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NOTE

from: General Secretariat of the Council
to: Delegations
Subject : Plenary Session of the European Parliament, 11 September 2012
Council and Commission statements - Political situation in Romania

On behalf of the Council, Mr MAVROYIANNIS, Cypriot Deputy Minister for European Affairs, delivered the speech in Annex I.

On behalf of the Commission, Ms REDING, Commissioner in charge of Justice, Fundamental Rights and Citizenship, delivered the speech in Annex II.

Contributions on behalf of the political groups

Mr WEBER (EPP, DE) recalled the irregularities in the removal of the Ombudsman, the impeachment procedure against the Romanian President, which included a referendum whose rules had been changed through emergency legislation for the ongoing procedure, as well as the restriction of powers of the Constitutional Court. He deplored that such events had occurred in an EU MS and criticised the attitude of Prime Minister Ponta, who he said had done nothing to withdraw the illegal emergency legislation as promised to the President of the Commission.

Mr SWOBODA (S&D, AT) totally disagreed with the facts as outlined by Mr WEBER, whom he accused of siding with President BASESCU's political party. He particularly emphasised the fact that Mr BASESCU had been reinstated in spite of the fact that 7.4 million Romanian citizens who had participated in the referendum had voted against him. He added that in such conditions Mr BASESCU could no longer sustain his presidential role of keeping the people united.

Mr WATSON (ALDE, UK) told Commissioner Reding that what had happened in Romania was not in any sense a coup d'état. In his view, the Constitutional Court had declared the procedure for suspending the President to be constitutional and the President himself had accepted the procedure when he went to Parliament to answer questions. In his view, part of the problem was that the European People's Party played fast and loose with the rule of law.

Ms HARMS (Greens, DE) stated her dismay about the terms being used in the discussion, which she described as being beneath EU standards and singly an extension of the electoral campaign. She considered it a very good thing that the Commission had taken a very close look at the situation in Romania.

Mr ANGOURAKIS (GUE/NGL, GUE) considered the whole debate to be unacceptable, since Romanians were absolutely capable of finding a solution to their internal crisis. In his view, the situation in Romania should be considered from the point of view of the austerity measures imposed on the people.

Mr VAN DER STOEP (NI, NL) accused the Commission of interfering with the internal affairs of a Member State and considered that the discussion was intended to provide support for national candidates in the run-up to Romanian elections.

Contributions by individual MEPs

Some 20 individual MEPs who took the floor mainly supported their political group speakers.

There was frequent use of the blue card procedure. While EPP members and S&D MEPs mainly contested the regularity and legality of events, Greens and ALDE MEPs instead discussed the role of the EU institutions and in particular the Commission. Mr PREDĂ (EPP, RO), supported by Ms MATHIEU (EPP, FR), described the events in Romania as a tyranny of the majority, because of the disregard of rules governing the referendum, whereas Mr IVAN (S&D, RO), supported by Mr LÓPEZ AGUILAR (S&D, ES), argued that the Constitutional Court had judged the referendum to be valid and considered that the 50 % quorum had been irregularly introduced. Ms MACOVEI (EPP, RO) criticized fraud in the referendum procedure, whereas Ms CREȚU (S&D, RO) wondered why such alleged irregularities had only been raised 3 weeks after the referendum had taken place.

On the other hand, Mr NICOLAI (ALDE, RO) considered that the Commission had intervened severely in internal Romania affair, Ms SARGENTINI (Greens, NL) expressed her surprise about the debate, as the Copenhagen criteria should also apply after a country had acceded, otherwise the credibility of the EU was at stake (Ms LUNACEK - Greens, AT). Human rights needed to be protected (Mr TAVARES - Greens, PT).

Mr BALDASSARRE (EPP, IT) considered that intervention by the Commission was necessary to bring about a return to the rule of law. He said he did not understand why the debate denied to address the role of the Commission. He was supported by Mr TABAJDI (S&D, HU), who agreed with the criticism expressed by Ms REDING, even if the Commission should also have condemned BĂSESCU.

Ms REDING's closing remarks are attached in Annex III.

Mr MAVROYIANNIS's closing remarks are attached in Annex IV.

Andreas Mavroyiannis, *President-in-Office of the Council*. – Mr President, honourable Members, let me first thank you for your kind comments on the success of the meeting in Paphos. We are looking forward to continuing until the end of the Cyprus Presidency, providing both hospitality for meetings but also substantial meetings that will contribute to moving forward our common European agenda.

Please allow me to begin this debate by stating that the Presidency is well aware of the concerns that have been expressed by many Members of this Parliament at recent political developments in Romania over the last few weeks and months. Given the implications of some of the actions and decisions taken at the highest political level in Romania, it is very understandable that this Parliament has not only followed developments closely, but has also wished to express its profound unease.

Unlike Parliament, the Council has not discussed this issue. You will appreciate that, since as a Presidency I speak on behalf of the Council as a whole, it follows that my contribution to this afternoon's debate will necessarily be limited. I would, however, like to make some more general comments and offer some reflections which are relevant to the wider context. I hope these will also clarify the situation from the point of view of the Council.

