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EUROPEAN UNION

**OSCE Review Conference
Warsaw, 4 October 2010**

EU Statement – Session 4: Rule of Law I

Dear Mr. Moderator

I am honoured to speak on behalf of the European Union.

The centuries-old idea of the rule of law is based on the understanding that laws should restrain the arbitrary behaviour of the state and its actors, and that people should be protected from the abuse of power either by individuals or by the state. It guarantees the fostering and promotion of civil, political, social and cultural rights by providing adequate means for individual citizens to defend them.

The rule of law is one of the key elements upon which the EU is founded, as illustrated in the Treaty on European Union and the Charter of Fundamental Rights of the European Union, and is one of the fundamental aspects of our common foreign and security policy. Strengthening the rule

of law in third countries through various EU programmes¹ has proven to be an effective means of protecting human rights and democracy worldwide.

OSCE participating States should have sufficient legal and structural institutions allowing for judicial independence. Its importance extends beyond the political. Individuals and institutions must be able to rely on a predictable justice, free of any influence in the adjudication of their claims. The confidence that court decisions will be fair and timely contributes to the security and predictability of economic transactions. Support for individual independence and impartiality of judges can contribute to extending the rule of law further in the OSCE area. Some of the practical safeguards to achieve it include the terms of appointment, the specialization of judges, the need for guaranteed tenure, the requirement of efficiency, fair and independent disciplinary proceedings, the duty of our States to provide adequate resources as salaries and training to promote and facilitate the judiciary's freedom of expression and association.

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.

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

¹ including the European Neighbourhood Policy, Partnership and Cooperation Agreements, Human Rights Dialogues and regional strategies

stakeholders throughout the proceedings. No access to an otherwise efficiently functioning justice is useless.

Moreover, the EU believes that transparency is vital for the improvement of justice administration and enforcement of judicial decisions. The appointment procedure, the decision making process, the publication of judgements and many other aspects should all be subject to public scrutiny.

There must be an absolute respect for the separation of powers. The link between the executive and the judiciary either makes or breaks public confidence in the rule of law and the system of checks and balances. 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. Unfortunately, a culture of political subordination of judges to politicians is still prevalent in some participating States, as reflected in the appointment system of judges, the lack of enforcement of rulings, etc.

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 must be rigorously eradicated.

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. 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 not duly executed on time deprives the law of its essence of delivering justice.

The OSCE standards in the matter have been stated in many occasions. Participating States have expressed their determination to reinforce judicial independence and the right to a fair trial in their internal judicial systems. In this regard, mention should be made of OSCE commitments relating to the right to a fair trial in Vienna (1989), in Copenhagen (1990) as well as to the independence of the judiciary (Moscow, 1991), where they declared that they will respect internationally recognized standards relating to the independence of judges and legal practitioners and the impartial operation of the public judicial service, including, inter alia, the universal declaration on human rights and the international covenant on civil and political rights.

Legislative transparency and efficiency is also a central element of genuine democratic governance. This issue is covered by the OSCE political commitments dealing with the transparency and inclusiveness of the law-making process. In accordance with the 1990 Copenhagen Document and the 1991 Moscow Document, legislation should be formulated and adopted as a result of an open process and public procedure reflecting the will of the people, either directly or through their elected representatives. Such

legislation should be published, which should be the condition for its applicability, and furthermore, the texts should be accessible to everyone.

The EU attaches great importance to transparent and inclusive legislative processes. In order for the adopted law to correspond to democratic values, the legislature should in the process of law-making consult with non-governmental organizations and other segments of civil society, in particular those affected by the legislation. In this way the legislative proposals become more acceptable to the public and may also in many cases result in better quality. Legislation is thus more likely to be properly implemented if it has been adopted as a result of such participatory process. The EU therefore encourages the participating States to improve access to the legislative process and furthermore, for the sake of transparency, to make all legislation accessible to its citizens.

Thank you for your attention

The candidate countries TURKEY, CROATIA*, the FORMER YUGOSLAV REPUBLIC OF MACEDONIA* and ICELAND**, the countries of the Stabilisation and Association Process and potential candidate countries ALBANIA, BOSNIA AND HERZEGOVINA, MONTENEGRO and SERBIA, the European Free Trade Association countries and members of the European Economic Area LIECHTENSTEIN and NORWAY, as well as UKRAINE, the REPUBLIC OF MOLDOVA, ARMENIA, GEORGIA, ANDORRA and SAN MARINO align themselves with this statement.

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

** Iceland continues to be a member of the EFTA and the European Economic Area.