



Council of the  
European Union

Brussels, 3 November 2016  
(OR. en)

13230/1/16  
REV 1

LIMITE

FREMP 163  
JAI 828  
COHOM 129

**NOTE**

---

From: Presidency

---

To: Delegations

---

No. prev. doc.: 12205/16

---

Subject: Rule of Law  
- Compilation of replies to the Presidency questionnaire

---

**DOCUMENT PARTIALLY ACCESSIBLE TO THE PUBLIC (31.01.2017)**

Delegations will find below contributions sent by 3 November 2016 in response to the Presidency questionnaire (doc 12205/16).

## TABLE OF CONTENT

<b>BELGIUM</b>	<b>3</b>
<b>CZECH REPUBLIC</b>	<b>6</b>
<b>DENMARK</b>	<b>10</b>
<b>GERMANY</b>	<b>13</b>
<b>ESTONIA</b>	<b>17</b>
<b>IRELAND</b>	<b>18</b>
<b>GREECE</b>	<b>22</b>
<b>SPAIN</b>	<b>26</b>
<b>FRANCE</b>	<b>30</b>
<b>CROATIA</b>	<b>35</b>
<b>ITALY</b>	<b>39</b>
<b>LATVIA</b>	<b>44</b>
<b>LITHUANIA</b>	<b>47</b>
<b>LUXEMBOURG</b>	<b>50</b>
<b>HUNGARY</b>	<b>53</b>
<b>MALTA</b>	<b>57</b>
<b>NETHERLANDS</b>	<b>60</b>
<b>AUSTRIA</b>	<b>65</b>
<b>POLAND</b>	<b>71</b>
<b>PORTUGAL</b>	<b>73</b>
<b>ROMANIA</b>	<b>76</b>
<b>SLOVENIA</b>	<b>80</b>
<b>FINLAND</b>	<b>85</b>
<b>SWEDEN</b>	<b>92</b>
<b>UNITED KINGDOM</b>	<b>96</b>

## **BELGIUM**

### **1. What elements should be improved while respecting the current framework set by the Council conclusions? On the other hand, what should be retained as a good practice?**

In our opinion the current framework has to be further developed . On the one hand, the European Treaties (art. 2, 6 and 49 TEU) define the respect for the rule of law and fundamental rights as a cornerstone of the European construction, on the other hand the Union has only limited means to ensure that these values are fully respected by Member States of the European Union.

The General Affairs Council decided two years ago to develop a regular dialogue among the Member States to promote and safeguard the rule of law. Two dialogues took place so far and they provided for substantial debate. In our view, more is needed however as a clear need is felt within the EU for a genuine political adherence to universal values, and hence, a need to strengthen the existing rule of law dialogue. The EU must be able to act effectively and proactively to ensure compliance with its most fundamental principles.

### **2. What is your view on turning this dialogue into or complementing it with an annual review process enabling periodical evaluation of rule of law related issues?**

We are in favour of approaching our common dialogue as a peer review process. In early 2016 Belgium has issued a paper “towards a periodic review of the respect for the rule of law and fundamental rights inside the European Union”. By opting for a peer review approach we create the conditions for a high level dialogue in a constructive and pragmatic manner.

Mutual trust among EU Member States and their respective legal systems is the foundation of the Union. The respect by the Member States for the values of the Union can be further ensured through a periodic review, which can be carried out within the Council of General Affairs. A peer review approach can constitute a part of the answer as it is by nature inclusive and based on the principle of equal and non-discriminatory participation. Such a process will also tend to be transparent, constructive and coherent. The review should be of a political nature and not an additional legal procedure and will be without prejudice to the existing legal procedures.

We would propose an automatic periodic review, every six months, whereby all member states on a rotating basis would be subject to the review.

**3. In addition to the existing dialogue, do you see a need to organize thematic ad hoc discussions on current rule of law challenges?**

We support the possibility of launching debates on thematic issues, or on an ad hoc basis, when circumstances require such a debate.

In our view a thematic dialogue should focus on the core elements of the respect for the rule of law. Over time this thematic dialogue can then lead to a periodical review as described above.

Cooperation with other institutions

**4. Cooperation with relevant stakeholders OK? Need for stronger involvement of COM and/or EP?**

As this is a political debate amongst member states in the general Affairs council, the Commission will be fully involved. There does not seem to be a specific need for a prior involvement of the European Parliament in context of a peer review. On the other hand, regular reporting to the European Parliament on the outcome and follow-up of the dialogue would be recommended.

**5. Are you in favour of involving in the preparation of the Council dialogue representatives of other EU bodies (FRA) or relevant organisations (Council of Europe, UN) and NGOs?**

The Council dialogue should take into account several sources like the Council of Europe and the Fundamental Rights Agency. Input from civil society could be used as a source of information as well.

This being said, duplication must be avoided and priority has to be given to better use of existing tools and instruments. Complementarity and added value are key concepts and the focus should be put on core aspects of the Rule of Law.

In the event of a periodic review, the review has to be prepared in an objective manner. Hence, either the FRA or the secretariat of the Council could be requested to draw up a synthesis of the various sources which may serve as a basis for discussion

## Preparation and conduct of the dialogue

### **6. Was the time allocated to prepare for each dialogue sufficient? What time period is necessary to prepare the contribution of the dialogue?**

#### **Idea about making the preparation more broad-based and systematic?**

As we support an automatic periodic dialogue, we equally support a systematic preparation. There does not seem to be a need for new reports but we do need to draft a synthesis of the existing reports, which could be used during the open and interactive discussion of the Council dialogue.

### **7. How could the Council dialogue be conducted? Would you be in favour of a more interactive discussion?**

In the event of a periodic review this review should be of a political nature and not a legal procedure which will make for a more interactive dialogue.

The other members of the Council would have the opportunity to ask questions and make recommendations to the Member States under review.

### **8. What kind of follow-up to increase the impact of the Council dialogue? How to implement the outcomes of each dialogue while ensuring continuity?**

We envisage a system in which Member States under review subscribe to the conclusions of the debate, take upon themselves certain commitments and thereby obtain ownership of the recommendations.

The debate should create added value, hence the need to focus on the implementation of recommendations. Member States will be requested to report back to the Council on progress made.

## CZECH REPUBLIC

### **1. What elements of the dialogue should be improved while respecting the current framework set by the Council conclusions? On the other hand, what should be retained as a good practice for the future rounds?**

The choice of topical issues as we have seen reflected in the past two dialogues is something we believe should be retained as good practice for future rounds. At the same time, the timing of the dialogue could be reconsidered. In the first two rounds, we have seen the dialogue take place once per year, but as it happened, it also occurred within half a year of each other. We believe it would be beneficial for the dialogues to be more spread out, unless the issue to be discussed is of urgent character (as was indeed the case with the second dialogue focused on migration).

### **2. What is your view on turning this dialogue into or complementing it with an annual review process enabling periodical evaluation of the rule of law related issues?**

The Czech Republic does not support the idea of turning the dialogue into an annual review process. We are of that opinion that a current form of the framework of the dialogue is satisfactory. In our view, a scoreboard evaluation of individual Member States when it comes to adhering to the rule of law principle would necessarily lead to comparisons between Member States that find themselves to be in different political situations. We are strongly persuaded that rule of law has to be abided by all Members States of the EU, however, its evaluation in an annual review, as proposed, might be counterproductive and contradictory to the intended complementary nature of the dialogue with other EU institutions and international organizations. Rule of law at a systematic level is already overseen on three levels – by the Court of Justice of the EU as enshrined in primary law, by the European Court of Human Rights and at national level by the relevant constitutional courts. Last but not least we cannot leave aside the valuable inputs of the Council of Europe's Venice Commission.

**3. In addition to the existing dialogue, do you see a need to organise thematic ad hoc discussions on current rule of law challenges?**

We do not see a pressing need of setting up thematic ad hoc discussions. The current system of annual rule of law discussions devoted to specific topical issues where the Member States discuss their own experience with the topic is sufficient. Both the discussions so far have reacted to timely themes and topics (best practices and the issue of migration).

Cooperation with other EU Institutions, international organisations and NGOs

**4. Do you consider the cooperation with relevant stakeholders during first two rounds of the dialogue as sufficient? In particular, do you see a need for a stronger involvement of the Commission or the European Parliament in the preparatory phase of the Council dialogue? If yes, how could this involvement look like in practical terms?**

Yes, we consider the cooperation with such entities as sufficient.

Regarding the stronger involvement of the Commission and the European Parliament, we are of the opinion that the state of their current involvement in the preparatory phase of the dialogue is adequate enough taking also into account the principle of conferral of powers on institutions in accordance with art. 13(2) TEU.

**5. Are you in favour of involving in the preparation of the Council dialogue representatives of other EU bodies (in particular FRA), relevant international organisations (e.g. the Council of Europe, the UN) and/or NGOs? If yes, how could this involvement look like in practical terms?**

Cooperation with relevant institutions and organisations during preparation of the dialogue could be of significant importance. Given their directly gained in-situ experience (when speaking of NGOs/FRA/the UN or the Council of Europe (Venice Commission) ) they have, in practical terms, the best insight into the topic. Their experience and knowledge could therefore be of benefit for the preparation of the dialogue. We suggest that their representatives might be present for a part of the preparatory stage of the dialogue.

## Preparation of the dialogue

### **6. As for preparatory works, was the time allocated to prepare for each dialogue sufficient? What time period (between the first submission of the discussion paper and the date of the GAC meeting) is necessary for Member States to prepare for the dialogue?**

Having had experience with preparation works for previous dialogues, we would like to emphasise that the allocated preparation time period given to us was at times insufficient. If the dialogue is to be beneficial for all participants, an extended preparation time period, in order to consult relevant national authorities for obtaining their stance on the issue; is needed. We suggest that the preparation time period is at least two weeks.