Firstly and importantly, I would like to stress one point which is well known to all of us – that the European Union is founded on a number of basic values and principles which are set out in the treaties. These values and principles, which include freedom, democracy and the rule of law, are also enshrined in the constitutional traditions of all Member States.

The Council attaches particular importance to ensuring that these values and principles are fully respected. I know that this House also fully shares that view. However, there has been no suggestion – either within or outside the Council – that any procedure involving the Council linked to the respect for the values on which the European Union is founded, should be invoked in the light of recent events in Romania.

All Member States are required to ensure that their legislation respects the basic values on which the EU is founded. But the rule of law and democratic values have not only to be enshrined in the texts, but also put into practice. That means that the legislation has to be respected and enforced. If there are any concerns or doubts that this is not the case, this is firstly a matter for the Commission. I know that the Commission has raised its concerns in various contacts with different parties within Romania. The undertaking given to the Commission by the Romanian Government to act swiftly to ensure respect for the rule of law and the independence of the judiciary will certainly be welcomed.

On a separate note, and though legally not linked with Schengen accession, I am sure that the Commissioner will wish to say more about the concerns which the Commission raised with the Romanians and which are set out in the Commission's latest report under the Cooperation and Verification Mechanism which it adopted on 18 July. The Council is expected next week to take a view on this report as a whole and recall that the existence of an impartial, independent and effective administrative and judicial system is indispensable for EU policies to function properly and for citizens to benefit from all the opportunities offered by membership of the Union.

I hope you will understand that I am not able at this stage to make a more detailed contribution to this debate, given that the Council has not adopted a position on this issue. I can, however, assure Members that I will listen with particular interest and attention to your comments and reactions to this issue. Let me finish by greeting the presence of Vice-President Reding and the Ministers.

Viviane Reding, Vice-President of the Commission. – Mr President, honourable Members, at the beginning of this summer we witnessed a combination of actions by the Romanian authorities, which called into question the rule of law, democratic checks and balances and the independence of the judiciary. We have built our Europe on judicial independence and on the respect for the rule of law. Those are fundamental values for our Union and the Commission, as guardian of the Treaty, has a duty to see that they are respected by all.

Let me be clear about the nature of the concerns the Commission expressed during the summer. They concerned respect for constitutional norms and judicial independence. They concerned the rule of law, because in Romania laws and emergency decrees were passed against constitutional practice with the aim of reducing democratic checks and balances, notably by imposing sudden limits to the powers of the constitutional court. At the same time, judges and prosecutors were subject to intimidation and pressure by political forces. Let me be very clear on the following: pressure on the judiciary is unacceptable regardless of which side of the political spectrum it comes from. That is why the Commission reacted swiftly and decisively.

On 6 July, in a press release, the Commission expressed concerns about the developments in Romania. On 11 July I met the Romanian Justice Minister in Brussels and President Barroso met Prime Minister Ponta the day after to share the Commission's concerns about the developments in Romania. As a result of our exchanges, the Romanian Government made a number of important commitments in response to the eleven specific points that we had raised. The Romanian authorities addressed some of our concerns and, in particular, restored the constitutional norms, notably in the run-up to the referendum to impeach President Băsescu on 29 July. The referendum, unfortunately, did not bring an end to the political strife.

Following the referendum there was again evidence of pressure on judges and of prosecutors' attempts to influence the circulation of the referendum turnout. President Barroso again set out the Commission's concern in a letter to Prime Minister Ponta on 10 August. In this letter the Commission called upon the Romanian Government to cooperate fully with the constitutional court and to act swiftly and decisively on allegations of intimidation against judges.

Let me also recall that the Venice Commission echoed the Commission's concern. The President of this Venice Commission stated on 7 August and I quote: 'it is a general principle of the rule of law that pressure on any court, whether constitutional or ordinary, in order to influence its decisions, is inadmissible' and he also appealed to 'all state authorities and political parties of Romania to fully respect the independence of the constitutional court and to refrain from exercising pressures'.

On 21 August the decision of the constitutional court to declare invalid the referendum for the impeachment of President Băsescu was respected by all mainstream political forces. This is an important step because it provides an opportunity for the normalisation of political life. In this context the Commission urges all political forces to seize this opportunity.

The Romanian people deserve a political discourse based on policy arguments, not on personal attacks. I hope that the coming weeks and months will show that all political actors in Romania are determined to fully respect the rule of law and the independence of the judiciary in a sustainable and irreversible way.

However, the situation in Romania remains fragile and requires our attention and support. Since Romania's accession to the EU in 2007, the Commission has a particular responsibility – as the Minister has just said – to monitor progress on the rule of law and the judicial independence in Romania under the cooperation and verification mechanism.

The political developments in Romania over the summer were of particular relevance to this monitoring exercise. The Commission therefore set out in detail its concerns in its report on Romania, which was adopted by the Commission on 18 July. Not all concerns and recommendations by the Commission regarding the rule of law and judicial independence have been addressed. The Commission will therefore continue to closely monitor the situation in Romania and maintain close contact with the Romanian authorities.

