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EU Statement for the Working Session 8:

Rule of Law I

28th September, Warsaw

Mr Chairman, Excellencies, Ladies and Gentlemen,

In today's world the effective judiciary and the rule of law are emerging as the cornerstones of building peace and democracy. The centuries-old idea of the rule of law is based on the understanding that laws should restrain the state and its actors, and that people should be protected from the abuse of power either by individuals or by the state. This is an essential precondition for political, social and economic development of society. The separation of powers and the democratic law-making are the new topics on the HDIM agenda. The EU welcomes the opportunity provided by this session to exchange information and to discuss these two issues, especially since they are the facilitators of the rule of law as well as guarantors of human rights, fundamental freedoms and democratic institutions.

The concept of the separation of powers and its corresponding system of checks and balances are *inter alia* essential elements of the democratic order, to which in accordance with the 1990 Charter of Paris for a new Europe all Participating States are committed to. In the time of Charles Montesquieu and the French Revolution the standards of the separation of powers and checks and balances between the legislative, executive, and judicial branches emerged as essential safeguards against the abuse of power and concentration of excessive power in any branch of the government, especially in the executive branch. The two principles are nowadays concretized in provisions on the state organization and its highest bodies. They provide a relative independence of each of the

three branches as well as a mechanism of checks and balances that makes it possible to exercise mutual control between them. The EU encourages the Participating States to provide for such constitutional and legal frameworks which would prevent over-concentration of powers, especially in the executive branch, and grant the legislator the authority to effectively represent its citizens. This can be achieved by ensuring free and democratic elections by universal suffrage, effective and democratic representation, sufficient freedom of national legislatures in their own proceedings and their possibility to oversight responsibilities of the executive branch. Independence of the judicial system is another fundamental element of the separation of powers, but since this topic is addressed separately in session 13 of this meeting, the EU will address it at a later stage.

Mr Chairman,

Allow me now to turn to the second topic of today's session. Legislative transparency and efficiency is another central element of genuine democratic governance. The democratic law-making is an issue 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 public access to legislation and furthermore, for the sake of transparency, to make all legislation accessible to its citizens.

One of the preconditions for democratic law-making is the full enjoyment of human rights and fundamental freedoms as defined in the OSCE human dimension commitments and the international law. In this context, the fundamental rights to freedom of assembly, association and expression are of crucial importance. In practical terms, they include, *inter alia*, the right to articulate political and other views in an open and permissive environment.

Mr Chairman, allow me to underline the EU's concern in respect of the threat posed by the restrictive legislation throughout the OSCE region on these freedoms, where the governments directly or indirectly discourage the public at large from exercising them. It is the EU's strong belief that the civil society cannot adequately participate in the law-making process if these freedoms are impaired. Just so, effective participation and representation in democratic societies require a climate in which civil society can thrive and be an integral part of the political process. Non-governmental organizations and individuals should enjoy the right to articulate their views and engage in both political and law-making processes freely and without fear of reprisal or repression.

Nevertheless, the issue of democratic law-making should be tackled from a broader perspective, also by establishing adequate and clearly defined procedural frameworks in the making of the legislation. The legislation should be prepared as a result of a foreseen and coordinated process of preparation, consultation and consideration. The ODIHR, in cooperation with the EU, has started upon the request of several Participating States to conduct surveys of their legislative process, for example in Georgia, former Yugoslav Republic of Macedonia, Ukraine, Moldova and Armenia. The EU encourages ODIHR to carry on this work and invites Participating States to refer to ODIHR more frequently. The EU believes that the efficiency of the law-making process can be enhanced by developing clearly defined rules concerning the passage of legislation that corresponds to the need for transparency and inclusiveness of this process. It is important to understand that legislative drafting should be done by experts with adequate experience and training.

Mr Chairman, the EU would like to conclude by emphasizing that although a democratically elected government should be granted the means of realizing its mandate and implementing policies, this should not prevent it from ensuring a transparent and inclusive law-making process. The concept of the separation of powers with its system of

checks and balances creates a fundamental framework for democratic decision-making and furthermore sets the stage for a public debate on policy issues. The promotion and development of the rule of law is a precondition for human rights to be respected, democratic institutions established and cultural heritage preserved.

Thank you, Mr Chairman.

The Candidate Countries Turkey, Croatia and the former Yugoslav Republic of Macedonia*, the Countries of the Stabilisation and Association Process Albania, Bosnia and Herzegovina, Montenegro and Serbia, EFTA country Norway, member of the European Economic Area, as well as Ukraine and the Republic of Moldova align themselves with this statement.

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