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From: Presidency
To: Permanent Representatives Committee/Council

Subject: Presidency non-paper for the Council (General Affairs) on 12 November
2018 - Annual rule of law dialogue

Delegations will find in the Annex the Presidency non-paper for discussion at the General Affairs Council on 12 November 2018.

Trust in Public Institutions and the Rule of Law

Annual Rule of Law Dialogue 2018
in the General Affairs Council

Brussels, 12 November 2018

Non-paper of the Austrian Presidency

I. Introduction

The annual rule of law dialogue in the Council (General Affairs) was established by the December 2014 conclusions of the Council and the Member States. The first dialogue took place during the Luxembourg Presidency in November 2015, the second during the Netherlands Presidency in May 2016, and the third during the Estonian Presidency in October 2017. An evaluation of the experience, carried out during the Slovak Presidency, in the Council (General Affairs) in November 2016, confirmed that the Member States wish to continue and strengthen the dialogue; furthermore, preparations for the dialogue should be more systematic and include the organisation of accompanying events to assemble broad input at expert level before discussions in the Council (General Affairs).

II. Fourth rule of law dialogue: Trust in Public Institutions and the Rule of Law

Citizens' trust in public institutions is indispensable for the proper functioning of those institutions, and thus for the overall functioning of States and the rule of law. The level of public trust affects citizens' engagement in decision-making, the extent to which they use public services and the success of institutions in fulfilling their tasks.

However, the latest surveys show that public trust in national institutions has gone down. According to the Eurobarometer in 2017 less than half of the EU's population trusted their national governments (37 %), national parliaments (36 %) or the EU (42 %), with a great degree of variation between Member States. Only 19 % of the EU's population trusted political parties. Tangibly higher levels of trust were placed in regional or local public authorities (51 %), the judiciary (55 %), the police (75 %), or the army (75 %).

The challenge is to gain trust in a population that consists of diverse and often multifaceted groups – different groups in society but also other entities, such as international organisations, civil society organisations, the media and private companies. Eurobarometer data show, for instance, that young people tend to distrust public institutions more than their older compatriots. In some Member States, this development went along with young people showing less interest in civic, community and political activities.

Finally, the EU itself relies on a system of mutual trust based on the common values set out in Article 2 of the Treaty on European Union – both horizontal trust among Member States and vertical trust between Member States and the EU. The successful implementation of various EU policies provided for in the Treaties, the functioning of the internal market, the EU's external action and the legal instruments based on mutual recognition all rest on this concept. Moreover, in order to effectively and fully exercise the rights and freedoms recognised in the Treaties, EU citizens and businesses must also trust public institutions of other Member States.

The current low levels of public trust raise concerns as to why trust in many vital institutions is so weak and what consequences the loss of trust can have for the proper functioning of democracies and thus for the rule of law. With figures varying considerably between different Member States and levels of government, an exchange of good practices could be the obvious instrument for finding out what public institutions can do to remedy the situation.

The issue has gained widespread attention. It was touched upon by the international expert conference 'Building Trust – Making Human Rights a Reality for All', which Austria hosted in Vienna on 22-23 May on the occasion of the 25th anniversary of the Vienna World Conference on Human Rights. It was a topic at the second Fundamental Rights Forum organised by the Fundamental Rights Agency on 25-27 September. This year's Annual Fundamental Rights Colloquium on Democracy hosted by the European Commission in November will also deal with related issues.

In order to prepare the debate in the Council, the Austrian Presidency organised an informal expert seminar in Brussels on 11 July 2018 on the subject of trust in public institutions and the rule of law. The seminar brought together representatives from Member States, EU institutions, the Fundamental Rights Agency, the Council of Europe, civil society and academia. The summary of the seminar is available in document 13820/18.

At the seminar, the participants discussed what different actors such as Member States, EU institutions, NGOs and media could do to help win back trust in public institutions. The six aspects in which governments need to take action to win back public trust, identified by the OECD in its 2017 report 'Trust and Public Policy', were seen as **key factors for trust**: reliability, responsiveness, openness, better regulation, integrity and fairness, and inclusive policy-making. Stronger connection with the local level, communication and comprehensibility (e.g. adding 'citizens' summaries' to legal texts) were identified as further important elements, as were management of expectations, accountability and the acknowledgement of failures. Governments need to ensure that effective policies avoiding corruption and mismanagement are applied.

The seminar highlighted that **trust in national institutions and trust in the EU are interconnected** and that Member States should therefore have an interest in keeping trust high in the EU as well. A number of speakers also noted that both a **vibrant civil society and independent media had a crucial role to play** because a critical debate was necessary to foster trust.

At the **Fundamental Rights Forum**, the quality of public services and the accessibility of low-threshold complaints mechanisms were highlighted as influential drivers of trust in public institutions. Improving whistle-blower protection was thought to be another important element to support trust by helping to prevent corruption.

III. Questions for discussion

In this year's fourth rule of law dialogue, the Presidency would like to invite Ministers to explore the reasons for the current low levels of trust and to develop strategies to promote citizens' trust on the basis of the following questions:

Question 1 – Factors: What do you see as the most important factors which determine the level of trust in public institutions in your country? What can Member States do to boost trust in public institutions? Please share your experience and best practices from national level.

Question 2 – Media and Civil Society: What is the role of media and civil society, and how can Member States and EU institutions best cooperate with these actors to foster trust?

Question 3 – Joint Communication: Acknowledging that there are links between trust in the EU, the national and the local level, can we improve joint communication of success stories and new policies, based on a common narrative, in order to mutually reinforce trust?

IV. Organisation of the dialogue

After an introduction by the Presidency and the Director of the Fundamental Rights Agency, the Commission and the Member States will be invited to share their thoughts on the basis of the three questions.

Following the discussion, the Presidency will draw up Presidency conclusions, which it will then forward to the relevant Council preparatory bodies for further consideration. Further follow-up may be considered when the Council re-evaluates the rule of law dialogue by the end of 2019.