In the coming days President Barroso and I will be seeing President Băsescu. President Barroso will receive Prime Minister Ponta and I will receive the new Romanian Minister of Justice. Before the end of the year the Commission will prepare a report on Romania within the cooperation and verification mechanism, as announced in July. In this report we will critically assess whether the rule of law and the stability of institutions have been restored in Romania and whether confidence lost over the summer has been regained by the necessary cooperation among all political actors.

I am confident that this Parliament shares the Commission's conviction that the rule of law and judicial independence are at the heart of the European Union and must be respected with impartiality in all 27 EU Member States. That is why the Commission calls on all political forces in this House and outside this House to act with responsibility and restraint in order to contribute to a stabilisation of the political situation in Romania. All political actors will have to contribute to this.

Viviane Reding, Vice-President of the Commission. – Mr President, this is the second time this year that we have had to address a very serious situation concerning the rule of law in one of the Member States of the European Union. After Hungary, Romania. And the debate today, like those we have had in the past on a similar question, was very much led by party political concerns, similar attitudes in similar debates.

The Commission is the guardian of the Treaties and this is why we always need to act with fairness and impartiality. When there is an attack on the rule of law or a breach of EU legislation, irrespective of the political colour of the government, the Commission will remain firm in expressing concerns and taking actions, and this does not apply only now but has also applied in the past.

I still remember a time when I took action on a very similar matter, which was in 2009 when I was Telecoms Commissioner. I started infringement proceedings against Romania to protect the independence of the national telecoms regulator. At that time a right-wing government coalition had introduced emergency legislation to deprive a court ruling of its effect and to remove the president of the national telecoms regulator from office.

It was the same rationale that the Commission followed earlier this year when we brought Hungary to the Court of Justice for violations of the independence of the Hungarian data protection legislation and other infringement procedures.

Of course such legal issues may seem small in the overall context. So what about the big picture? What about the rule of law in general and what about the independence of the judiciary?

I agree with those who asked these questions. Yes, the Commission has to play its role as guardian of the Treaties and it has to go after breaches in EU law by means of infringement proceedings. It is a general principle, and small violations count too. What about the big violations? Here I would to draw two lessons from the recent experiences.

First, of course, we always need to tackle these matters with independence and objectivity. Respect for the rule of law has nothing to do with the political party in power. For President Barroso and for myself, this has been very important throughout these processes. Lady Justice is blind. She does not recognise party political colours. She only reacts to the rule of law which is in danger.

Secondly, we can see very well by these very concrete examples that we have experienced this year that we lack effective mechanisms in the EU to enforce respect for the rule of law more generally and more systematically.

Today everybody mentions the situation in Hungary and Romania. Are we sure that we will not see such a situation again in a couple of weeks in another EU country? Now let us be honest – and some of the parliamentarians have said it very clearly – we face a Copenhagen dilemma. We are very strict on the Copenhagen criteria, notably on the rule of law in the accession process of a new Member State but, once this Member State has joined the European Union, we appear not to have any instrument to see whether the rule of law and the independence of the judiciary still command respect.

We as a European Union need to stand firm on our values and on the rule of law, and that is why I think that we need to put in place an objective mechanism to assess the judicial systems in all of our 27 Member States, because our infringement procedures are too technical and too slow to react to high-risk situations concerning the rule of law, and because the Article 7 procedure is a nuclear option that should only be used by the Commission, Parliament and the Council when there is really no other solution.

But what do we have in between? I would therefore like to work with the European Parliament and with the justice ministers of all Member States on a new intermediate and more focused mechanism. I propose to add to the economic and social benchmark in the European Semester a new mechanism for measuring, comparing and benchmarking the strength, efficiency and reliability of the justice systems in all Member States.

(Applause)

So my experts are at this moment developing for the European Semester a justice scoreboard that will allow a detailed assessment of the justice systems of all Member States, their strengths and their weaknesses and I am going to start a discussion with Parliament and with the justice ministers in the coming weeks.

We Europeans have built a Community based on the rule of law – *Rechtsgemeinschaft* as the Germans say – and we therefore cannot allow the rule of law to become an object of any party political game. We need a strong, reliable rule of law in all 27 Member States of the Union and I count on this Parliament to strongly support the European Commission in this endeavour.

(Applause)

Andreas Mavroyiannis, *President-in-Office of the Council*. – Mr President, honourable Members, as I promised I would at the outset, I have followed this debate closely and listened with interest to your remarks. I fully understand the unease with which this Parliament has followed developments in Romania over the summer. I have taken good note of all the criticisms I have heard in the course of the debate and I will, of course, convey all of them and all your comments to the Council.

As the Presidency representative, I speak on behalf of the Council as a whole and must therefore reflect the position of the Council, and that applies in particular when we are addressing the situation in any one Member State. It is particularly important however that this Parliament also has the opportunity to make its views known and I therefore welcome the possibility of hearing your views at first hand. Let me conclude by reminding you that – irrespective of the merits of the contradictory arguments aired here – the quintessence of democracy, stemming directly from Socrates in ancient Athens, is that you do not change the rules governing the operation of the democratic system for reasons of political expediency.