



Doc. ...

5 March 2020

Modification of the Assembly's Rules of Procedure - Follow-up to Resolution 2319 (2020) of the Assembly on a Complementary joint procedure between the Committee of Ministers and the Parliamentary Assembly in response to a serious violation by a member State of its statutory obligations

Report¹

Committee on Rules of Procedure, Immunities and Institutional Affairs

Rapporteur: Sir Edward Leigh, United Kingdom, European Conservatives Group & Democratic Alliance

Summary

By adopting Resolution 2319 (2020), the Parliamentary Assembly decided to introduce a complementary joint procedure between the Committee of Ministers and the Parliamentary Assembly in response to a serious violation by a member State of its statutory obligations. This report aims to make the necessary changes to the Assembly's Rules of Procedure to enable this procedure to be implemented, as regards the conditions for initiating such a procedure and to establish the conditions for voting on an Assembly decision initiating the procedure.

¹ Reference to committee: Bureau decision, Reference 4492 of 31 January 2020.

A. Draft resolution²

1. At its January 2020 part-session, by adopting Resolution 2319 (2020), the Parliamentary Assembly decided to introduce a complementary joint procedure between the Committee of Ministers and the Parliamentary Assembly in response to a serious violation by a member State of its statutory obligations. This decision completes three years of reflection by the Assembly aimed at intensifying and structuring the political dialogue with the Committee of Ministers and providing for joint action by the two statutory organs of the Council of Europe in order to strengthen the Organisation's ability to react more effectively in situations where a member State violates its statutory obligations or does not respect the fundamental principles and values upheld by the Council of Europe.

2. The Assembly takes note of the Ministers' Deputies' decision of 5 February 2020 to agree on "a complementary procedure for the application of Article 8 of the Statute of the Council of Europe, as a consequence of a serious violation by a member State of fundamental principles and values of the Organisation under Article 3 of the Statute".

3. Consequently, the Assembly decides to amend its Rules of Procedure as follows:

3.1. as regards *the conditions for initiating and dealing with a proposal for a complementary joint procedure between the Committee of Ministers and the Parliamentary Assembly in response to a serious violation by a member State of its statutory obligations*:

3.1.1. in Rule 24.2.c. on motions tabled by members which are published as official documents of the Assembly, complete the footnote by specifying "including motions tabled under Rule 54 and motions for a recommendation to initiate a complementary joint procedure between the Committee of Ministers and the Parliamentary Assembly in the event of a serious violation by a member State of its statutory obligations";

3.1.2. after Rule 25.2 on the tabling of motions for recommendations and resolutions, insert the following new rule: "A motion for recommendation to initiate a complementary joint procedure between the Committee of Ministers and the Parliamentary Assembly in response to a serious violation by a member State of its statutory obligations shall be presented in both official languages and signed by at least one fifth of the component members (representatives and substitutes) of the Assembly, belonging to at least three political groups and fifteen national delegations";

3.1.3. in Rule 25.2, second sentence, add a footnote stating that "This provision shall apply to a motion for dismissal (Rule 54) and to a motion to initiate a complementary joint procedure between the Committee of Ministers and the Parliamentary Assembly in response to a serious violation by a member State of its statutory obligations." ;

3.1.4. in Rule 25.3., add a footnote stating that "A motion for dismissal (Rules 54.2 and 54.3) or a motion to initiate a complementary joint procedure between the Committee of Ministers and the Parliamentary Assembly in response to a serious violation by a member State of its statutory obligations (Rule 25.[3]) shall be published within twenty-four working hours." ;

3.1.5. in Rule 26 on reference to committees, add a footnote stating that: "The provisions of Rules 26.1 and 26.3 shall not apply to a motion for dismissal (Rules 54.2 and 54.3) – which shall be automatically referred to the Committee on Rules of Procedure, Immunities and Institutional Affairs –nor to a motion to initiate a complementary joint procedure between the Committee of Ministers and the Parliamentary Assembly in response to a serious violation by a member State of its statutory obligations (Rule 25.[3]), which shall be automatically referred to the Committee on Political Affairs and Democracy for report.";