### **7. Do you have ideas about making the preparation more broad-based and systemic (discussions at technical level, seminars for Member States, trio seminars, and consultations with civil society)?**

We would plead for dissemination of the preparatory documents not only directly to the Capitals but also through the traditional channels at the Member States' PermReps.

As stated in our response to the question number 5, we believe that consultations with civil society could bring added value to the Council dialogue where relevant. However, any such inclusion must be in line with the boundaries of the dialogue as set out in the Council conclusions.

## Conduct of the dialogue

### **8. How should the Council dialogue be conducted? Would you be in favour of more interactive discussions (e.g. representatives speaking on behalf of like-minded states help of an external moderator, lunch discussions)?**

Some topics may be more suited to an interactive discussion than others, for these an external moderator may be of use. However, we do not directly support the idea of dividing Member States into groups for the issue of Rule of Law. This could potentially go against the foundation of this dialogue as set out in the Council conclusions – particularly the equal treatment of all Member States and respect of national identities of Member States inherent in their fundamental political and constitutional structures.

For some topics which are more delicate than others the lunch format might be the most convenient one.

Follow up of the dialogue

**9. What kind of follow up would increase the impact of the Council dialogue? At the same time, how should this output be evaluated? How to disseminate, implement the outcomes of each dialogue while ensuring continuity between the different editions of the dialogue?**

Given the large thematic range of the dialogue, it will necessarily have different potential outcomes each and every time. Setting out a concrete format for an outcome may end up being detrimental to discussion.

## DENMARK

General discussion and/or thematic discussion combined with a periodic review

### **1. What elements of the dialogue should be improved while respecting the current framework set by the Council conclusions? On the other hand, what should be retained as a good practice for the future rounds?**

The purpose of the dialogue is to promote and safeguard the rule of law framework of the Treaties in order to ensure that treaty obligations related to rule of law are respected and followed by EU Member States. Adherence to these obligations are essential for well-functioning States based on free and open societies that facilitate transparent and stable environments for citizens and companies. The Council should therefore continue on a regular basis to review the rule of law situation in the EU and support the efforts by the Commission who plays a key role as guardian of the Treaty. The Commission Rule of Law Framework collects and assesses relevant information which can serve as input for discussions in the Council.

### **2. What is your view on turning this dialogue into or complementing it with an annual review process enabling periodical evaluation of rule of law related issues?**

An annual rule of law review based on a horizontal approach would be very much welcome allowing for concrete discussions on how to improve and safeguard the rule of law situation. The rule of law dialogue in the Council should complement the Commission Rule of Law Framework. The Commission should on a more regular basis inform the Council on its Rule of Law work.

### **3. In addition to the existing dialogue, do you see a need to organise thematic ad hoc discussions on current rule of law challenges?**

Although the former thematic discussions in the Council have covered relevant rule of law themes they have partly crowded out discussions on the actual rule of law challenges within the EU. This does not mean that the rule of law dialogue could not be based on a horizontal approach as long as it addresses the concrete challenges and key issues. It is essential that the future dialogue address the key issues of rule of law in order to allow for real discussions among Ministers.

**4. Do you consider the cooperation with relevant stakeholders during first two rounds of the dialogue as sufficient? In particular, do you see a need for a stronger involvement of the Commission or/and the European Parliament in the preparatory phase of the Council dialogue? If yes, how could this involvement look like in practical terms?**

The Commission should play a key role in cooperation with the Presidency to prepare discussions on rule of law in the Council drawing on relevant inputs from the European Parliament.

**5. Are you in favour of involving in the preparation of the Council dialogue representatives of other EU bodies (in particular FRA), relevant international organisations (e.g. the Council of Europe, the UN) and/or NGOs? If yes, how could this involvement look like in practical terms.**

It should be up to the Presidency, the Commission and individual Member States to involve relevant inputs from such bodies and organisations for discussions in the Council. Involvement of relevant agencies, international organisations and civil society in the preparatory phases should be complimentary to the discussions in the Council.

Preparation of the dialogue

**6. As for the preparatory works, was the time allocated to prepare for each dialogue sufficient? What time period (between the first submission of the discussion paper and the date of GAC meeting) is necessary for Member States to prepare the contribution for the dialogue?**

In order to ensure proper preparations of the rule of law dialogue in the Council documents should be available at least 2-3 weeks in advance of the Council discussions which would also allow for proper consultations of national parliaments. This would not exclude later updates due to changes etc.

**7. Do you have ideas about making the preparation more broad-based and systematic (discussions at technical level, seminars in different Member States, trio seminars, consultations with civil society etc.)?**

We do not have concrete proposals and would be open for such arrangements but do not see them as systematic parts of the Council dialogue preparations but rather as supplementing such discussions.

Conduct of the dialogue

**8. How should the Council dialogue be conducted? Would you be in favour of a more interactive discussion (e. g. representatives speaking on behalf of like-minded states, help of an external moderator, lunch discussions)?**

Article 20E in the Rules of Procedures of the Council already provides for such a framework which we welcome, although we do not have strong views on the format for the dialogue as long as it allows for addressing the key rule of law challenges within the EU. The dialogue could be structured around for example 3-5 key rule of law issues to be addressed across Member States.

Follow up of the dialogue

**9. What kind of follow up would increase the impact of the Council dialogue? At the same time, how should this output be evaluated?**

The Presidency could make a sum up of for example 3-5 key rule of law issues across Member States. In addition rule of law could also be a more regular information point on GAC meetings, when appropriate, allowing the Presidency and the Commission to provide updates.

**10. How to disseminate, implement the outcomes of each dialogue while ensuring continuity between the different editions of the dialogue?**

The Council should follow up on its rule of law dialogue by Presidency summing up the discussions and outlining the next steps.

Implementation of concrete recommendations will be in the hands of the Commission and the individual Member States benefitting from the Commission Rule of Law Framework. In case of lack of implementation the Council should be kept informed.

## GERMANY

General discussion and/or thematic discussion combined with a periodic review

### **1. What elements of the dialogue should be improved while respecting the current framework set by the Council conclusions? On the other hand, what should be retained as a good practice for the future rounds?**

Since the Council conclusions of late 2014 on the Rule of Law we made first steps to our objective strengthening the rule of law. The dialogue is an important instrument to establish a common view of core values and “monitor” possible endangerments.

However, in order to develop the full potential of the dialogue, it also needs to comprise - in addition to thematic debates - discussions on rule of law aspects of individual Member States, as appropriate and in the framework of the Council conclusions of December 2014 and of the Treaties.

In future, we should also focus on improving the general organisation of the dialogue and make it more substantive. One way would be by structuring the dialogue better; especially the preparations and the follow-ups (see the answer to question 7). It is important that we involve the General Secretariat of the Council more and use it more effectively.

We should also take into account the work already done by other relevant EU bodies and European organisations such as the Commission and EU’s Fundamental Rights Agency (FRA).

### **2. What is your view on turning this dialogue into or complementing it with an annual review process enabling periodical evaluation of rule of law related issues?**

We support the overall idea of strengthening the dialogue by having a more structured and regular process. However, we should be careful to avoid burdensome procedures and underline also the non-discriminatory nature of the dialogue.

### **3. In addition to the existing dialogue, do you see a need to organise thematic ad hoc discussions on current rule of law challenges?**

Ad-hoc discussions could be a valuable instrument and are important to strengthen the respect for the rule of law. They should also comprise the possibility to discuss possible rule of law aspects of individual Member States, as appropriate and in the framework of the Council conclusions of December 2014 and of the Treaties.

**4. Do you consider the cooperation with relevant stakeholders during first two rounds of the dialogue as sufficient? In particular, do you see a need for a stronger involvement of the Commission or/and the European Parliament in the preparatory phase of the Council dialogue? If yes, how could this involvement look like in practical terms?**

Strengthening the rule of law concerns the other EU institutions as well. Therefore, we should be open to enhance our cooperation with them to strengthen the overall view on core values. We should study how to establish a link between our dialogues with the processes of other institutions. The idea of including the European Parliament could be interesting and a first step could be to invite a guest speaker of the European Parliament to our next dialogue.

**5. Are you in favour of involving in the preparation of the Council dialogue representatives of other EU bodies (in particular FRA), relevant international organisations (e.g. the Council of Europe, the UN) and/or NGOs? If yes, how could this involvement look like in practical terms.**

Relevant organisations could support the preparations. However, first we need to establish a more structured way of preparing the dialogues before including various players. In our answer to question 7 we propose using the Working Party on Fundamental Rights, Citizens Rights and Free Movement of Persons (FREMP) as a preparatory institution for the dialogue. Relevant organisations could meet with the FREMP and give incitation for the preparations. Thus duplication could be avoided and complementarity ensured.

### Preparation of the dialogue

**6. As for the preparatory works, was the time allocated to prepare for each dialogue sufficient? What time period (between the first submission of the discussion paper and the date of GAC meeting) is necessary for Member States to prepare the contribution for the dialogue?**

**7. Do you have ideas about making the preparation more broad-based and systematic (discussions at technical level, seminars in different Member States, trio seminars, consultations with civil society etc.)?**

The focus should be on a structured preparation of the dialogue. The Presidency should organize a preparatory meeting at least two months ahead of the dialogue (also see answer to question 5). The Working Party on Fundamental Rights, Citizens Rights and Free Movement of Persons (FREMP) could be a suitable venue. Using FREMP, we would make sure that that we establish a routine for preparing the dialogue. The preparatory meeting itself could be used to discuss main points which would be summarised in a possible non-paper of the Presidency. This could be used as one of the basis for the dialogue later on.

