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**NOTE**

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From: Presidency  
To: Delegations

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Subject: Questionnaire for the Member States on the review of the Council's annual rule of law dialogue

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Delegations will find in the Annex a discussion paper and a questionnaire, prepared by the Presidency.

Delegations are invited to reply to the four questions **by 11 October 2019**, by writing to [fi.presidency@vnk.fi](mailto:fi.presidency@vnk.fi) and [WP-FREMP@consilium.europa.eu](mailto:WP-FREMP@consilium.europa.eu).

On the basis on the input received, the Presidency will prepare draft conclusions on the evaluation and future of the dialogue. The aim of the Presidency is that the November GAC adopts these conclusions, preceded by preparatory discussions at expert level and Coreper.

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

### Introduction

1. On 16 December 2014, the Council of the European Union and the Member States meeting within the Council adopted conclusions on ensuring respect for the rule of law, establishing an annual political dialogue among all Member States within the Council to promote and safeguard the rule of law in the framework of the Treaties (17014/14). It was agreed that the dialogue would be based on the principles of objectivity, non-discrimination and equal treatment of all Member States and would be conducted using a non-partisan and evidence-based approach. The dialogue takes place once a year at the Council, in its General Affairs configuration, and is prepared by Coreper, taking an inclusive approach. It was agreed that this dialogue would be developed in a complementary manner, avoiding duplication and taking into account existing instruments and expertise in this area.
2. As mandated by the aforementioned conclusions, the dialogue was evaluated in 2016 on the basis of a Presidency questionnaire and a discussion in the General Affairs Council on 15 November 2016. According to the Presidency summary on the evaluation (14565/16), most of the Member States had underlined the importance of ensuring the continuation and strengthening of the dialogue by having more frequent debates, which should be more result-oriented and better structured. Consensus was reached on the need to improve the dialogue by making its preparation more systematic. The importance of proper, more result-oriented follow-up to the dialogue was also stressed.
3. Finally, it was agreed that the rule of law dialogue in the Council should be re-evaluated by the end of 2019, when the Member States should be more ready to consider the possibility of turning the dialogue into an annual peer review exercise.

4. In practice, the dialogue has followed a thematic approach. The first round of the dialogue was organised by the Luxembourg Presidency, on the subject of the rule of law in the age of digitalisation (13744/15). The second round of the dialogue took place under the Netherlands Presidency and it focused on the integration of migrants (8774/16). The third round, organised by the Estonian Presidency, discussed the rule of law in the context of media pluralism (13609/17) and the fourth, during the Austrian Presidency, rule of law in the context of trust in public institutions (14678/18).
5. In its communication of 17 July 2019 (11217/19), the Commission announced that it intends to publish, as part of its new Rule of Law Review Cycle, an annual Rule of Law Report that would provide a summary of significant developments in the Member States and at EU level. According to the communication, the Rule of Law Report could serve to inform the dialogue within the Council.
6. Since May 2019, the Member States have been discussing, in an informal expert-level working group separate from the structures of the EU, a possible periodic peer review mechanism ('PPR') on the rule of law. This expert group is co-chaired by Germany and Belgium and the basis of its work is a paper entitled 'General principles for establishing a periodic peer review of the rule of law', brought to the attention of ministers in the margins of the General Affairs Council on 19 March 2019.

## The evaluation

7. In accordance with the mandate given in 2016, the Finnish Presidency will now carry out the evaluation of the Council's rule of law dialogue. The evaluation will cover both the experience gained thus far and the way forward.
8. As a first step towards the evaluation, the Council held a discussion on enhancing respect for the rule of law in the meeting of the **General Affairs Council** on 16 September 2019, on the basis of a Presidency discussion paper entitled 'Enhancing respect for the rule of law in the union' (12044/19).
9. The steering questions included in the discussion paper related to the future of the dialogue, the creation of a peer review mechanism, and the possible interaction between the Rule of Law Review Cycle proposed by the Commission and the Council's activities.
10. The Presidency drew the following general conclusions from this discussion, as regards developing our common rule of law instruments:
  - a large majority of Member States spoke in favour of synergies and stressed the need to avoid duplication and unnecessary administrative burdens;
  - a large majority also stressed the importance of equal treatment of the Member States, objectivity, a fact-based approach and inclusiveness;
  - there was strong support for the initiatives and ideas contained in the Commission's communication of 17 July 2019, including the Commission's Rule of Law Review Cycle and the annual Rule of Law Report;
  - several Member States proposed using the Commission's Rule of Law Report as a basis for the dialogue and/or were ready to consider turning the dialogue into a general stocktaking exercise;
  - some Member States were in favour of keeping the nature of the dialogue thematic instead or in addition to a general scope.

11. It is clear from the previous evaluation that the Member States want the dialogue to be stronger, more result-oriented and better structured; its preparation should be more systematic and proper follow-up should be ensured.
12. According to the Presidency, progress towards these goals could be effectively furthered by turning the dialogue into a yearly stocktaking exercise on the state of play and developments as regards the rule of law. In this scenario, the main basis for the dialogue could be the Commission's Rule of Law Report. This discussion could be comprehensive and concentrate on the rule of law situation in the European Union as a whole, taking into account both positive and negative trends.
13. The Presidency sees many advantages in this approach:
  - the Commission's annual Rule of Law Report would form an objective, fact-based and wide-ranging basis for the rule of law dialogue;
  - this kind of dialogue would create synergies between institutions and help to prevent rule of law problems in an inclusive and constructive manner through discussion and exchange of best practices;
  - it would also ensure proper follow-up and continuity, as the dialogue would naturally take into account the developments compared to the previous year.
14. This would not rule out the possibility of also organising thematic discussions, if deemed appropriate and necessary. The thematic discussions could, for instance, concentrate on the most relevant themes emerging from the Rule of Law Report and the rule of law dialogue.
15. In order to evaluate the dialogue thus far, to get input on its possible reform, to ensure an inclusive approach and to obtain explicit feedback from all Member States, the Presidency has the following questions for delegations:

## Questions for the Member States

1. What is your experience of the Council's rule of law dialogue so far? Has it been useful? If you think that there are shortcomings, could you specify them?
2. Do you think that the Council's rule of law dialogue should, in the future, be a general discussion on the state of play and latest developments regarding the rule of law, for which the Commission's annual Rule of Law Report could serve as the basis or as background material?

If so, do you think that the Council's rule of law dialogue should be preceded by a preparatory discussion at expert level (experts from the permanent representations in Brussels or other formats)?

3. Do you think that the thematic dialogues should continue, instead of or in addition to a general dialogue?
4. Do you have any preliminary views on the PPR mechanism in the above context?

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