



Council of the  
European Union

Brussels, 1 September 2023  
(OR. en)

10905/23  
ADD 14

LIMITE

JAI 872  
FREMP 198  
POLGEN 72  
AG 60

**NOTE**

---

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 Lithuanian Delegation

---

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

# QUESTIONNAIRE FOR THE MEMBER STATES ON THE EVALUATION OF THE COUNCIL'S ANNUAL RULE OF LAW DIALOGUE

## LITHUANIA

### 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?***

The European project relies on permanent respect of the rule of law in all Member States. It is a prerequisite for the effective application of EU law and for mutual trust between Member States. Lithuania is supportive of all initiatives that contribute to the strengthening respect within the Union for the Rule of Law, including the Council's annual rule of law dialogue. We welcome the efforts of the Spanish presidency of the Council of the European Union to reflect on ways to improve the upholding of the rule of law in the EU. In the answer below Lithuania highlights some proposals how the annual rule of law in the Council could better achieve its goal to create a mechanism for structured and constructive discussions amongst the 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?***

We view the development of the annual rule of law dialogue since 2014, especially noting the introduction of the Commission's annual report, in a positive light. The introduction of the report contributed substantially to making the annual dialogue more structured, introduced an easily-to-follow, predictable, and systematic calendar for preparations, and ensured a thorough follow-up in the Council.

Lithuania is of the position that in any further developments of the annual dialogue, the following principles should be respected. The primary responsibility for ensuring the rule of law should rest with the Member States. The EU's role has to be based on the contribution of all EU institutions, taking into account their respective roles and prerogatives. All modifications to the annual dialogues process should be legally sound, based on the core EU principles such as objectivity, non-discrimination, equal treatment, a non-partisan and evidence-based approach, and designed to fit in with the tools and instruments which already exist at the EU level, in particular the Art. 7 TEU and infringement procedures, but also other tools such as the Rule of law framework, as well as other relevant processes such as the European Semester. Duplication with other mechanisms and unnecessary administrative burdens should be avoided and we should aim to set them within the framework of the current EU treaties.

**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?**

In essence, we mostly agree that the dialogue, in its current state, has been carried out in a coherent way, avoiding duplication and in synergy with other rule of law instruments. In some instances, notably in regard to the ongoing hearings under Article 7(1) TEU concerning Poland and Hungary, the country-specific discussions tend to overlap with the Article 7(1) hearings. We urge to keep these two rule of law instruments separate from each other. The country-specific discussions should focus on the findings detailed in the Commission's annual report, the Article 7(1) hearings – on their own separate basis (in the case of Poland – proposal of the Commission (2017 December 20), Hungary – the resolution of the European Parliament (2018 September 12)).

In addition, we draw attention to the fact that other instruments, such as the European Economic and Social Committee report on the situation of fundamental rights and rule of law in the Member States in principal mimic the Commission's annual rule of law report.

**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?**

*Since the introduction of the horizontal discussion their scope and nature, in our view, has remained unchanged. By itself, this fact does not hinder the benefit of horizontal discussions. Yet, we find that the interventions from the Member States during these discussions tend to vary in their depth, sometimes even swaying away from the findings of the report. Thus we suggest to put additional effort to better structure the horizontal discussions, stressing the to have an in depth, political discussions amongst the ministers.*

**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?**

In the view of Lithuania, the horizontal debates at the General affairs council serve as a good introduction to the annual rule of law dialogue in the Council. It paints a general picture of the state of the rule of law in the European Union, whilst allowing the ministers to highlight the most important developments that took place in the past year. Yet, knowing the broad scope of the horizontal discussion and the limited time frame designated for such agenda items, the horizontal discussions tend to lack concreteness.

Thus, we would agree to set up thematic debates in the General Affairs Council as a substitute or an addition to the horizontal discussion. Such specialized discussions would provide an opportunity for the minister to have a political debate in substance on rule of law issues.

**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?**

The biannual discussions at the General affairs council are useful for the exchange of good practices amongst Member States, yet also they mobilize, in the case of Lithuania, the national institutions to mobilize their efforts to speed up the ongoing processes to solve the remaining rule of law issues in the country. This effect is especially noticeable before the country chapter discussion in the General Affairs Council, when the chapter of Lithuania was discussed.

**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?**

In our opinion, the reduction of interlocutors per biannual Rule of law country-specific discussions could improve the depth of the discussion, resulting in a more concrete and comprehensive exchange of views.

Yet, we believe that with the current method, the discussions are carried out, and they are predisposed to focus on more technical than political topics. Due to the fact that the Commission's annual rule of law report is technical in nature, focusing on concrete policy issues in the Member States, the country-specific discussions in the Council tend to mimic the beforementioned nature. Thus, in our opinion, more efforts should be dedicated to retaining the discussions at the Council at a political level – highlighting the general approach to solving ongoing rule of law issues in the Member States, discussing possible ways to bolster the Rule of Law culture in the Member States, etc. If there would still be a need for more detailed and practical discussions – they could be carried out in designated Council Working parties.

**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 current involvement of the Member States in the preparatory processes of the Commission's annual rule of law report is sufficient. The Member States are thoroughly involved by providing substantial inputs via answers to the rule of law questionnaire, providing information during the virtual country visits, having the opportunity to provide technical comments to the draft country chapter, and having an open channel of communication in the Commission up until the release of the annual report.

Additionally, the Member States, at the level of national contact point for the rule of law network, could be more actively involved in the virtual consultations the Commission is carrying out with the state institutions, NGOs, and civil society organizations. Such participation would allow the national contact point to be more involved in the discussions regarding a wider spectrum of the rule of law issues at the national level, and better propose additional interlocutors for a broader understanding of the rule of law situation in the Member State.

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

The Commission's recommendations should remain non-binding in their nature. The recommendations act as a useful summary of the main findings from the Commission, directly pointing out rule of law related issues that need to be addressed by the Member States. They help to structure the annual rule of law dialogue discussions in the General affairs council. The recommendations eased the evaluation process of the Member States progress made during on full Rule of law dialogue cycle.

***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 would suggest a closer cooperation with the European Economic and Social Committee, since the report about fundamental rights and rule of law in the Member States include a wide variety of stakeholders, especially from the civil society. This additional input could be beneficial in broadening the representation of civil societies' views in the Commission's annual report.

***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?***

The first step of better involvement of the civil society would be related to broadening the scope of civil society interlocutors who are consulted to collect the initial input for the annual rule of law report. Such a change would yield a better understanding of the civil society perspective regarding the state of the rule of law in each Member State.

We would support the involvement of experts on rule of law issues in the annual rule of law discussions in the Council. Such an addition would be beneficial to broaden the scope of the discussion, in addition to enriching it with new perspectives outside the extent of the Commission's assessment laid down in the annual report.

In our opinion, it would be beneficial to present the main discussion that took place during the annual rule of law dialogue with civil society. Since civil society organizations contribute to the annual report by providing initial input, it would be welcomed to keep them in the loop by presenting the results of Council discussions, which are based on the mentioned report.

***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?***

In the opinion of Lithuania, we see complementarity between the annual rule of law discussions in the General Affairs and Justice and Home Affairs Councils.

We stress the need to retain all horizontal and country-specific discussion in the General Affairs Council. We would not object to discussing the possibility to include rule of law related questions to other formations of the Council on ad hoc basis if such need would be identified by the General Affairs Council.

---