### Conduct of the dialogue

**8. How should the Council dialogue be conducted? Would you be in favour of a more interactive discussion (e. g. representatives speaking on behalf of like-minded states, help of an external moderator, lunch discussions)?**

We welcome the idea of a more interactive discussion though without forgetting the main objective is to nurture a dialogue on the rule of law between the Member States. The preparatory meeting could be used to discuss the conduct of the upcoming dialogue and the possibility of inviting external guest speakers.

Follow up of the dialogue

**9. What kind of follow up would increase the impact of the Council dialogue? At the same time, how should this output be evaluated?**

**10. How to disseminate, implement the outcomes of each dialogue while ensuring continuity between the different editions of the dialogue?**

It is important that we develop a follow-up with real added-value for the EU and its Member States as well as for its EU institutions, such as developing best-practices or new initiatives. We should also think about how to link the annual dialogues better between the Presidencies, maybe by assessing steps taken since the last dialogue.

## ESTONIA

- We are satisfied with the current framework to promote and safeguard the principles of rule of law in the Union. We consider it very important and valuable to retain that the focus of annual political discussion within the Council is on important horizontal issues related to the principles of rule of law affecting all Member States. Seminars at expert level and Presidency non-papers have also been very helpful to prepare discussions of the Ministers in the Council.
- Estonia does not support turning this dialogue into (or complementing it with) periodical review of rule of law related issues in the Member States as similar mechanisms already exist within other international organizations where all Member States participate. Creating such a mechanism in the EU would be an unnecessary duplication of work.
- However, Estonia strongly supports close cooperation and dialogue with relevant stakeholders and representatives of other EU bodies (in particular FRA) and international organizations (e.g. the Council of Europe, the UN) in the preparatory phase of the Council dialogue. This could take place in different forms to share their experience and provide input for Council discussions.
- Estonia is in favour of a more interactive discussion on rule of law (e.g. with lead or guest speaker) and we do not rule out this discussion taking place in the lunch format.
- Estonia is open to the idea of possible Presidency conclusions on the outcomes of a discussion in order to increase the impact, implementation and follow-up of the Council dialogue on rule of law. It is also important to ensure the continuity between the dialogues in the Council.

## **IRELAND**

General discussion and/or thematic discussion combined with a periodic review

### **1. What elements of the dialogue should be improved while respecting the current framework set by the Council conclusions? On the other hand, what should be retained as a good practice for the future rounds?**

The Rule of Law is listed as a founding value of the Union in Art 2 TEU, as complemented by Articles 6 and 7. The Presidency-led annual Council dialogue, along with the EU Rule of Law Framework and Treaties, give practical expression to collective commitment to this shared European values.

We support the continuation of the annual Rule of Law dialogue within the General Affairs Council, and support retaining the Presidency's prerogative to choose the theme for discussion. This should be the subject of discussion in trio format.

In order to improve the existing mechanism, consideration should be given to (i) allowing discussion at Council of the Presidency's proposed theme or themes in advance of fixing the theme and date of the dialogue; and (ii) making space to allow interested Member States make general interventions on the theme of Rule of Law.

### **2. What is your view on turning this dialogue into or complementing it with an annual review process enabling periodical evaluation of rule of law related issues?**

Naturally we all wish to go further and develop mechanisms that will be more effective in resolving issues of concern or in preventing issues arising in the future. But it was not easy to reach agreement even on the quite modest mechanisms and practices now in place. Therefore, until they have bedded down and allowed for proper assessment, we remain cautious about the practicality of further steps. For now, the focus should be on implementation of the current mechanisms rather than seeking to create new procedures, but this is an issue to be kept under review in the light of experience.

Our consideration must also be informed by our upcoming negotiations on Brexit, and as our Heads of State and Government undertake political reflection on the future of the EU, the focus at this time should be on moving ahead together as 27 and delivering concrete outcomes in areas which have already been agreed and which directly affect EU citizens.

**3. In addition to the existing dialogue, do you see a need to organise thematic ad hoc discussions on current rule of law challenges?**

Rather than creating additional mechanisms for now, we are of the view that the existing mechanisms allow items to be brought to the Council agenda, or for stand-alone events to be organised on rule of law, or other themes, as appropriate, and should be given time and a proper assessment before new steps are considered.

Cooperation with other EU Institutions, international organisations and NGOs

**4. Do you consider the cooperation with relevant stakeholders during first two rounds of the dialogue as sufficient? In particular, do you see a need for a stronger involvement of the Commission or/and the European Parliament in the preparatory phase of the Council dialogue? If yes, how could this involvement look like in practical terms?**

Cooperation with Commission and Parliament should be an important element of the preparatory phase of the Council dialogue preparations. In engaging with these institutions, the Presidency will need to take into account factors such as the theme of the dialogue, the legislative context and the prevailing political circumstances.

**5. Are you in favour of involving in the preparation of the Council dialogue representatives of other EU bodies (in particular FRA), relevant international organisations (e.g. the Council of Europe, the UN) and/or NGOs? If yes, how could this involvement look like in practical terms.**

The FRA made a significant contribution to the second Rule of Law dialogue, and appropriate use should be made of its expertise in future dialogues. We should continue to work closely with other organisations which have a remit in this area - the Council of Europe in particular, with which we should strengthen our cooperation in this area.

### Preparation of the dialogue

**6. As for the preparatory works, was the time allocated to prepare for each dialogue sufficient? What time period (between the first submission of the discussion paper and the date of GAC meeting) is necessary for Member States to prepare the contribution for the dialogue?**

The time allocated to prepare for previous dialogues was sufficient.

**7. Do you have ideas about making the preparation more broad-based and systematic (discussions at technical level, seminars in different Member States, trio seminars, consultations with civil society etc.)?**

This should remain at the discretion of the Presidency, taking account of the topic for the dialogue and subject to discussion in trio format, but we believe in principle that broader participation in preparatory discussions along the lines suggested would be useful.

### Conduct of the dialogue

**8. How should the Council dialogue be conducted? Would you be in favour of a more interactive discussion (e. g. representatives speaking on behalf of like-minded states, help of an external moderator, lunch discussions)?**

The format should remain at the discretion of the Presidency. We would, of course, support the drive to make the format as interactive and productive as possible. The principle of one Member State speaking on behalf of others is of course enshrined in the Council's Rules of Procedure.

### Follow up of the dialogue

**9. What kind of follow up would increase the impact of the Council dialogue? At the same time, how should this output be evaluated?**

Presidency should circulate a written report on the dialogue to Member States for discussion in Coreper and the outcome should be shared with the other Institutions and with those involved in the preparatory process.

**10. How to disseminate, implement the outcomes of each dialogue while ensuring continuity between the different editions of the dialogue?**

Incoming Presidencies, making use of the trio format, should consider the experience of previous dialogues with a view to making decisions on timing, theme and preparations for the next dialogue.

## **GREECE**

General discussion and/or thematic discussion combined with a periodic review

### **1. What elements of the dialogue should be improved while respecting the current framework set by the Council conclusions? On the other hand, what should be retained as a good practice for the future rounds?**

The two rounds of political dialogue within the General Affairs Council on strengthening the rule of law in the m-s have been a very interesting and useful experience. However, there is ample room for improvement. Our future efforts should aim at improving the coherence among the various rounds, possibly by improving the complementarity of the subjects chosen for each thematic debate. Additionally, we should try to focus our dialogue on subjects related to the rule of law *stricto sensu*, so as to have a more focused procedure that is not yet another broad, general and unfocused political discussion. On the other hand, the political nature of the current rule of law dialogue should be maintained, as it encourages m-s to be more open and forthcoming with information about the situation within their country, and seek to exchange experiences and best practices with other m-s.

### **2. What is your view on turning this dialogue into or complementing it with an annual review process enabling periodical evaluation of rule of law related issues?**

Apart from valid concerns about whether there is a legal basis in the Treaties for the establishment of such a periodical review process in the Council, we are doubtful of the added value of such a process within the Council of the EU, given the existence of similar procedures within other international fora, such as the UN and the Council of Europe, where all EU m-s participate. As it was pointed out at the December 2014 GAC Conclusions, the rule of law dialogue should be complementary and avoid duplication with other EU institutions and international organizations, as well as take into account existing instruments and expertise in this area.

**3. In addition to the existing dialogue, do you see a need to organise thematic ad hoc discussions on current rule of law challenges?**

The possibility to hold thematic debates has already been foreseen in the December 2014 GAC Conclusions. We believe that it is up to each Presidency of the Council of the EU to decide, depending on the current state of affairs, whether the rule on law dialogue for the given year should concentrate on particular subjects or themes. Actually, the RoL dialogue rounds organized by the previous Luxembourg and Netherlands Presidencies were basically thematic debates.

Cooperation with other EU Institutions, international organisations and NGOs

**4. Do you consider the cooperation with relevant stakeholders during first two rounds of the dialogue as sufficient? In particular, do you see a need for a stronger involvement of the Commission or/and the European Parliament in the preparatory phase of the Council dialogue? If yes, how could this involvement look like in practical terms?**

We are in favour of opening up the rule of law dialogue process so as to more actively involve other EU institutions in its preparatory phase. The Commission and/or the European Parliament could be invited to provide their input and share their experiences, challenges and best practices with the Council on rule of law related issues. However, given the confidential nature of Council meetings, this exchange could take place during preparatory, informal meetings, such as a round table or panel discussion, well ahead of the GAC rule of law dialogue. The results of these meetings could be presented by the Presidency to the Council, so as to feed into the dialogue. Such events could also be publicized and open to the public, so as to raise public awareness on rule-of-law-related issues.

