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From: General Secretariat of the Council  
To: Delegations

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

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

I. 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?*

Luxembourg considers that the Council's annual rule of law dialogue is a useful mechanism as it helps us to gain insight into each other's legal and institutional frameworks, promote mutual understanding, and enable us to identify emerging challenges and share best practices.

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?*

Since 2014, the structure of the dialogue has evolved significantly, but the different Presidencies of the Council have made the efforts to ensure that the discussions are guided by those key principles. Since 2020, the European Commission's annual rule of law report provides a new efficient basis for the rule of law dialogue and thereby guarantees that the discussions are well structured, result oriented and systematic.

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?*

A formalization of the current structure/practice of the rule of law dialogue could further strengthen the instrument and contribute to making it fully operational. Such a codification will help to ensure that potential duplicates with other existing rule of law instruments are avoided.

II. 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?*

As mentioned in the 2<sup>nd</sup> question, the use of the European Commission's annual rule of law report as a basis for the rule of law dialogue does not only ensure that the key principles are respected, but also that the discussions are fact-based and substantiated.

*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?*

Luxembourg believes that, in principle, the thematic debates should be held in the different competent Council configurations and that the General Affairs Council should be able to raise general and cross-cutting 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?*

Luxembourg considers that these discussions contribute to encouraging progress and pushing forward specific pending issues. As an example, the discussion on the rule of law situation in Luxembourg has facilitated the national dynamics on the creation of the National Council for Justice.

*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?*

Luxembourg is satisfied with the current setup and frequency of the cycle. A reduction of the number of Member States per session would extend the intervals between the evaluations of every Member State and it could reduce the political impetus linked to the exercise. In addition, it remains uncertain whether the discussions in the GAC could become more focused by reducing the number of countries under evaluation.

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?*

Luxembourg is satisfied with the Commission's annual rule of law report and fully supports its use as a basis for the rule of law dialogue.

We believe that proposals to improve the establishment of the report should in principle be discussed first in the dedicated group of the national contact points.

The Commission's country visits have so far only taken place in virtual form. Face-to-face meetings could improve Member States' involvement.

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

Luxembourg fully supports the establishment of recommendations in the Commission's annual rule of law report. However, a duplication with other existing procedures (such as the European Semester) should be avoided.

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 report is already based on a variety of reliable sources such as the Venice Commission, the GRECO evaluations, OECD reports etc.

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?*

Experts and civil society representatives can be involved in thematic discussions such as the symposium organized under the Swedish Presidency of the Council. Civil society could be debriefed as appropriate by the Presidency.

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?*

Luxembourg believes that the role of the sectoral Councils, notably the JHA Council, could be strengthened further when it comes to discussing the follow up to the report on a more technical level.

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