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From: General Secretariat of the Council
To: Delegations

Subject: Questionnaire for the Member States on the evaluation of the Council's
annual rule of law dialogue - Reply from the Croatian Delegation

Delegations will find below the reply from the Croatian Delegation to the Presidency questionnaire on the review of the Council's annual rule of law dialogue (document 10905/23).

On the purpose and principles that govern the dialogue

1. Do you agree that the purpose of the Council's annual rule of law dialogue is to be a useful mechanism, creating a space for structured and constructive discussions among Member States and for sharing best practices and lessons learned? How do you consider that this purpose could be further developed?

Croatia could agree with the stated purpose of the annual rule of law dialogue. Rule of law dialogue has gone through a very dynamic development since its creation in 2014. Now we have a structured Commission's annual Rule of Law Report (Report) with specific recommendations for each Member State, structured general debate on the Report and country-specific debates based on the Report. We consider that the current mechanism is well developed and serves the purpose of better mutual understanding, sharing experiences and best practices across the EU. The main focus now should be on consolidating the achievements of the current institutional cycle with respect to the annual rule of law dialogue and nurturing positive developments achieved so far at the EU level. Fostering and preserving the sense of ownership by Member States over this process should have precedence over introducing any novelty elements into it.

2. The principles that have governed the dialogue since the conclusions of 2014 have the objective to make this dialogue stronger, more result-oriented and better structured, its preparations more systematic and its follow-up adequate. Do you consider that those principles have guided the Council well in conducting the dialogue? If not, can you indicate why, and how the implementation of those principles could be improved?

Croatia could agree that stated principles have guided the Council well in conducting the dialogue. The rule of law dialogue should continue to be inclusive and cooperative in nature, encouraging exchanges of best practices and facilitating improvements at the EU and national level, where needed.

3. In your opinion, has the dialogue been carried out in a coherent way that avoids duplication, while taking into account the scope and objective of the dialogue vis-à-vis other existing rule of law instruments?

We consider the dialogue complementary to other instruments and mechanisms that the EU has at its disposal in its rule of law toolbox. It has distinguishable methodical difference compared to other instruments where its strong preventive and constructive side with focus on sincere dialogue within the Council is clearly recognizable. In this sense, we do not consider that there are duplications with other instruments in the toolbox. Thematic wise, to some extent there is same or similar focus on specific areas addressed also in other instruments. We do not consider this problematic as long as the dialogue maintains its approach and purpose.

On the way that the dialogue is performed today and possible improvements

4. Every autumn the dialogue has devoted one session to a horizontal debate on the state of play of the rule of law in the Member States.
- a. How do you evaluate the way that these sessions have developed since 2020?

We consider that the debate has become more focused and structured since the introduction of the Report; therefore, we evaluate the development of the sessions positively. The Report allows for a more informed discussion among the Member States since it contains general assessment of the rule of law situation in the European Union.

- b. Would it be useful if in each yearly cycle – from July to June – successive presidencies coordinated thematic debates at the General Affairs Council, based on the content from the corresponding Commission annual rule of law report?

The General Affairs Council holds horizontal annual rule of law dialogue that focuses on four key areas already agreed and covered by the Report. The debates are framed to fit the General Affairs Council methodology and focus. Introducing thematic debates would require more in-depth knowledge on the specifics of each of these areas and possibly require involvement of experts/ministers from other Council formations. That would inevitably lead to a debate that would move away the GAC from its horizontal role. Thematic debates within the GAC could also be seen as possible overlapping with specific debates that we have, and could have, within other Council formations.

Another challenge would be to add such debates to the GAC calendar. We already have very well established dynamics of the debates on the rule of law – horizontal debate on the Report and country-specific debates, both within the ROL dialogue, as well as hearings within the Article 7 procedures. This ensures adequate focus of the GAC on the rule of law.

5. Over the past four years, in addition to that horizontal debate, a steady pace has been maintained in the country-specific discussions. Every Council presidency has decided to keep discussing the development in five Member States, up until the current country cycle restarted during the Swedish Presidency in the first semester of 2023.

- a. How has this part of the dialogue, in which all Member States can share their rule of law challenges and exchange good practices, helped you with discussing potential solutions?

This process proved to be very useful in exchanging information, best practices and lessons learned, as well as finding potential solutions to identified challenges. Some developments are very similar and shared by a number of Member States. Information exchanged can serve as an inspiration for further actions at national level and instigate cooperation between Member State's administrations.

