



Council of the
European Union

Brussels, 1 September 2023
(OR. en)

10905/23
ADD 19

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 Austrian Delegation

Delegations will find below the reply from the Austrian 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

- The rule of law dialogue has proved to be a useful tool that enables constructive and in depth discussions on the various aspects of the rule of law in the EU and in the Member States.
- Based on the principle of equal treatment of all Member States, the rule of law dialogue is an important instrument to identify possible challenges concerning the rule of law.
- From AT's point of view, the principles of objectivity and equal treatment of all Member States have guided the Commission and the Council well in conducting the dialogue.
- The rule of law dialogue should help to identify possible best practices and promote an exchange on such best practices. By including recommendations, the Commission's analysis has become more concrete and condensed.
- The rule of law dialogue is an important element of the rule of law toolbox and contributes to strengthening the rule of law. In order to exploit the full potential of all instruments it is, from AT's point of view, advisable to examine ways to optimize their interaction.
- Reliable rule of law structures in economic life and lawful behaviour by public authorities are key for investment and trade being able to prosper. The rule of law and the respect for fundamental rights ensure legal certainty and predictability and thus strengthen not only the trust of citizens but also of companies.

On the way that the dialogue is performed today and possible improvements

- It is important to use all instruments to safeguard the rule of law in an efficient manner. However, duplication, also with regard to similar processes in other existing fora such as the FRA and the Council of Europe, should be avoided as far as possible.
- The rule of law mechanism is a tightly knit yearly process whereas implementing reforms addressed in the country reports in many cases take time. Adding additional elements and exchanges within this process could therefore potentially have only limited added value in our view. We would rather encourage the consolidation of the existing process that Member States are already acquainted with.
- The horizontal debate has become an important tool for providing an overview of the rule of law situation in the EU. Thematic debates at the General Affairs Council based on the Rule of Law Report could be a useful tool to address specific challenges and also contribute to making the debates more focused. In addition, the participation of experts in horizontal debates could be useful.

- The country-specific discussions enable an in-depth dialogue on best practices and concrete challenges in individual Member States. A certain reduction in the number of Member States examined could possibly improve the debates, but at the same time the intervals between country debates should not become too long so as not to weaken the preventive function of the instrument.
- From AT's point of view, a direct and regular exchange between the Commission and the national parliaments is very important since national parliaments as legislators play a major role in rule of law issues.
- The Commission's Rule of Law Report is an important basis for the rule of law dialogue. It provides an annual stocktaking of developments concerning the rule of law and allows identifying trends as well as opportunities for improvement at national and European level. The procedure for preparing the report is adequate and transparent, and the processes are now well established. Some fine-tuning has also taken place with regard to the methodology. Factual corrections and updates by the Member States are an important element that require adequate time.
- The recommendations of the Rule of Law Report draw attention to important specific issues of the rule of law in a Member State since existing challenges are clearly identified by the Commission. However, it is important to address also other – with regard to best practices especially positive – aspects in a Member State. It is necessary to give a comprehensive view on the developments, both positive and negative, in the Member States.
- AT welcomes that the judgments of the European Court of Human Rights are now also covered in the framework of the Rule of Law Report. The European Convention on Human Rights and the ECtHR play a crucial role in safeguarding human rights in Europe and the judgments of the ECtHR have a significant impact on the rule of law in the EU.
- Discussions of specific aspects related to rule of law in in other Council formations such as the Justice and Home Affairs Council are an important complement to the debates in the General Affairs Council. This allows for addressing specific issues with the expertise of other Council formations.