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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 Maltese Delegation

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

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?

Yes, the Council's annual dialogue must remain useful for the purpose of creating the opportunity for a valuable discussion among the Members States by sharing good practices as well as lessons learned even through challenges. To date, the dialogue, as developed following the adoption of the Presidency conclusions in 2019, has proven to be useful and relevant. As a possible suggestion, the dialogue could be further developed by rendering the discussion more focused, for instance on two pillars rather the four of them, also bearing in mind the time constraints. Therefore, a discussion on the other two pillars would then be organised in the following year. That said, we are of the view that the horizontal discussion has already proven to be a useful mechanism so long as it faithfully reflects the principles of objectivity, non-discrimination, and equal treatment of all 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?

Yes, these principles were and remain relevant.

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?

Yes, to date duplication in terms of dialogue has been minimal. We do however maintain the view that duplication and overlaps are to be avoided to the largest extent possible not only in terms of minimising the administrative burden but also to ensure a fruitful dialogue.

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?

To date, our assessment has been positive welcoming the fact that having this dialogue in a more structured environment has allowed Member States to discuss the topic of the rule of law more openly, more concretely and more objectively.

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, we would be open to this idea as indicated in the reply to Question 1.

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 exercise has helped to identify more areas where Member States could relate to each other. It also encourages further discussion on possible reforms and possibly cooperation with one or more Member States on possible ideas for projects or measures to be undertaken at the national level.

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?

Experience has shown that the session can feel too lengthy leading to more focus and attention on the first few Member States than on the last ones which should not be the case.

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 in terms of Member States' involvement, or other, would be useful?

Our assessment is that the situation is currently satisfactory.

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

The recommendations should be considered as part and parcel of the report. The Member State concerned tends to give more focus on its recommendations made by the Commission in the country-specific discussion.

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?

At this stage, we do not envisage other international sources which are not already consulted or referred to by the Commission as authoritative bodies such as the Venice Commission. It is worthy to note that any changes in methodology to the Annual report, including the sources, would need to be agreed upon by the Rule of Law contact points network. Whereas changes in methodology to the Dialogue would need to be discussed within the Council.

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 strongly support the Commission's approach and methodology in engaging with civil society organisations in preparation of the report itself and highly welcome the publication of their respective contributions which we can be referred to even at a later stage. With regard to the dialogue itself which takes place within the General Affairs formation, we consider that this forum merits maintaining the current approach (that is in Council format without external guests). We are also of the opinion that keeping the forum as is will permit for more frank discussions among the Member States. We urge for a pragmatic and cautious approach when changes are being considered to the current rules/form because of the impact on other Council formations. In addition, nothing prevents individual Member States from engaging in discussions with the national and/or international civil society organisations vis-à-vis their respective country-chapter.

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?

The General Affairs Council should retain overall horizontal responsibility for Rule of Law. Malta however sees merit in holding specific discussions within the JHA Council. When framing this sectorial discussion it is of utmost importance to ensure that the discussion is focused and productive and to avoid duplication.