



Council of the
European Union

Brussels, 1 September 2023
(OR. en)

10905/23
ADD 18

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 Dutch Delegation

Delegations will find below the reply from the Dutch 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?

Yes, we agree with this purpose. The rule of law dialogues play a key role in harnessing a European rule of law culture. They help to make tangible the joint responsibility of the Member States to protect and promote the rule of law across the European Union. The dialogues based on the Commission rule of law report cover all Member States on an equal footing, help the Member States to gain insight into each other's legal and institutional frameworks, promote mutual understanding, and enable the identification of emerging trends, challenges and solutions, as well as the exchange of best practices and lessons learned. In our view the current practice meets this purpose to a large extent. The Netherlands therefore believes the upcoming evaluation should primarily aim for Council Conclusions in which existing practices and working methods are codified. Additionally, the answers to the questions below include some concrete suggestions to further strengthen the dialogues by increasing their relevance.

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, we believe these principles have been respected by both the Commission and the Council. The Commission has applied in the annual rule of law reports the same scope and methodology for the assessment in the country chapters of all member states, and successive presidencies have regularly and consistently organized country specific dialogues on the basis of the Commission's report.

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, we believe the dialogue has been carried out in a coherent way that avoids duplication. In our view the annual rule of law report and the rule of law dialogues should be viewed in conjunction and in coherence with the other EU rule of law instruments. The systematic monitoring of the rule of law situation by the Commission and the dialogues in the Council contribute to the effective use of the other political, legal and financial rule of law instruments, where applicable. Concrete examples are the recommendations feeding into the milestones included in National Recovery and Resilience Plans, as well as the findings of the report being taken into account in the adoption of country specific recommendations in the context of the European semester.

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?

In our view, the horizontal debates have proven a valuable tool to reflect - in a general way - on the state of play and rule of law developments in the Union. The general nature of the debate allowed the Commission to reflect on the entire report in her introduction and for each Member State to bring up those issues they found particularly relevant. This practice has ensured that there are no pressing issues raised in the report that potentially fall outside the scope of the dialogues, and thereby do not get the appropriate attention of the Council.

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 our view, discussing a predetermined theme related to the rule of law holds merit, but it would be difficult in practice to combine the discussion of a specific theme with having a thorough yearly stocktaking exercise on the state of play and rule of law developments in the Member States. In the General Affairs Council, we would therefore suggest sticking to the latter.

The Netherlands is, however, in favour of enhancing the role of the sectoral Council configurations (the Justice and Home Affairs Council and the Education, Youth, Culture and Sport Council (Media)) in discussing the follow up to the report on a more technical level, while respecting the horizontal responsibility of the General Affairs Council and within the competences of the sectoral Council configurations. One possibility would be to further develop the thematic debates already held in the Justice and Home Affairs Council by focussing these discussions around clusters of similar/related recommendations. This could enhance the possibility for a targeted exchange of best practices, in which the Commission could play a role as ‘broker’, to link Member States (on request). This would allow for additional in depth and focused exchanges between ministers who are domestically responsible for the different pillars covered by the report and could potentially add to the concrete follow up given to the report.

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 Netherlands is strongly convinced that the rule of law requires a continued investment. The rule of law report and the country specific dialogue help to support efforts to strengthen the rule of law as well as promote the rule of law culture in the Netherlands. The dialogue prompts critical self-reflection, and also helps to stimulate the national debate on what more can be done. The country specific dialogue with the Netherlands in April 2022, further encouraged the Dutch interest in the Italian best practice related to anti money laundering measures, which has been followed by the ministry of Justice. We do believe the practice of sharing best practices could be further improved by enhancing the role of the sectoral Council configurations in this regard. Please see the answer to question 7.

- 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?

The Netherlands attaches importance to maintaining a certain frequency in when Member States are ‘under review’. We would therefore not be in favor of lengthening the interval, by discussing four Member States instead of five.

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?

In general the Netherlands is positive about the exchange with the Commission in preparation of the report. In our view the report provides us with a valuable, thorough and objective analysis of the rule of law situations in the different Member States. When it comes to the follow up further improvements could be:

- i) *The Netherlands welcomes the inclusion of concrete recommendations in the country chapters and the fact that Member States are asked to report on their progress in the input to the yearly questionnaire, made public on the Commission’s website. To feed into the national rule of law debate and increase accountability, Member States should be encouraged to facilitate a national (parliamentary) dialogue/debate about the report, the recommendations and the envisaged follow up. We welcome the different national initiatives in this regard, as well as the Commission’s readiness to present the report directly to national parliaments. These practices should be continued and further enhanced.*
- ii) *In a similar vein, we appreciate the Commission’s initiative this year to organize a stake holder dialogue in The Hague in order to contribute to the national rule of law dialogue on the basis of the rapport. We would be in favor of extending this practice to all Member States.*

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

The country specific dialogues offer an opportunity for Member States to inform the Council about the follow up to the recommendations. Too much focus on the recommendations should however, in our view be avoided. The whole report remains relevant and should continue to form the basis of the General Affairs Council's discussion, which should be kept on a more general, political level.

Please see the answer to question 4b for a concrete suggestion to enhance the role of the sectoral Council configurations (the Justice and Home Affairs Council and the Education, Youth, Culture and Sport Council (Media)) in discussing the follow up to the report on a more technical level on the basis of the recommendations.

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 annual Rule of Law report by the Commission is in our view the most appropriate source to serve as a basis for the dialogue and at the same time contribute to an adequate follow-up to the Commission's review cycle in the Council. In our view expanding the sources could potentially have a negative effect on the focus of the exchange.

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 Netherlands would be open to inviting renowned experts on rule of law issues to participate in the dialogue, as well as to presenting the main conclusions of the discussion to a group of civil society representatives.

Netherlands would more generally like to explore the possibility to increase the transparency of the rule of law dialogues, to enhance accountability and citizen participation, including civil society. The Commission considers to organize an annual Rule of Law conference to involve citizens as well as stakeholders, as a follow up to the Conference on the Future of Europe¹. The Netherlands would support the Council to explore how the rule of law dialogue could feed into such a conference and vice versa, for example by debriefing the Conference about the main conclusions of the rule of law dialogues.

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?

Yes, the Netherlands is in favor of enhancing the role of the sectoral Council configurations (the Justice and Home Affairs Council and the Education, Youth, Culture and Sport Council (Media)) in discussing the follow up to the report on a more technical level. Please see the answer to question 7.

¹ [EUR-Lex - 52022DC0404 - EN - EUR-Lex \(europa.eu\)](#), chapter 5.