**5. Are you in favour of involving in the preparation of the Council dialogue representatives of other EU bodies (in particular FRA), relevant international organisations (e.g. the Council of Europe, the UN) and/or NGOs? If yes, how could this involvement look like in practical terms.**

As with the Commission and/or the European Parliament (see question 4), other EU bodies (particularly the FRA), as well as other international organisations' representatives could also be invited to participate in such preparatory meetings, and provide their valuable experience and expertise on the subject.

## Preparation of the dialogue

**6. As for the preparatory works, was the time allocated to prepare for each dialogue sufficient? What time period (between the first submission of the discussion paper and the date of GAC meeting) is necessary for Member States to prepare the contribution for the dialogue?**

We believe that a time period of at least three weeks is necessary for the effective and substantial preparation of the dialogue, given the various subjects that might be treated and the need to coordinate with various ministries and/or agencies within each m-s. Also, there should be at least one preparatory discussion at COREPER, before the rule of law dialogue at the GAC.

**7. Do you have ideas about making the preparation more broad-based and systematic (discussions at technical level, seminars in different Member States, trio seminars, consultations with civil society etc.)?**

All of the afore-mentioned ideas, particularly the organisation of thematic seminars, with the participation of other EU institutions and bodies, sound very interesting and could provide valuable input to the rule of law dialogue within the Council.

## Conduct of the dialogue

**8. How should the Council dialogue be conducted? Would you be in favour of a more interactive discussion (e. g. representatives speaking on behalf of like-minded states, help of an external moderator, lunch discussions)?**

We are of the opinion that the current dialogue among the Ministers and State Secretaries for EU Affairs of the m-s is already rather open and interactive, mainly because of its political nature. It should be up to each Presidency of the Council to moderate the discussion and employ further ways of improving its interactive character.

## Follow up of the dialogue

### **9. What kind of follow up would increase the impact of the Council dialogue? At the same time, how should this output be evaluated?**

Each round of the dialogue could also envisage further areas of interest that were not covered during the particular thematic debate and that are relevant or complementary to the thematic debate under way, so as to enhance the overall cohesion and coherence among the various RoL dialogue rounds and help each incoming presidency choose a subject that would build upon the progress already achieved by the previous presidencies. Also, during each dialogue round, m-s could be invited to inform the Council about any measures taken or results achieved in the thematic areas that were covered during the previous rounds.

### **10. How to disseminate, implement the outcomes of each dialogue while ensuring continuity between the different editions of the dialogue?**

The dissemination of the outcome of each dialogue could be achieved by the circulation of a Presidency Note, summing up the results of the dialogue, as well as by the issuance of a Press Release, all with due respect to the confidential character of Council meetings. As for the implementation, it is up to each m-s to adopt the best practices of its counterparts in the particular areas where it experiences specific challenges. M-s could also be encouraged to inform the Council of any best practices of other m-s they have decided to put to effect, of any improvement in the areas where they had been experiencing particular challenges, as well as of the means they employed so as to arrive at such positive outcomes.

## SPAIN

### **1. What elements of the dialogue should be improved while respecting the current framework set by the Council conclusions? On the other hand, what should be retained as a good practice for the future rounds?**

We must respect the framework set by the Council conclusions of 16 December 2014, which reflect the Member States' consensus on the issue and take into account the considerations of the Council Legal Service regarding the Council's policy framework as permitted by the current Treaties.

Spain feels that the GAC dialogue sessions on the rule of law in the Union have not been as satisfactory or useful as might have been hoped. This has shown how difficult it is for the Council to conduct a debate on this subject.

### **2. What is your view on turning this dialogue into or complementing it with an annual review process enabling periodical evaluation of rule of law related issues?**

Spain believes that the Treaties do not allow the current mechanism for dialogue regarding the rule of law to be turned into an evaluation. The Treaties only allow (Article 7 TEU) a group of Member States, the Commission or the Parliament to open a debate in the Council regarding a breach of the rule of law by a Member State.

Spain considers it neither possible nor useful to establish a generalised procedure for regularly assessing the rule of law in all Member States.

### **3. In addition to the existing dialogue, do you see a need to organize thematic ad hoc discussions on current rule of law challenges?**

Dialogue and discussions on specific points are more useful than dialogue on general issues pertaining to best practice.

Specific aspects should be chosen which incorporate the principle of the rule of law, so as to maintain a common approach to concrete issues while remaining within the framework of the EU's competencies.

**4. Do you consider the cooperation with relevant stakeholders during first two rounds of the dialogue as sufficient? In particular, do you see a need for a stronger involvement of the Commission or/and the European Parliament in the preparatory phase of the Council dialogue? If yes, how could this involvement look like in practical terms?**

The conferences, promoted by the Commission and the Parliament, play a useful role in preparing for the GAC debate on specific points selected by each Presidency.

The Commission and the Parliament could present their contributions to the GAC. However, the debate itself must remain between the Member States.

**5. Are you in favour of involving in the preparation of the Council dialogue representatives of other EU bodies (in particular FRA), relevant international organizations (e.g. the Council of Europe, the UN) and/or NGOs? If yes, how could this involvement look like in practical terms.**

Spain is of the opinion that the discussion on the rule of law in the European Union differs from the discussion in the other competent international organisations. It should not be duplicated. It would therefore not be useful for these international organisations and the NGOs that collaborate with them to contribute.

The dialogue on the rule of law could offer a useful opportunity to discuss concrete issues and a common approach. In this regard, contributions from the FRA and from civil society could be useful for the preparation of this dialogue (in any conferences which may take place before the discussion in the GAC).

Preparation of the dialogue

**6. As for the preparatory works, was the time allocated to prepare for each dialogue sufficient? What time period (between the first submission of the discussion paper and the date of GAC meeting) is necessary for Member States to prepare the contribution for the dialogue?**

These dialogues, scheduled to be held once a year, could be more frequent, if the Presidency felt a specific matter required urgent attention and deemed it necessary for it to be discussed in the Council.

In order for Member States' contributions to the dialogue to be useful and allow consensus positions to be determined, Member States must have enough time to prepare their position, which usually needs to be verified by the competent internal institutions.

**7. Do you have ideas about making the preparation more broad-based and systematic (discussions at technical level, seminars in different Member States, trio seminars, consultations with civil society etc.)?**

Spain believes that the dialogue must be properly prepared so that it can be as structured as possible. It should not be held without sufficient preparation.

The Commission and the Parliament could contribute by organising preparatory conferences attended by national experts and civil society. The organisation of any specific activities will depend on the matter to be addressed. If it is one of the Union's fields of action, advice will be needed from Member States' experts.

Conduct of the dialogue

**8. How should the Council dialogue be conducted? Would you be in favour of a more interactive discussion (e. g. representatives speaking on behalf of like-minded states, help of an external moderator, lunch discussions)?**

The Presidency is responsible for structuring the dialogue. It should prepare it properly, with the help of the Commission, and present the necessary documentation to the GAC in good time.

Respecting the rule of law is a responsibility of the Member States. The discussion should therefore be left to them. It should not be a brainstorming session. It should be a more structured dialogue in the Council, with a view (where necessary) to establishing a common approach.

Follow up of the dialogue

**9. What kind of follow up would increase the impact of the Council dialogue? At the same time, how should this output be evaluated?**

The discussions and the common viewpoints expressed during the dialogue in the GAC should be subject to some kind of follow-up.

**10. How to disseminate, implement the outcomes of each dialogue while ensuring continuity between the different editions of the dialogue?**

Some European citizens are concerned about various issues relating to the rule of law, as different Member States sometimes interpret it differently (from the protection of refugees to certain social rights).

It is the responsibility of the GAC and the Presidency to correctly identify the issues that these citizens are concerned about. It is the responsibility of the Presidency to communicate to the public the outcome of the GAC discussions.

## FRANCE

General discussion and/or thematic discussion combined with a periodic review

### **1. What elements of the dialogue should be improved while respecting the current framework set by the Council conclusions? On the other hand, what should be retained as a good practice for the future rounds?**

The first two dialogues, held in November 2015 and May 2016, gave rise to useful and productive discussions. Both the letter and the spirit of the conclusions of 16 December 2014 were respected, making the dialogue on the rule of law a significant event in the life of the General Affairs Council.

The topics (digitalisation and migration) proved to be aptly chosen, as much for their importance on the EU's agenda as for the rule of law issues they raise. They provided a basis for genuine political discussions between ministers. The exchanges of best practices, in particular, served to highlight certain ongoing innovations in Member States, and should be continued.

However, the discussions sometimes seemed a little out of touch with current events. It would therefore seem appropriate to try, in full transparency, to identify more topical subjects.

## **2. What is your view on turning this dialogue into or complementing it with an annual review process enabling periodical evaluation of rule of law related issues?**

There are already several fora in which some kind of 'periodical review' process can be carried out. The conclusions of 16 December 2014, in providing for the dialogue within the Council to 'be developed in a way which is complementary with other EU Institutions and International Organisations' (see point 5), allow such reviews to be taken into account where relevant. It is therefore not immediately apparent what the purpose and added value of such a periodical review process within the Council would be. There is also a risk that such a process could appear counterproductive. It should be recalled that the idea of establishing a mechanism or cycle of Member State evaluations was already discussed in 2014. On that occasion, the Council Legal Service concluded (in its opinion of 27 May 2014; 10296/14) that the sole basis on which the EU institutions are able to monitor Member States' respect of the EU's fundamental values is Article 7 TEU. However, as the Legal Service noted, although that Article provides for an explicit three-stage monitoring procedure, it does not include a preliminary evaluation stage and establishes no basis on which such a stage may be modified or further developed. It was on the basis of this analysis that the Council decided to opt for a dialogue rather than a cycle of Member State evaluations. Similarly, the EU Justice Scoreboard established by the Commission in 2013 was originally intended to be a first step towards rule of law indicators, but for the same reasons its scope was reviewed and it now covers only civil, administrative and commercial law. It is presented as a mere information tool and is part of the European Semester.

