair system of checks on the judicial branch that also allows an effective legal redress for judges whose integrity or independence is put into question. As much as judges make the law they are also part of it. The law must therefore also work on their behalf. In this sense corruption undermines the pillars of justice and must be rigorously eradicated

- **D)** The majority of individual rights vis-à-vis public authority are not primarily challenged in contact with the judicial system, but inside the public administration. The rule of law is just as vital throughout the administration, in any situation where the individual seeks to exercise his or her rights. The rule of law is by no means an exclusive privilege of the judiciary.

Not only an independent and transparent judiciary safeguards the rule of law, the very essence of the principles of justice and accountability requires judicial proceedings to be fair, timely and thus effective:

- Firstly, a citizen seeking justice or a society seeking justice against a citizen must be guided by the principles of a fair trial. As an illustration of its will to put its commitments into practice, the EU, in this regard, has agreed to follow a step by step approach for the approximation of the procedural rights in criminal proceedings.
- Secondly, the relationship between justice and time is a challenge in all its dimensions. A judgment rendered outside a reasonable time entails a cost for society both in terms of confidence and usefulness of seeking legal redress. Likewise, a judgment rendered within a reasonable time but executed without regard for time-related interests denies its execution as an inherent aspect of the judgment and thereby deprives the law of its essence of delivering justice. The new Council of Europe working group on justice within a reasonable time provides ample opportunity to tackle this delicate question;
- Thirdly, an effective justice is also a justice which is given the means to exercise its role. In as much as the system of checks and balances prohibits interference in the actual

judicial motion it requires a commitment from the executive and legislative branches to provide the resources to set justice in motion.

- Fourthly, violations of these principles are always possible, including in states with an effective rule of law, but these states have at their disposal the necessary legal mechanisms to address and to sanction these violations.

Such are some of the challenges all of us face in our internal functioning. However, in an era where international law flourishes as globalization requires ever more transnational cooperation and regulation, the adherence to an effective implementation of international law also remains of some concern. Putting into practice the rule of law in today's society has become both more refined and complex. This increases the prevalence of implementation of international law both within a State's jurisdiction, as well as with regards to a State's presence on the global scene.

Along the same line, respect for the rule of law excludes that international crises, may they be economical or political, are dealt with outside the existing framework of international law. Without, there can be no actual and effective resolution of an international dispute. Neither the international financial crisis nor the struggle against terrorism can justify a weakening of any human rights standards. Without this commitment the law is stripped of its role as safeguard of a sound functioning democracy and is reduced to a mere tool to be applied 'à la carte'.

Finally, with Decision No. 7/08 'Further strengthening the Rule of Law in the OSCE area' the Helsinki Ministerial Council has sent an

important signal. The EU considers of paramount importance this contribution to accentuating the presence of the topic of rule of law on the political agenda as well as the incentive this Decision generates to stimulate participating States and the OSCE executive structures to continue their efforts in the strengthening and implementation of the rule of law. The EU also welcomes ODIHR's immediate response to this Decision by means of the recent Human Dimension Seminar with a special focus on the effective administration of justice. Also recently, at the 29<sup>th</sup> Conference of the Council of Europe the ministers of Justice adopted Resolution n°3 on Council of Europe action to promote the rule of law. This resolution pleads for a further reinforcement of the rule of law activities of the Council of Europe, including greater synergies with other international organizations such as the OSCE, the EU and the UN. In light of these recent events, the current HDIM Meeting provides plenty occasion to continue our reflection on this topic.

The Candidate Countries Turkey, Croatia and the former Yugoslav Republic of Macedonia\*, the Countries of the Stabilisation and Association Process and potential candidates Albania, Bosnia and Herzegovina, Montenegro and Serbia, EFTA countries Liechtenstein and Norway, members of the European Economic Area, as well as Ukraine, the Republic of Moldova, Armenia and Georgia align themselves with this statement.

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\* Croatia and the former Yugoslav Republic of Macedonia continue to be part of the Stabilisation and Association Process.