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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 Italian Delegation

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

Questions for the Member States

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?

IT: Italy considers the Council's annual rule of law dialogue a very useful mechanism, both to share good practices and to keep Member States' (MS) attention focused on potential critical issues in the rule of law domain. The current format appears to be adequate, as the annual dialogue mechanism complements other tools, such as the Rule of Law Toolbox, implemented by other EU institutions in accordance with their individual powers and functions. It is then essential this format to be preserved, allowing a fruitful exchange of ideas and best practices among Member States, based on the principle of a dialogue among peers. In that sense, recent innovations such as the inclusion of Commission's recommendations in the RoL annual Report risks altering the balanced approach designed by the Finnish and German Presidencies on the basis of 2014 relevant Council's conclusions and supported by a large majority of Member States.

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?

IT: Italy supported the 2020 reform of the Rule of Law dialogue, launched under the Italian Presidency in 2014. Since the first dialogue discussions among MS have been constructive and have led to positive forms of "peer pressure", also providing MS the opportunity of sharing their good practices. Given its horizontal, institutional nature, it is crucial that the dialogue is conducted exclusively in the competent *GAC filière*.

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?

IT: From our perspective the dialogue has been carried out in a coherent way that avoids duplications, as requested in the relevant 2014 Council's conclusions. However, the introduction of innovative elements (such the above-mentioned recommendations in the RoL annual report) may in the longer-term lead to an unintended duplication of other Rule of Law tools (European Semester, Art. 7 TEU)

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?

IT: We appreciate the session devoted to a horizontal debate because it allows a comprehensive overview of the state of play of the rule of law in MS.

- 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?

IT: We would not be in favor of replacing sessions devoted to a horizontal debate with thematic debates. These would inevitably focus on specific aspects and neglect other profiles of equal importance and interest. However, thematic debates could be added on top of the current structure of the Council's annual rule of law dialogue.

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?

IT: Country-specific discussions are very useful for learning from the experience of other MS and for sharing best practices that could be replicated by other MS.

- 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?

IT: Reducing the number of Member States that undergo the dialogue in each country-specific discussion to four could be helpful, as it will give more/better time for discussions. However, the current structure allows a more frequent assessment of the situation in each MS.

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: We would suggest:

- exploring mechanisms in order to further exchange information and views on relevant best practices, including from the regional and local level.
- developing more targeted requests for information and contributions in order to involve all the relevant national stakeholders, especially for more technical topics.

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

IT: While an overall assessment of the Commission might help keep the discussion focused, formal recommendations may impinge on the mechanism, which should maintain its peer review character as well its non-discriminatory and non-partisan approach, as stated in 2013 relevant Council's conclusions.

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?

IT: In our perspective, the current sources used by the Commission are generally appropriate.

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?

IT: In our perspective, a direct involvement of civil society actors in the dialogue itself would change the nature of the exercise. The Council's annual rule of law dialogue was conceived as a dialogue among "peers", where MS can have an open and frank discussion on possibly sensitive issues.

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?

IT: We consider the current structure of the dialogue appropriate. We do not see any added value in the involvement of other Council configurations.