Nevertheless, if the choice of discussion topics were to be improved (for instance, by involving the Agency for Fundamental Rights – see point 5 below) the discussions could be linked more directly to the rule of law challenges facing the EU and its Member States, which would allow real peer pressure to be exerted without the need to establish a periodical review mechanism.

**3. In addition to the existing dialogue, do you see a need to organise thematic ad hoc discussions on current rule of law challenges?**

The conclusions of 16 December 2014 provided that the 'dialogue [would] take place once a year in the Council'. To allow the discussions to be more attuned to current events, they could be held more often, for example once every six months. In addition, the option of organising 'emergency' dialogues could be provided, for instance on the basis of a request from at least half the Member States, to discuss cases where there was evidence showing a failure to respect the rule of law.

This could give the Council the opportunity to discuss whether it would be appropriate to launch the procedure laid down in Article 7 TEU.

Cooperation with other EU Institutions, international organisations and NGOs

**4. Do you consider the cooperation with relevant stakeholders during first two rounds of the dialogue as sufficient? In particular, do you see a need for a stronger involvement of the Commission or/and the European Parliament in the preparatory phase of the Council dialogue? If yes, how could this involvement look like in practical terms?**

The first two dialogues were satisfactory (see above), including as regards the role of the Commission. There is no need for the European Parliament to be systematically involved, since it can communicate its positions through its own channels. It could however be consulted on a case-by-case basis.

**5. Are you in favour of involving in the preparation of the Council dialogue representatives of other EU bodies (in particular FRA), relevant international organisations (e.g. the Council of Europe, the UN) and/or NGOs? If yes, how could this involvement look like in practical terms.**

The Agency for Fundamental Rights could play a larger role in preparing the discussions by helping to select the topics.

This could be organised as follows:

- In the first month of a Presidency's term, the Agency would put forward a list of three topics, identifying for each one an external speaker (from an NGO or another institution) to introduce the ministers' discussion.
- The GAC, taking the Agency's suggestions into account, would agree on a topic for the discussion, which would be held during the fourth month of the Presidency's term. (It would not, however, be bound by the suggestions, since the rule of law is not limited to the issue of fundamental rights.)
- If necessary, the final GAC of the term could be used to draw up operational conclusions.

#### Preparation of the dialogue

**6. As for the preparatory works, was the time allocated to prepare for each dialogue sufficient? What time period (between the first submission of the discussion paper and the date of GAC meeting) is necessary for Member States to prepare the contribution for the dialogue?**

To ensure that the discussion goes as smoothly as possible, particularly if external speakers are invited to enhance the quality of the exchanges, it could be helpful for the supporting documents to be distributed one month before the dialogue in the GAC.

**7. Do you have ideas about making the preparation more broad-based and systematic (discussions at technical level, seminars in different Member States, trio seminars, consultations with civil society etc.)?**

Since the goal is to allow ministers to hold political discussions, it does not really seem appropriate to add more fora and levels of preparation beyond Coreper. However, this should not preclude promising thematic initiatives, such as the seminar on good governance organised by the Netherlands Presidency.

Conduct of the dialogue

**8. How should the Council dialogue be conducted? Would you be in favour of a more interactive discussion (e. g. representatives speaking on behalf of like-minded states, help of an external moderator, lunch discussions)?**

Systematically inviting a guest speaker to give an introductory speech, to which ministers would be expected to respond, might make for a livelier and more interactive discussion.

Follow up of the dialogue

**9. What kind of follow up would increase the impact of the Council dialogue? At the same time, how should this output be evaluated?**

See question 5.

**10. How to disseminate, implement the outcomes of each dialogue while ensuring continuity between the different editions of the dialogue?**

Once the new format has been in place for a year, the Presidency could draw up an initial review with the help of the GSC.

## CROATIA

### General discussion and/or thematic discussion combined with a periodic review

#### **1. What elements of the dialogue should be improved while respecting the current framework set by the Council conclusions? On the other hand, what should be retained as a good practice for the future rounds?**

The principles listed in the GAC Conclusions of December 2014 (objectivity, non-discrimination and equal treatment of all Member States) should remain our leading principles when considering any possible improvements of the rule of law framework in the Council. We consider that the previous two dialogues were conducted in a well-designed and balanced manner, concentrating the ministerial debates upon the most pressing challenges and identifying areas where further efforts are needed. Presidency non-papers are a useful instrument for steering the ministerial debate and should be retained, as well as exchanging the views on best practices at the national level.

#### **2. What is your view on turning this dialogue into or complementing it with an annual review process enabling periodical evaluation of rule of law related issues?**

At the level of the EU it is primarily necessary to ensure the full use of the existing mechanisms (EC framework for the protection of the rule of law, the annual dialogue on guaranteeing the respect for the rule of law, infringement procedures, the mechanism of cooperation and verification, Justice Scoreboard, Anti-corruption reports, etc.). Therefore, it would be useful to more thoroughly analyze the scope of existing mechanisms for the protection of the rule of law as well as fundamental rights. That should give us a much clearer picture on possible options to use the full scope of the currently available instruments and provide as with the option to discover their possible limitations; for example, concrete situations where a breach of the rule of law cannot be addressed effectively by infringement proceedings or other currently existing mechanisms.

In line with that, we believe that annual review/s leading to periodical evaluation of the rule of law could be introduced only if the analysis of the existing instruments and their use should indicate that such procedure would provide a significant contribution to the respect of values listed in Article 2 of the TEU.

Generally speaking, any future initiative in this area should be applied in a transparent manner, on the basis of evidence objectively compiled, compared and analysed, and on the basis of equal treatment of all Member States.

**3. In addition to the existing dialogue, do you see a need to organise thematic ad hoc discussions on current rule of law challenges?**

We find that additional thematic ad-hoc discussions are a useful instrument.

Cooperation with other EU Institutions, international organisations and NGOs

**4. Do you consider the cooperation with relevant stakeholders during first two rounds of the dialogue as sufficient? In particular, do you see a need for a stronger involvement of the Commission or/and the European Parliament in the preparatory phase of the Council dialogue? If yes, how could this involvement look like in practical terms?**

We consider that cooperation with the relevant stakeholders during the first two rounds was well balanced. The dialogue should, in our view, remain focused on discussion within the Council, to avoid the overlapping with the activities relating to the rule of law conducted by other institutions and within other frameworks. We consider that the Council dialogue brings an added value to the EU framework because it provides an opportunity for open and inclusive discussions among the Member States. Any potential greater involvement of the Commission or/and European Parliament should take into account the inter-institutional balance and Treaty-based competences of different actors (this could possibly be elaborated in more detail by the Council's Legal Service).

**5. Are you in favour of involving in the preparation of the Council dialogue representatives of other EU bodies (in particular FRA), relevant international organisations (e.g. the Council of Europe, the UN) and/or NGOs? If yes, how could this involvement look like in practical terms?**

The contribution of EU Agency for Fundamental Rights is welcome, as it is an EU body with a particular expertise of EU competences in this area. As far as other international organisations are concerned, we find that the preparation is best placed within the Council which can cooperate with dedicated EU bodies.

## Preparation of the dialogue

**6. As for the preparatory works, was the time allocated to prepare for each dialogue sufficient? What time period (between the first submission of the discussion paper and the date of GAC meeting) is necessary for Member States to prepare the contribution for the dialogue?**

We find that 2-3 weeks are sufficient to carry out the necessary consultations and prepare for the dialogue.

**7. Do you have ideas about making the preparation more broad-based and systematic (discussions at technical level, seminars in different Member States, trio seminars, consultations with civil society etc.)?**

The preparation of the type suggested seems to entail a lengthy and complicated procedure. We believe that former dialogues were successful because the subjects were found in the most relevant current challenges and the Member States were given the possibility of preparing their inputs autonomously.

## Conduct of the dialogue

**8. How should the Council dialogue be conducted? Would you be in favour of a more interactive discussion (e. g. representatives speaking on behalf of like-minded states, help of an external moderator, lunch discussions)?**

We would prefer not to have an external moderator, but rather conduct the dialogue in the regular format of Council proceedings/meetings. We can support a more interactive discussion in form of lunch discussions or representatives speaking on behalf of like-minded member states as well as other improvements which could make the GAC meetings more time-efficient.

## Follow up of the dialogue

### **9. What kind of follow up would increase the impact of the Council dialogue? At the same time, how should this output be evaluated?**

The impact of the Council dialogue could be increased by regular follow-up discussions in Coreper that could be conducted in a manner to serve at the same time as an evaluation of the output of the Council dialogue.

### **10. How to disseminate, implement the outcomes of each dialogue while ensuring continuity between the different editions of the dialogue?**

The summary of the dialogue should be distributed to Member States, to provide an overview of national responses to current challenges with regards to the rule of law. As mentioned above the continuity between the different editions of the dialogue could be ensured through the follow-up discussions at the Coreper meetings

## ITALY

### **1. What elements of the dialogue should be improved while respecting the current framework set by the Council conclusions? On the other hand, what should be retained as a good practice for the future rounds?**

The Rule of Law dialogue is a *soft* instrument established within the Council to encourage the culture of respect for rule of law in the EU and to complement the existing means which the EU might use in the field of rule of law, namely the infringement procedure in the case of a breach of EU law and the mechanism foreseen in article 7 TUE which allows for the suspension of voting rights in the case of a serious and persistent breach of EU values. It contributes to resolve future systemic threats to the rule of law in Member States before the conditions for activating these mechanisms would be met.

