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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 Cyprus Delegation

Delegations will find below the reply from the Cyprus 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?

Cyprus agrees that the purpose of the annual rule of law dialogue is the one stated. This purpose could be further developed if the horizontal debate was focused on the areas where most deficiencies are registered. The dialogue could focus on common challenges and through the discussion suggestions that could help MS facing these challenges could be put forward as long with the relevant technical support. More specifically regarding the Justice Pillar, the Commission is doing an outstanding work and this dialogue in the framework of the rule of law is an excellent opportunity for cooperation between the member states and for the strengthening of the rule of law in the EU. The report is also a very useful tool for future reforms in the field of Justice. This dialogue could be further developed if in the future considers to cooperate with Greco.

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?

Yes, the principles have guided the Council well. We would suggest that particularities of the national systems or a particular situation that MS have to deal with should be taken into account, not as an excuse to lower the standards but rather to help develop tailor made recommendations or provide for tailor made assistance.

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 believe that the dialogue should be taking into account all the relevant rule of law tools because since 2014 there are parallel procedures for certain MS and sometimes the picture given is fragmented. Another problem is that there no comprehensive measurement system for the rule of law.

For example, there are studies where the rule of law is measured by looking at the demand side: the needs of citizens, whilst there are also studies which are focused on the national legal system (the supply side). Furthermore, due to the ‘controversy’ between the end-based conception of the rule of law (primary oriented at the realization of certain values connected at the rule of law) and the institutional conception of the rule of law (there is rule of law when there (is) are (a group of) judicial institutions) it seems to be difficult to generate a complete list of rule of law indicators and to develop for example a ‘rule of law’ index. For example, Indicators such as: ‘Governance Matters’ and ‘Doing Business’, by the World Bank and the study on judicial systems carried out within the framework of the Council of Europe (CoE) by the European Commission for the Efficiency of Justice (CEPEJ) could be useful. The first two of these studies are primary oriented at the ‘demand side’ of the rule of law; while the third is focused on the legal institutions that are necessary for an acceptable level of the rule of law.

If there was a comparison between the three in order to see which aspects of the rule of law are covered and where the ‘blind spots’ are could be helpful to make a step into the direction of the development of a complete list of rule of law indicators which in turn could make the rule of law “measurable”

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?

These sessions have been developed fairly well however the horizontal debate should prioritize the areas / aspects to which deficiencies in most MS are observed and also the multiplication of tools and developments in each procedure should be taken into account

- 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?

Yes, focused on areas in which most deficiencies have been registered

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?

There are common challenges among MS and it is helpful to exchange best practices in responding to these common challenges. Sometimes a solution applied by one MS cannot be applied by another because of differences in national legal systems but in some cases the way forward chosen by one MS might help another MS to deal with a challenge. Also, the Commission having all the information regarding the challenges faced by MS in each of the 4 pillars could initiate the contact between MS who seem to deal with the same problems in order to facilitate the exchange of best practices.

- 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?

Yes, a reduction to 4 would help the dialogue to become more focused.

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?

The Commission should make the questionnaire more focused and avoid duplication of the matters covered.

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

Implementation of the Recommendations should structure both the horizontal discussions and the discussions for each MS but the specific situation in each MS should be taken into account when assessing the progress made regarding the implementation of each Recommendation within a year, as different Recommendations need a different timeframe for implementation.

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?

We believe that the Annual Report of the Committee of Experts of the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism – MONEYVAL is a reliable source that could be taken into account. Also, the United Nations methodology for the prevention of Corruption.

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 would encourage the active involvement and contribution of Civil Society as long as authorities have the right to submit their comments together with the ones submitted by the civil society so that in case of disagreement the potential reader will be able to see the arguments of both sides. We would not object to invite experts on the rule of law issues to participate in the horizontal dialogue provided that they represent well established and acknowledged civil law organizations. We consider the publication of each annual report on an easily accessible website vital, and the listing of involved parties in a relevant annex as very useful. The member states could run consultations with these specific parties to fulfill specific recommendations.

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?

We would suggest that the specific discussions taking place in the JHA Council and the relevant conclusions are taken into account in the general debate taking place in the GAC.