3.1.6. in Rule 27.1 on the agenda, add a footnote stating that "The report of the Committee on Political Affairs and Democracy on the initiation of a complementary joint procedure between the Committee of Ministers and the Parliamentary Assembly in response to a serious violation by a member State of its statutory obligations shall also be placed on the agenda.";

² Draft resolution adopted by the committee on 4 March 2020

3.1.7. in Rules 51.1 and 52.1 on urgent procedure in the Assembly and in the Standing Committee, add a footnote stating that: "A motion to initiate a complementary joint procedure between the Committee of Ministers and the Parliamentary Assembly in response to a serious violation by a member State of its statutory obligations cannot be the subject of a request for urgent procedure";

3.2. with regard to establishing *the conditions for voting on an Assembly decision on the initiation of a complementary joint procedure between the Committee of Ministers and the Parliamentary Assembly in response to a serious violation by a member State of its statutory obligations*, insert the following new rule after Rule 41.a:

"[The following majorities are required:] for the adoption of a draft recommendation on the initiation of a complementary joint procedure between the Committee of Ministers and the Parliamentary Assembly in response to a serious violation by a member State of its statutory obligations, a majority of two thirds of the votes cast and a number of votes in favour equivalent to at least one third of the total number of members of the Assembly authorised to vote;"

4. The Assembly decides that the amendments to the Rules of Procedure set out in this resolution shall enter into force upon their adoption.

B. Explanatory memorandum by Sir Edward Leigh, rapporteur

1. Scope of this report

1. By adopting Resolution 2319 (2020), the Parliamentary Assembly decided to introduce a complementary joint procedure between the Committee of Ministers and the Parliamentary Assembly in response to a serious violation by a member State of its statutory obligations. The Assembly was thus completing the reflection process it had begun three years earlier, when it decided to initiate "a procedure aimed at harmonising, jointly with the Committee of Ministers, the rules governing participation and representation of member States in both statutory organs, while fully respecting the autonomy of these bodies" (Resolution 2186 (2017) "Call for a Council of Europe summit to reaffirm European unity and to defend and promote democratic security in Europe"), and then when it considered "the urgent need to develop synergies and provide for joint action by the two statutory organs in order to strengthen the Organisation's ability to react more effectively in situations where a member State violates its statutory obligations or does not respect the fundamental principles and values upheld by the Council of Europe" (Resolution 2277 (2019) "Role and mission of the Parliamentary Assembly: main challenges for the future").

2. Paragraph 10 of Resolution 2319 (2020) states that "Any changes required to implement the present resolution will be introduced into its Rules of Procedure through a subsequent resolution to be adopted on the basis of a report by the Committee on Rules of Procedure, Immunities and Institutional Affairs. The complementary joint procedure will enter into force upon adoption of the latter resolution and a decision by the Committees of Ministers along the same lines."

2. Implementation of Resolution 2319 (2020) on the complementary joint procedure between the Committee of Ministers and the Parliamentary Assembly in response to a serious violation by a member State of its statutory obligations

3. Resolution 2319 (2020) on the complementary joint procedure between the Committee of Ministers and the Parliamentary Assembly in response to a serious violation by a member State of its statutory obligations sets out the basic principles governing this new procedure (paragraph 4), clearly defines the process, step by step (paragraphs 5 to 9) – from the decision to engage, the preparation, adoption and implementation of a roadmap, up to the decision of the Committee of Ministers to act under Article 8 of the Statute of the Council of Europe if the serious violation of Article 3 of the Statute by the State concerned continues to exist – as well as the timetable and deadlines for the actions foreseen for each stage.

4. Following the example of the rules and procedures for the elections of the Secretary General of the Council of Europe – which were the subject of a joint interpretative statement adopted by the Assembly and the Committee of Ministers in the same terms in March 2010 – or the competence framework for the procedure for election of the Deputy Secretary General, also adopted in the same terms by the Assembly and the Committee of Ministers in 2012, the complementary joint procedure between the Assembly and the Committee of Ministers in response to a serious violation by a member State of its statutory obligations has the status of a complementary text. It does not need to be incorporated as such into the body of the Rules of Procedure. This is also the case for a number of other procedures which are the autonomous responsibility of the Assembly, such as the procedure for monitoring the obligations and commitments entered into by Council of Europe member States or the procedure for the election of judges to the European Court of Human Rights.

