

Brussels, 14 November 2014
(OR. en)

15206/14

FREMP 198
JAI 846
COHOM 152
POLGEN 156

NOTE

From: Presidency
To: Council

Subject: Ensuring respect for the rule of law in the European Union

I. INTRODUCTION

1. The European Union and its institutions are committed to promoting EU values, including respect for the rule of law, according to the EU Treaties and to the Charter of Fundamental Rights.
2. The rule of law is one of the founding principles stemming from the common constitutional traditions of all the Member States of the EU and one of the key values on which the Union is founded.
3. This initiative focuses more specifically on the respect for rule of law that is an essential element of the European Union's identity.

II. STATE OF PLAY

4. Article 7 TEU lays down procedures for ensuring respect for the rule of law and for the fundamental values referred to in Article 2 TEU within the Union.
5. The Council plays an important role in the procedure set out in Article 7 (1) TEU. Acting by a majority of four fifths of its members, it “*may determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2*”. The Council may act “*on a reasoned proposal presented by one third of the Member States, by the European Parliament or by the European Commission*” and “*after obtaining the consent of the European Parliament*”. Before making such a determination, the Council “*shall hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure*”.¹ Furthermore, the Council shall regularly verify that the grounds on which its determination was made continue to apply. As an *ultima ratio* remedy, in case of a serious and persistent breach by a Member State of the Union's values, under the procedure set out in Article 7 (3) TEU the Council may suspend certain rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council.
6. There are numerous national and international organisations or institutions developing and implementing human rights and rule of law standards. In particular the Council of Europe, including its Venice Commission, the United Nations and OSCE have an important role in defining the principles stemming from the rule of law, in co-ordinating and developing synergies and in monitoring compliance with them at national level. The 2007 Memorandum of Understanding (MoU) between the Council of Europe and the EU states that “*the Council of Europe will remain the benchmark for human rights, the rule of law and democracy in Europe*”. The MoU continues to guide and structure the values-based partnership between the Council of Europe and the EU.²

¹ Article 7 (1) TEU.

² http://www.coe.int/t/der/docs/MoU_EN.pdf.

7. The Ministers of Foreign Affairs of Denmark, Finland, Germany and the Netherlands sent a letter to the Commission President and the Presidency on 6 March 2013, raising the possibility of exploring a new mechanism to safeguard the rule of law and other fundamental values in the European Union. The first comprehensive discussion on the subject took place in the General Affairs Council on 22 April 2013.³
8. On 6 June 2013, the Justice and Home Affairs Council stated that "*respecting the rule of law is a prerequisite for the protection of fundamental rights*" and called on the Commission to "*take forward the debate in line with the Treaties on the possible need for and shape of a collaborative and systematic method to tackle these issues*".⁴
9. In 2013 and in 2014 several times the European Parliament called on all the EU institutions to launch a joint reflection and debate on how to equip the Union with the necessary tools to fulfill its Treaty obligations on democracy, the rule of law and fundamental rights, while avoiding any risks of applying double standards among its Member States and stressed the importance of ensuring continued compliance with the fundamental values of the Union and the requirement of democracy and the rule of law.⁵
10. On 11 March 2014, the Commission issued a Communication on a new EU Framework to strengthen the Rule of law⁶. The Framework describes how the Commission intends to examine, at a preliminary stage, whether there are grounds for using its power of issuing a reasoned proposal under Article 7 (1) or 7 (2) TEU. The Communication is without prejudice to the Commission's powers of launching infringement procedures under Article 258 TFEU in case of breaches falling under the scope of EU law.⁷

³ Press release, 3235th Council meeting, General Affairs, Luxembourg, 22 April 2013.

⁴ Doc.10168/13.

⁵ Several EP resolutions of 2013 and 2014 set out various recommendations to the EU institutions on how to strengthen the protection of Article 2 TEU - see also [http://www.europarl.europa.eu/RegData/seance_pleniere/textes_adoptes/provisoire/2014/03-12/0231/P7_TA-PROV\(2014\)0231_EN.pdf](http://www.europarl.europa.eu/RegData/seance_pleniere/textes_adoptes/provisoire/2014/03-12/0231/P7_TA-PROV(2014)0231_EN.pdf)

⁶ Doc. 7632/1/14 REV 1; 7632/14 ADD 1.

⁷ COM(2014) 158 final, p. 5.

11. On 18 March 2014, the General Affairs Council took note of a presentation by the Commission of its Communication on the rule of law. The Council had a preliminary exchange of views and agreed to revert to the issue.⁸

12. On 27 May 2014, replying to several legal questions which had been raised in the Council, the Council Legal Service issued a legal opinion⁹ in which it explored legal constraints pertaining to any EU Rule of Law mechanism. In essence, under this opinion, the rule of law applies as a value of the EU in the areas in which the EU has competence and EU monitoring mechanisms are possible to this extent. The CLS recalled that *“there is no legal basis in the Treaties empowering the institutions to create a new supervision mechanism of the respect of the rule of law by the Member States, additional to what is laid down in Article 7 TEU”*. The Council Legal Service specified also that, should the Member States set up a mechanism by an international agreement, *“the possibility for the Union to use the powers provided for in Article 7 TEU and Articles 258, 259 and 260 TFEU must be unaffected”*.

13. According to the 18 month work programme of 17 June 2014, prepared by the Italian Presidency with the future Latvian and Luxembourg Presidencies and the High Representative¹⁰, endorsed by the General Affairs Council, *“the EU has a key role to play in the development of the new universal framework, which should build on the three dimensions of sustainable development (economic, social, environmental) and should also integrate issues relating to governance, the rule of law, human rights, gender equality and peaceful societies”*¹¹.

⁸ Press release, 3306th Council meeting, General Affairs, Brussels, 18 March 2014.

⁹ Doc. 10296/14.

¹⁰ Doc. 11258/1/14

¹¹ Doc. 11258/1/14.

The Council confirmed, in particular, that in its international relations dimension the EU remains the anchor for reforms in the areas of the rule of law and fundamental rights for several third countries. In order to be credible in this respect, full compliance with the rule of law should be ensured, first of all, within the EU. This is why in its work programme it is stated that “[t]he Council will closely accompany the future developments of a new EU framework to strengthen the Rule of Law which seeks to resolve future systemic threats to the Rule of Law in Member States before the conditions for activating the mechanism foreseen in Article 7 TEU would be met”.¹²

III. POINTS OF DISCUSSION

14. On this basis, the Italian Presidency would like to take discussions forward on the Council’s role in ensuring the respect for rule of law within the framework of the Treaties. Such approach should be without prejudice to the principles of conferred competences, as well as the respect of national identities, inherent in their political and constitutional structures, and should be brought forward in light of the principle of sincere cooperation.
15. The Council should play a central role in order to contribute to a common understanding on compliance with the rule of law in accordance with the Treaties.
16. To this end the Council aims to encourage the culture of “respect for rule of law” through a constructive dialogue among the Member States. This could be done by promoting the political dialogue within the Council in respect of the principles of objectivity, non discrimination, equal treatment, on a non-partisan and evidence-based approach.

The political dialogue should be developed in a synergic way, taking into account existing instruments and expertise in this field.

¹² Doc. 11258/1/14.

To this end, the Italian Presidency invites Ministers to an exchange of views on the following points:

- a) Do Ministers agree on the considerations expressed above (points 14,15 and 16)?
 - b) How could principles under 16 be ensured ? How these principles can be made effective in practice?
 - c) Which sources of information could be considered worthy and reliable?
 - d) What should be the modalities of this dialogue (e.g. once per year, within General Affairs Council prepared by the Coreper)?
-