The current framework set by the Council conclusions should be fully implemented and its potential fully exploited. For example, in order to guarantee full equality in treatment of individual Member States and evidence-based approach, the Council might rely on relevant, objective, comparable and reliable information available from Governments, European Institutions, International Organizations, independent Agencies, equality bodies and monitoring systems civil society organizations and, all useful resources in validating indicators and in pooling existing data. That would also help to develop the dialogue in a way which is complementary with other EU Institutions and International Organizations, avoiding duplication and taking into account existing instruments and expertise in this area, as stated by the conclusions.

while respecting the current framework set by the Council conclusions, the existing dialogue might be strengthened, making sure that it caters for a comprehensive consultation within the framework of a more political debate among peers. Ideally, the dialogue should allow Member States to have an open and frank discussion not only on cross-cutting issues, but also on specific cases, especially when issues of common concern might arise. If necessary, closed-door sessions might occasionally be convened to preserve confidentiality and foster constructive dialogue among Ministers. And increasing the frequency of the political dialogue (i.e. from 2 to 4 times per year) might be considered as a possibility to increase its effectiveness.

For the future rounds, it will be crucial to find the right balance between avoiding divisive debates and the obligation to talk about themes that are central to our common European identity.

Good practices from the previous two rounds might be holding seminars to prepare the dialogue; involving European agencies (i.e. FRA) and international organizations (i.e. CoE); circulating Presidency papers before and after the dialogue; focusing on thematic issues of common concern.

**2. What is your view on turning this dialogue into or complementing it with an annual review process enabling periodical evaluation of rule of law related issues?**

The idea of turning the existing dialogue into an annual review process has been discussed in Rome on the occasion of the Friends of the Rule of Law Dialogue on October 3rd 2016. Italy is in favor of further developing this approach.

In particular, we share the Belgian proposal to develop a peer review mechanism in order to strengthen the dialogue among all Member States on policies promoting and safeguarding human rights and the rule of law in the framework of the treaties. It is important that there is a regular discussion at a political level among all Member States on the different ways we implement our commitments with respect to the rule of law and fundamental rights and the existing dialogue within the General Affairs Council could take the shape of a periodic review. All Member States, on an equal footing, would be subject to this regular review, based on a participatory approach that would take into account the viewpoints of both duty bearers and rights holders. Such a review cycle would also enhance the coherence between our internal commitments and the high standards we want to promote through our foreign policy.

This exercise could also draw some inspiration from the existing cooperative process of the Universal Periodic Review in the UN system, avoiding any duplication in the process. Under every Semester of Presidency of the Council of the EU, the General Affairs Council would devote one session to the evaluation of the respect of the rule of law in a group of Member States, that would be assessed on an equal footing. This review would indeed be based on the core principles agreed by Member States in establishing the political dialogue in December 2014: objectivity, non-discrimination, equal treatment of all member states, evidence-based, and nonpartisan.

An alternative option could consist of reinforcing the existing dialogue by making it a more political debate among peers (see Question 1).

**3. In addition to the existing dialogue, do you see a need to organise thematic ad hoc discussions on current rule of law challenges?**

Thematic ad hoc discussions on the current rule of law challenges are more than welcome as long as they are organized in line with the existing EU framework set by the Council conclusions of December 16th 2014. The outcome of thematic ad hoc discussions should not be dispersed. Instead, it could be put to good use by contributing to an inclusive and dynamic preparation of the annual dialogue. Thematic ad hoc discussions on specific cases challenging the respect of rule of law in the UE and in the Member States might be used to react swiftly and effectively to ensure compliance with common principles, especially when issues of common concern might arise.

**4. Do you consider the cooperation with relevant stakeholders during first two rounds of the dialogue as sufficient? In particular, do you see a need for a stronger involvement of the Commission or/and the European Parliament in the preparatory phase of the Council dialogue? If yes, how could this involvement look like in practical terms?**

As “guardian of the EU Treaties”, the European Commission has the task of monitoring the application of EU law and ensuring its uniform application throughout the EU. Beyond this task, the Commission is also responsible for guaranteeing the fundamental values of the EU, including the Rule of Law. Against this background, the Commission should be more involved in the preparatory phase of the Council dialogue, by reporting back to the Council on the ongoing cases where the *2014 Rule of Law Framework* has been applied in any of the EU’s 28 Member States. If necessary, such session could be closed-door.

More in general, a stronger cooperation with the European Commission and the European Parliament on the rule of law initiatives is desirable and compliant with the Council conclusions.

**5. Are you in favour of involving in the preparation of the Council dialogue representatives of other EU bodies (in particular FRA), relevant international organisations (e.g. the Council of Europe, the UN) and/or NGOs? If yes, how could this involvement look like in practical terms.**

We reaffirm that the dialogue has to be developed in a way which is complementary with other EU Institutions and International Organizations, avoiding duplication and taking into account existing instruments and expertise in this area, as stated in the Council conclusions.

Representatives of other EU bodies and civil society can represent a useful reference point to collect the existing scientific literature and evidence-based reports on the issues to be discussed by the Council. In particular, the assistance and expertise that the European Agency for Fundamental Rights (FRA) provides to EU institutions and Member States should be given special attention.

**6. As for the preparatory works, was the time allocated to prepare for each dialogue sufficient? What time period (between the first submission of the discussion paper and the date of GAC meeting) is necessary for Member States to prepare the contribution for the dialogue?**

In general terms, the preparation time period should be extended. In the view of the GAC annual dialogue, a discussion paper should be available at least three months in advance so as to allow each Member State to give active support to the dialogue within the Council.

**7. Do you have ideas about making the preparation more broad-based and systematic (discussions at technical level, seminars in different Member States, trio seminars, consultations with civil society etc.)?**

The existing Rule of Law dialogue is a soft instrument which should be of systematic structure and of political nature. Seminars hosted by like-minded Member States is a good practice, following the example the “Friends of the RoL Dialogue” meetings. In addition to this, all initiatives concerning of rule of law (seminars, reports, consultations, workshops) organized by the Commission and by other EU Institution and bodies should be more frequently reported, so as to give also an added value to the ongoing work of the Council in this field.

**8. How should the Council dialogue be conducted? Would you be in favour of a more interactive discussion (e. g. representatives speaking on behalf of like-minded states, help of an external moderator, lunch discussions)?**

As for the organization of the dialogue, we should look back to the original roots of this exercise, as set out in the 2014 Council conclusions which provide that the Council will consider, as needed, to launch debates on thematic subject matters. It flows from this provision that the discussion could be held not only on cross-cutting issues, but also on the general respect of RoL of Member States. The Commission could be invited to report back to the Council on the state of play concerning the EU Framework to strengthen the Rule of Law.

If necessary, closed-door sessions might occasionally be convened to preserve confidentiality and foster constructive dialogue among Ministers.

**9. What kind of follow up would increase the impact of the Council dialogue? At the same time, how should this output be evaluated?**

An annual review among peers focused on the respect of the rule of law in Member States could look at the possibility of issuing recommendations to the Member States under review, in compliance with the principles of objectivity, non-discrimination and equal treatment of all Member States.

**10. How to disseminate, implement the outcomes of each dialogue while ensuring continuity between the different editions of the dialogue?**

Today, implementation and evaluation are key in every public policy-cycle process. This also applies to the exercise of the dialogue in GAC

## LATVIA

General discussion and/or thematic discussion combined with a periodic review

- 1. What elements of the dialogue should be improved while respecting the current framework set by the Council conclusions? On the other hand, what should be retained as a good practice for the future rounds?**
- 2. What is your view on turning this dialogue into or complementing it with an annual review process enabling periodical evaluation of rule of law related issues?**
- 3. In addition to the existing dialogue, do you see a need to organise thematic ad hoc discussions on current rule of law challenges?**

The rule of law is a founding principle of any democratic society, including the European Union. During previous discussions on the matter a common understanding was reached that the newly established dialogue should respect the EU competences as established by the EU treaties. The dialogue should be developed in a way which is complementary with other EU Institutions and International Organisations, meaning that any duplication with the mandate of international organizations or institutions developing, implementing and monitoring rule of law standards must be avoided. For example, Council of Europe's Venice Commission provides substantial expertise to states wishing to bring their legal and institutional structures into line with European standards and international experience in the fields of democracy, human rights and the rule of law. As the Presidency rightly noted, the dialogue must be based on the principles of objectivity, non-discrimination and equal treatment of all Member States and shall be conducted on a non-partisan and evidence-based approach.

The Council had already 2 dialogues on the rule of law. Latvia sees them as a good possibility to respond to the current challenges in the field of respecting the rule of law. The “Conclusions of the Council of the EU and the member states within the Council on ensuring respect for the rule of law” sets the right framework for the dialogue and there is no need for new elements/structures or monitoring mechanisms in this regard.

**4. Do you consider the cooperation with relevant stakeholders during first two rounds of the dialogue as sufficient? In particular, do you see a need for a stronger involvement of the Commission or/and the European Parliament in the preparatory phase of the Council dialogue? If yes, how could this involvement look like in practical terms?**

**5. Are you in favour of involving in the preparation of the Council dialogue representatives of other EU bodies (in particular FRA), relevant international organisations (e.g. the Council of Europe, the UN) and/or NGOs? If yes, how could this involvement look like in practical terms.**

The cooperation with other stakeholders during the first two rounds of the dialogue was sufficient. The Conclusions of the Council provides that COREPER (Presidency) is preparing a dialogue and we see no need for a stronger involvement of the Commission or/and the European Parliament in the preparatory phase.

However, Latvia believes that certain involvement of Council of Europe's experts (for example, those of the European Commission for Democracy through Law (*Venice Commission*)) in the preparatory work of the GAC dialogue might be of benefit, taking into account that promotion of the rule of law constitutes Council of Europe's core mandate and is one of the main subjects of its expertise.