5. On 5 February 2020, the Ministers' Deputies agreed on "a complementary procedure for the application of Article 8 of the Statute of the Council of Europe, as a consequence of a serious violation by a member State of fundamental principles and values of the Organisation under Article 3 of the Statute".³ It should be noted that this final decision differs significantly from the draft decision of the Ministers' Deputies which the French Presidency of the Committee of Ministers transmitted to the Assembly on 25 November 2019, to which the Assembly, via its Presidential Committee, had agreed in principle, and which was deemed to "serve as a basis for an agreement with the Assembly".

6. It is difficult not to point out that the "complementary joint procedure" decided on by the Assembly in Resolution 2319 (2020) and the "complementary procedure" agreed on by the Committee of Ministers in its

³ "Complementary procedure between the Committee of Ministers and the Parliamentary Assembly in response to a serious violation by a member State of its statutory obligations", Document CM/Del/Dec(2020)1366/1.7 and appendix

decision of 5 February 2020 diverge both in their title (the Ministers' Deputies did not use the term "joint"), in their basic principles and in their operative provisions, as well as in the timetable, which sets time limits for the various stages, which do not coincide. This is a disappointment, particularly since the Committee of Ministers has chosen not to base its decision on the Assembly Resolution, which it had previously negotiated with over many months. What is to be thought of the Committee of Ministers' decision to incorporate into the "basic principles" of its procedure Amendment 15 tabled by members of the Russian delegation, which had been rejected by the Committee on Political Affairs and Democracy by an overwhelming majority and withdrawn by its signatories in plenary session? One can therefore only wonder about the usefulness of the very many joint meetings and the process of mutual consultation that has taken place over many months, in the framework of the Joint Committee and the meetings between the Bureau of the Committee of Ministers and the Presidential Committee, and regret that the Committee of Ministers could not refrain from seeking to belittle the Assembly's prerogatives. In concrete terms, if such a procedure were to be initiated soon, on what basis would it be implemented in view of the differences in approach? Ultimately, one may question the viability and feasibility of a procedure which the Committee of Ministers did not wish to make fully joint.

7. Although Resolution 2319 (2020) is quite clear on this point, it should be reiterated in the context of this report that this new procedure complements existing rules, mechanisms and procedures, that it cannot call them into question and cannot affect their effective implementation. This concerns in particular the procedure for monitoring the Assembly's obligations and commitments as well as the procedure for challenging the credentials of national delegations on substantive grounds. The Assembly and its competent committees are the sole judge of the advisability of conducting these procedures concurrently or in parallel with, before or after, a joint procedure with the Committee of Ministers in response to a serious violation by a member State of its statutory obligations. The initiation of such a joint procedure in respect of a member State subject to a procedure for monitoring its obligations and commitments, or a post-monitoring dialogue, would in no way block the continuation of the Monitoring Committee's work.

8. Notwithstanding this hiatus with the Committee of Ministers, the decision in principle taken by the Assembly in Resolution 2319 (2020) to introduce a complementary joint procedure between the Committee of Ministers and the Parliamentary Assembly in response to a serious violation by a member State of its statutory obligations cannot be called into question. Its implementation requires the amendment of the Assembly's Rules of Procedure on certain points.

2.1. Conditions for initiating a proposal for a complementary joint procedure

9. The complementary joint procedure may only be initiated on the exclusive basis of a motion for a recommendation, signed by at least one fifth of the component members of the Assembly, belonging to at least three political groups and fifteen national delegations (paragraph 5.1 of Resolution 2319).

10. The conditions for tabling a motion for a resolution or recommendation are laid down in Rule 25 of the Rules of Procedure: only the signatures of at least 20 members of the Assembly belonging to five national delegations are required. There is only one derogation procedure in the Rules of Procedure, with strengthened conditions, namely that for dismissing the President and Vice-Presidents of the Assembly (Rule 54).