- b. In order to achieve deeper reflection and better preparation of the exercise by the other Member States, would reducing the number of Member States that undergo the dialogue in each country-specific discussion to four be helpful? Could this help make the discussion more focused?

We would not be supportive of such and any further reduction. Discussing fewer than five Member States would lead to the technical level of examination, which is not appropriate for the GAC ministerial level and purpose of this political dialogue. The existing formula that focuses on five Member States proved to be adequate.

6. The dialogue has used the Commission's annual rule of law report in this yearly stocktaking exercise. The Commission has improved the exchange with Member States used to draw up the report. What further improvements in terms of Member States' involvement, or other, would be useful?

It is very important that the Member States remain deeply and continuously involved in the process of preparation of the Report. They should continue to be regularly consulted and they

should retain the opportunity to react to the factual and other statements in the Report prior to its adoption.

We believe that for the credibility of the dialogue, we should solidify the recommendation-based monitoring, including also possible re-calibration of recommendations, to adequately assess the progress made in one-year period while maintaining the objectivity, transparency and even-handedness of the process. This concerns especially those recommendations that require longer implementation period. Regarding the drawing up of the Report, the emphasis should be put on an objective information and balanced approach, including with regard to the level of details.

7. What role should the recommendations of the Commission's annual rule of law report play in the dialogue?

The recommendations included in the Report have given a new focus to both our dialogue in the Council and between the Member States and the Commission. In line with the preventive nature of this instrument, they are also relevant in planning and conducting national reform processes and activities. This should remain as the main purpose of the recommendations in the future as well. The level of their fulfilment (almost 65% of specific recommendations from 2022 have been followed up, as the Commission assessed in its 2023 Report) shows that the Member States have recognized their value.

We believe that the Report should avoid setting out overly prescriptive recommendations. The recommendations should be focused, well targeted and consistent with the preventive nature of the Report and informal political dialogue. They should continue to serve the purpose of guiding the Member States in their reforms. Member States should retain the flexibility in choosing methods to achieve certain goals, regardless of whether they need to correct certain irregularities or enhance the standards. Otherwise, there would be a risk of overlaps with other instruments and of micromanaging the implementation at national level. Cooperation with Member States is needed in assessing the time frame for their implementation.

In the future Reports, we would propose to separate the Commission assessments of progress in the previous periods, including the follow-up to the previous year's recommendations, from the new recommendations based on the latest assessments in a given year. We believe this would ensure greater focus, more clarity and easier understanding of the recommendations.

8. Are there any other international sources whose methodology is reliable and fact-checking process rigorous, the use of which you would consider appropriate to complement the dialogue?

The rule of law annual dialogue is a unique process that has developed its specific methodology over time. It is important that the dialogue preserves its integrity and continues to be based on findings that are objective, credible and verifiable. Consultations with Member States, as well as the possibility to react to factual statements and findings in the process of drafting of the Report, should remain the key characteristics of the process. We would not be able to support ideas to outsource assessments to third bodies or use international sources (e.g. of think-tanks) other than those already identified (e.g. Council of Europe).

9. How could we further involve civil society in the dialogue? Would you be willing to invite experts on rule of law issues to participate in the dialogue? Would it be appropriate to present the main conclusions of the discussion to a group of civil society representatives?

We value the role that civil society has in the process, especially the fact that the reports and analysis from civil society are taken into account in the process of drafting of the Report. Going beyond that, e.g. by introducing participation of the representatives of civil society in this peer-based process within the GAC could be very challenging both from the procedural and substance point of view. We would encounter difficulties in choosing a specific civil society organisation(s) that would be most representative to the debate since there is a number of different and specialised civil society organisations that deal with certain subject matter of the existing four areas that the Report covers. We should preserve the informality of exchange with representatives of civil society, which has proven to be useful. Since the Reports are public and the debates are framed by them, we consider that the civil society is very well informed on the substance of the debates and their findings.

10. How do you view the relationship between the dialogue that takes place in the General Affairs Council, which tends to be general, and more specific discussions taking place each semester in the Justice and Home Affairs Council, which tend to be focused on a specific area of its competence? Do you see added value in discussing certain technical issues related to rule of law challenges, as identified by the General Affairs Council, in other formations of the Council?

This relation is a natural one, as it arrives from different competences of each formation of the Council. Discussion within the GAC and findings that come out from this process have their value for the Member States, and for the Council as well. For that reason they may be used in more specific debates, but the extent would depend on the scope and framing of each specific debate.