Preparation of the dialogue

**6. As for the preparatory works, was the time allocated to prepare for each dialogue sufficient? What time period (between the first submission of the discussion paper and the date of GAC meeting) is necessary for Member States to prepare the contribution for the dialogue?**

**7. Do you have ideas about making the preparation more broad-based and systematic (discussions at technical level, seminars in different Member States, trio seminars, consultations with civil society etc.)?**

The time allocated to prepare for each dialogue was not sufficient. We propose to send out the discussion paper of the incoming dialogue at least a month prior the respective Council's meeting in order to have a well-prepared and in-depth discussion on the matter.

Regarding the preparation of the dialogue itself we are cautious about any strict rule or guidelines for Presidencies. It is up to the Presidency/Trio Presidency to decide whether there is a need for any seminar or consultations with civil society etc.

#### Conduct of the dialogue

### **8. How should the Council dialogue be conducted? Would you be in favour of a more interactive discussion (e. g. representatives speaking on behalf of like-minded states, help of an external moderator, lunch discussions)?**

We see the dialogue on the rule of law as a platform for exchanging views on the acute problems. Therefore the structure and preparation of the dialogue should not be complex and unwieldy. We should keep the structure of the dialogue as flexible as possible.

It could be helpful to involve external moderators. However we should keep in mind the internal nature of the discussions within the Council.

#### Follow up of the dialogue

### **9. What kind of follow up would increase the impact of the Council dialogue? At the same time, how should this output be evaluated?**

### **10. How to disseminate, implement the outcomes of each dialogue while ensuring continuity between the different editions of the dialogue?**

We have an early evaluation stage of the dialogue on the rule of law and therefore it is too early to discuss and to decide on the possible follow-up.

Our clear intention is not to have the dialogue as a “blame and shame” game. It would be useful to have an overview of best practices collected from Member States during the dialogues. However we see this more as a helping tool in dealing with the concrete challenges and not as the guidelines for Member States that should be implemented.

## LITHUANIA

General discussion and/or thematic discussion combined with a periodic review

**1. What elements of the dialogue should be improved while respecting the current framework set by the Council conclusions? On the other hand, what should be retained as a good practice for the future rounds?**

Sharing best practices among Member States as well as challenges encountered in guaranteeing the respect of the rule of law should be retained as the main elements of this dialogue.

**2. What is your view on turning this dialogue into or complementing it with an annual review process enabling periodical evaluation of rule of law related issues?**

We are in favour of keeping the present form of the annual dialogue, conducted on a non-partisan approach and respecting the principle of conferred competences.

**3. In addition to the existing dialogue, do you see a need to organise thematic ad hoc discussions on current rule of law challenges?**

Yes, thematic ad hoc discussions on current challenges could be useful, but it should be based on principles of objectivity, non-discrimination, equal treatment, on a non-partisan and evidence-based approach. Recent debate on migrant's integration and EU fundamental rights on 24 May 2016 might serve as an example of such thematic discussion.

Cooperation with other EU Institutions, international organisations and NGOs

**4. Do you consider the cooperation with relevant stakeholders during first two rounds of the dialogue as sufficient? In particular, do you see a need for a stronger involvement of the Commission or/and the European Parliament in the preparatory phase of the Council dialogue? If yes, how could this involvement look like in practical terms?**

Cooperation and involvement of the Commission and Agency for Fundamental Rights during the previous dialogue rounds was useful and brought added value. However, we have a strong preference to keep this dialogue within the framework of the Council. We would be cautious about the involvement of the European Parliament into the Council dialogue and possible politicisation of this process.

**5. Are you in favour of involving in the preparation of the Council dialogue representatives of other EU bodies (in particular FRA), relevant international organisations (e.g. the Council of Europe, the UN) and/or NGOs? If yes, how could this involvement look like in practical terms.**

Involving EU Agency for Fundamental Rights in preparation of the dialogue would provide valuable assistance and expertise the Agency has in the field. In accordance with evidence-based approach, the Agency could help the Council to identify areas where progress is still needed. Situation of the Rule of Law should be evaluated in terms of compliance with the EU Charter of Fundamental Rights.

Duplication with rule of law instruments of other international organisation should be avoided, therefore we would be cautious about involving representatives of the Council of Europe or UN into the Council dialogue.

#### Preparation of the dialogue

**6. As for the preparatory works, was the time allocated to prepare for each dialogue sufficient? What time period (between the first submission of the discussion paper and the date of GAC meeting) is necessary for Member States to prepare the contribution for the dialogue?**

1-2 month would be a reasonably sufficient time to prepare a contribution for the dialogue.

**7. Do you have ideas about making the preparation more broad-based and systematic (discussions at technical level, seminars in different Member States, trio seminars, consultations with civil society etc.)?**

#### Conduct of the dialogue

**8. How should the Council dialogue be conducted? Would you be in favour of a more interactive discussion (e. g. representatives speaking on behalf of like-minded states, help of an external moderator, lunch discussions)?**

We consider that the present form of conducting the dialogue in the General Affairs Council is appropriate.

Follow up of the dialogue

**9. What kind of follow up would increase the impact of the Council dialogue? At the same time, how should this output be evaluated?**

Follow-up of the previous dialogues might be included into the yearly dialogue of the Council.

**10. How to disseminate, implement the outcomes of each dialogue while ensuring continuity between the different editions of the dialogue?**

Summary of each dialogue could be disseminated among Member States and other participants. Implementation of the outcomes is the responsibility of Member States.

## LUXEMBOURG

General discussion and/or thematic discussion combined with a periodic review

**1. What elements of the dialogue should be improved while respecting the current framework set by the Council conclusions? On the other hand, what should be retained as a good practice for the future rounds?**

The values defines in Article 2 TEU are not negotiable. All Member States should respect them. The GAC should also discuss the respect for fundamental rights.

**2. What is your view on turning this dialogue into or complementing it with an annual review process enabling periodical evaluation of rule of law related issues?**

Luxembourg is in favour of complementing the dialogue on the rule of law by a process enabling periodical evaluation of rule of law related issues. Establishing a peer review mechanism in the form of a “periodic review” at the level of the GAC is advisable. However, we should avoid the duplication of existing structures and foras and make sure that a general coherence of the discussions in different fora’s on this topic is assured.

**3. In addition to the existing dialogue, do you see a need to organise thematic ad hoc discussions on current rule of law challenges?**

As initiator of the first dialogue in the GAC on the respect and the promotion of the Rule of law, Luxembourg is in favour of organising thematic or sectoral (based on a topic-by-topic approach) discussions on current challenges regarding the rule of law. The following topics are currently relevant: independence of justice, migration, democracy and freedom of the media.

**4. Do you consider the cooperation with relevant stakeholders during first two rounds of the dialogue as sufficient? In particular, do you see a need for a stronger involvement of the Commission or/and the European Parliament in the preparatory phase of the Council dialogue? If yes, how could this involvement look like in practical terms?**

An implication of the Commission in preparing the dialogue would in principle be welcomed, if possible together with the Fundamental Rights Agency.

**5. Are you in favour of involving in the preparation of the Council dialogue representatives of other EU bodies (in particular FRA), relevant international organisations (e.g. the Council of Europe, the UN) and/or NGOs? If yes, how could this involvement look like in practical terms.**

At the current stage, it is advisable to focus on establishing an efficient dialogue between the Member States only. First and foremost, we have to build mutual trust. A possible outreach exercise would have to be discussed only at a later stage.

Preparation of the dialogue

**6. As for the preparatory works, was the time allocated to prepare for each dialogue sufficient? What time period (between the first submission of the discussion paper and the date of GAC meeting) is necessary for Member States to prepare the contribution for the dialogue?**

The time allocated to prepare for each dialogue is sufficient. That being said, we have to be careful not to add substantial administrative burdens and reporting obligations.

**7. Do you have ideas about making the preparation more broad-based and systematic (discussions at technical level, seminars in different Member States, trio seminars, consultations with civil society etc.)?**

Allowing for a more systematic preparation of the dialogue is recommendable. The dialogue should be prepared in close cooperation between the Member States. Whether or not to increase the involvement of civil society could be considered at a later stage.

## Conduct of the dialogue

**8. How should the Council dialogue be conducted? Would you be in favour of a more interactive discussion (e. g. representatives speaking on behalf of like-minded states, help of an external moderator, lunch discussions)?**

Luxembourg is in favour of working towards a more interactive discussion. Moreover, we are sympathetic to the idea of moving ahead on the basis of a like-minded approach, as it would help to move the process forward.

## Follow up of the dialogue

**9. What kind of follow up would increase the impact of the Council dialogue? At the same time, how should this output be evaluated?**

**10. How to disseminate, implement the outcomes of each dialogue while ensuring continuity between the different editions of the dialogue?**

In order to ensure an efficient follow-up as well as continuity between the different editions of the dialogue, the process should enable the adoption, by the GAC as a whole, of concrete sector-specific or topic-based recommendations. In addition, Member States could consider the elaboration of country-specific recommendations after every Council dialogue.

## HUNGARY

### I. Experience acquired and way forward

General discussion and/or thematic discussion combined with a periodic review

#### **1. What elements of the dialogue should be improved while respecting the current framework set by the Council conclusions? On the other hand, what should be retained as a good practice for the future rounds?**

We believe that the rule of law mechanism has to continue respecting the national legal frameworks, which lead to a very broad spectrum of answers given by the individual Member States. We believe that it is a good approach that the annual dialogue is focusing on current challenges or on such long-standing (evergreen) challenges as e.g the balance between the stability of the legal system and the need for quick political and legislative reactions in a swiftly changing world. All approaches shall be in line with the Council Conclusions of 2014.