11. It will therefore be necessary to:

- complete the footnote to Rule 24.2.c on motions tabled by members which are published as official documents of the Assembly;
- insert a new Rule after Rule 25.2 on the tabling of motions for recommendations and resolutions, in order to stipulate the conditions for tabling a motion for the initiation of a complementary joint procedure;
- include a new footnote in Rules 25.2 and 25.3, on the tabling of motions for recommendations and resolutions, to mention the derogatory nature of this new procedure;
- include a footnote to Rule 26 on references to committees, in order to establish that a reference to the Committee on Political Affairs and Democracy does not require a decision by the Bureau;

- also include a footnote to Rule 27.1 on the agenda (paragraph 5.2 of the Resolution), in order to establish that the report of the Committee on Political Affairs and Democracy shall be placed on the agenda of the Assembly session;
- finally, in a footnote to Rules 51.1 and 52.1 on urgent procedure in the Assembly and the Standing Committee (paragraph 5.3 of the Resolution), to specify that it will not be possible to propose a debate under urgent procedure for the initiation of the complementary joint procedure.

2.2. Conditions for the initiation of the complementary joint procedure by the Assembly

12. The Committee on Political Affairs and Democracy is instructed to present to the Assembly a report including a draft recommendation "on whether or not to initiate the complementary joint procedure", the adoption of which will require "a double majority", namely a two-thirds majority of the votes cast and "a number of votes in favour equivalent to at least one third of the total number of members of the Assembly authorised to vote" (paragraph 5.4 of the Resolution).

13. This "double majority" is intended to ensure that a decision of such political importance, which is also binding on the Committee of Ministers and the Secretary General of the Organisation, enjoys unquestionable support, guaranteeing the credibility, authority and political legitimacy of the Assembly's decision to initiate the new procedure with respect to a member State.

14. Rule 41 of the Rules of Procedure concerning the majorities required for the adoption of Assembly decisions should therefore be amended by inserting the following new Rule after Rule 41a:

"[The following majorities are required:] *for the adoption of a draft recommendation on the initiation of a complementary joint procedure between the Committee of Ministers and the Parliamentary Assembly in response to a serious violation by a member State of its statutory obligations, a majority of two thirds of the votes cast and a number of votes in favour equivalent to at least one third of the total number of members of the Assembly authorised to vote*".

15. In this connection, it is to be noted that the Assembly will have to adopt the draft resolution presented by the Committee on Rules of Procedure in the context of this report by a two-thirds majority of the votes cast, in accordance with Article 29 of the Statute of the Council of Europe, which places the Assembly under obligation to approve by a two-thirds majority any amendment to the provisions of the Rules of Procedure determining what majority is required for the voting of a decision.

3. Conclusions

16. In order to implement Resolution 2319 (2020) 2020) on *a complementary joint procedure between the Committee of Ministers and the Parliamentary Assembly in response to a serious violation by a member State of its statutory obligations*, the rapporteur recommends examining the following proposals for possible changes to the Rules of Procedure:

- as regards the conditions for initiating such a procedure, to complete the footnote to Rule 24.2.c, to add a new sub-paragraph to Rule 25, to complete the footnote to Rule 25.2, to add footnotes to Rule 25.3, Rule 26, Rule 27.1 and Rules 51.1 and 52.1;
- as regards the conditions for voting on an Assembly decision initiating such a procedure, to add a new sub-paragraph to Rule 41.

17. Article 29 of the Statute of the Council of Europe requires the Assembly to approve by a two-thirds majority any amendment to the provisions of the Rules of Procedure determining what majority is required for the voting of a decision. In so far as the draft resolution presented proposes to amend Rule 41 of the Rules of Procedure concerning the majorities required for the adoption of Assembly decisions, its adoption will require a two-thirds majority of the votes cast.

18. Finally, with regard to the implementation of the regulatory changes to be made, the draft resolution proposes that the amendments to the Rules of Procedure should enter into force upon their adoption.