#### **2. What is your view on turning this dialogue into or complementing it with an annual review process enabling periodical evaluation of rule of law related issues?**

Our position is that the EU institutional framework provides effective tools for the EU institutions to take actions in case of the violation of the fundamental values of the EU. Furthermore we believe that the principles of the dialogue laid down in the 2014 General Affairs Council conclusions fully cover the tools needed to discuss issues concerning the rule of law. At this point we believe that the Council's responsibilities and duties are clearly and sufficiently defined regarding the area of rule of law.

#### **3. In addition to the existing dialogue, do you see a need to organise thematic ad hoc discussions on current rule of law challenges?**

We believe that the current dialogue is sufficient to elaborate on the common rule of law related challenges and best practices.

**4. Do you consider the cooperation with relevant stakeholders during first two rounds of the dialogue as sufficient? In particular, do you see a need for a stronger involvement of the Commission or/and the European Parliament in the preparatory phase of the Council dialogue? If yes, how could this involvement look like in practical terms?**

We do consider the current state of cooperation sufficient. Stronger involvement of the Commission and/or the Parliament is not needed in the preparatory phase of the dialogue, since this dialogue takes place among the Member States within the Council, according to the Council Conclusions of 2014.

**5. Are you in favour of involving in the preparation of the Council dialogue representatives of other EU bodies (in particular FRA), relevant international organisations (e.g. the Council of Europe, the UN) and/or NGOs? If yes, how could this involvement look like in practical terms?**

Stronger involvement is not needed.

Preparation of the dialogue

**6. As for the preparatory works, was the time allocated to prepare for each dialogue sufficient? What time period (between the first submission of the discussion paper and the date of GAC meeting) is necessary for Member States to prepare the contribution for the dialogue?**

We found that more time is needed for the preparation of the concrete answers to the specific questions raised within the topics. The general topic is announced always very early, but the concrete questions are specified in our opinion too late.

**7. Do you have ideas about making the preparation more broad-based and systematic (discussions at technical level, seminars in different Member States, trio seminars, consultations with civil society etc.)?**

We believe that the current process works sufficiently. However we believe that the Presidencies could involve Member States when identifying topics for the next debate in the preparatory phase. Without binding nature, the Presidency could make a survey to inquire what the most pressing issues are according to the Member States when deliberating on the next topic of the dialogue. Besides, if the Presidency finds it necessary, it is not excluded to organize preliminary conferences/seminars/events, also in the presence of the representatives of other EU bodies, relevant international organisations or other stakeholders, in a subject matter corresponding to the concrete topic of the forthcoming annual dialogue within the Council.

Conduct of the dialogue

**8. How should the Council dialogue be conducted? Would you be in favour of a more interactive discussion (e. g. representatives speaking on behalf of like-minded states, help of an external moderator, lunch discussions)?**

We are satisfied with the current conduct of the dialogue. Informal GAC lunch discussion might be organised, but its added would be questionable.

Follow up of the dialogue

**9. What kind of follow up would increase the impact of the Council dialogue? At the same time, how should this output be evaluated?**

We want to emphasize again, that this process can only be effective and keep its balanced character if no evaluation by other EU bodies or actors follow the exchange of views and experiences. This is one of the most important features, which is as well laid down in the December 2014 GAC conclusions. Member States have the possibility to contact each other on bilateral basis concerning further details on the best practices, even after the Council's dialogue.

**10. How to disseminate, implement the outcomes of each dialogue while ensuring continuity between the different editions of the dialogue?**

We believe that the topics of the dialogue must not be linked closely; what is important is only that they have a relevant connection to the rule of law. It shouldn't be a priority to create continuity between the different editions; it should be a priority to focus on the emerging threats arising in all Member States concerning the rule of law.

## **MALTA**

General discussion and/or thematic discussion combined with a periodic review

### **1. What elements of the dialogue should be improved while respecting the current framework set by the Council conclusions? On the other hand, what should be retained as a good practice for the future rounds?**

- It is important to have a clear topic to discuss so the debate is structured and focused.
- It should be a positive exercise whereby the focus is on the exchange of best practices at the political level.
- The seminar organised by the NL Presidency and the preparatory discussion at the level of informal Directors General responsible for European Affairs (as done under the Luxembourg Presidency) were good practices.
- Some degree of follow-up is desirable.
- We also need to keep in mind the way these debates project the image of the Union not only within its Member States but outside its borders.

### **2. What is your view on turning this dialogue into or complementing it with an annual review process enabling periodical evaluation of rule of law related issues?**

Malta prefers the retention of the existing dialogue format respecting the framework set out the Council Conclusions. While some form of follow-up is desirable, we do not believe that it necessitates an annual review process. Also see answer to question 9.

### **3. In addition to the existing dialogue, do you see a need to organise thematic ad hoc discussions on current rule of law challenges?**

Not specifically. The existing framework should be retained. The incumbent Presidency would however have the prerogative to hold preparatory discussions as appropriate.

Cooperation with other EU Institutions, international organisations and NGOs

**4. Do you consider the cooperation with relevant stakeholders during first two rounds of the dialogue as sufficient? In particular, do you see a need for a stronger involvement of the Commission or/and the European Parliament in the preparatory phase of the Council dialogue? If yes, how could this involvement look like in practical terms?**

The existing level of cooperation is considered satisfactory. It is important that all Member States intervene and that there is a dynamic discussion. While the input of the European Parliament and the Commission is always valued, it is felt that the Presidency should be allowed the discretion to prepare the dialogue as it feels best, involving those institutions or stakeholders it chooses.

**5. Are you in favour of involving in the preparation of the Council dialogue representatives of other EU bodies (in particular FRA), relevant international organisations (e.g. the Council of Europe, the UN) and/or NGOs? If yes, how could this involvement look like in practical terms.**

Malta agrees that this dialogue should be developed in a way which is complementary with other EU Institutions and International Organisations, avoiding duplication of efforts and taking into account existing instruments and expertise in this area. Such involvement should be left to the discretion of the Presidency in office.

Preparation of the dialogue

**6. As for the preparatory works, was the time allocated to prepare for each dialogue sufficient? What time period (between the first submission of the discussion paper and the date of GAC meeting) is necessary for Member States to prepare the contribution for the dialogue?**

Such papers should be disseminated 3 weeks in advance of the date of the GAC.

**7. Do you have ideas about making the preparation more broad-based and systematic (discussions at technical level, seminars in different Member States, trio seminars, consultations with civil society etc.)?**

The existing framework is deemed to be appropriate. Notwithstanding, initiatives similar to the seminar organised by the NL Presidency and the preparatory discussion at the level of informal Directors General responsible for European Affairs (as done under the Luxembourg Presidency) were positive initiatives. Leaving the initiative to Presidencies is however something we view more positively rather than a systematic exercise.

Conduct of the dialogue

**8. How should the Council dialogue be conducted? Would you be in favour of a more interactive discussion (e. g. representatives speaking on behalf of like-minded states, help of an external moderator, lunch discussions)?**

A more informal setting could indeed make the discussion more dynamic. However, it should be up to the Presidency in office to decide on the modalities taking into account lessons learned from previous debates. Nonetheless, it is worth reiterating that the framework should allow for the discussion to take place in a variety of formats and hence one should refrain from having strict guidelines on its modalities.

Follow up of the dialogue

**9. What kind of follow up would increase the impact of the Council dialogue? At the same time, how should this output be evaluated?**

As stated above, some degree of follow-up would be desirable. In order to ensure continuity, Malta would recommend the introduction of a rolling report prepared by the General Secretariat of the Council which could also feed in the discussion.

**10. How to disseminate, implement the outcomes of each dialogue while ensuring continuity between the different editions of the dialogue?**

Better use of online media, including the Presidency website as well as the Consilium website can contribute towards improved dissemination.

## NETHERLANDS

### General discussion and/or thematic discussion combined with a periodic review

- Rule of Law in and amongst EU member states needs continuous attention, not a given.
- RoL both as intrinsic and instrumental value in EU cooperation.
- Coherence between internal and external policy is moreover required for the EU's credibility.
- Good basis with the two RoL Dialogues: start of promising tradition in GAC which needs to be strengthened and further developed.
- Now continuity is needed to further enhance a culture of respect for the RoL: commit to yearly RoL Dialogue at least in every first semester.
- Benefits of an inclusive approach to preparation, working with natural partners CoE and FRA. See under *Preparation*.
- NL would like to see retained the possibility for both a general dialogue (broad-based rule of law oriented, general trends) as well as a thematic dialogue (focus on specific RoL related topics).
- Essential that dialogue is developed in complementary way with other EU institutions, existing instruments and expertise, avoiding duplication and maintaining synergy with JHA Council Conclusions.
- Effective follow up: ensuring the outcome of debates will be taken up.

### **1. What elements of the dialogue should be improved while respecting the current framework set by the Council conclusions? On the other hand, what should be retained as a good practice for the future rounds?**

- The Council Conclusions underline that the Council has its own responsibility in the field of RoL, providing for an annual discussion at the ministerial level.
- Role of the Council is essential in promoting respect for the rule of law within the EU and in creating a culture of dialogue between MS.
- Guarding and promoting respect for the rule of law is an interest shared by all MS.
- The Dialogue should focus mainly on safeguarding and ensuring the respect for Rule of Law principles by MS. To this end the 2016 RoL Checklist of the Council of Europe could provide guidance (see also further below under Cooperation).

**2. What is your view on turning this dialogue into or complementing it with an annual review process enabling periodical evaluation of rule of law related issues?**

- NL feels that the RoL Dialogue should be improved and strengthened on a step by step basis.
- A light mechanism of peer review within the Council could be beneficial, provided it is a constructive dialogue based on objective information where the goal is to share best practices and lessons learnt with a focus limited to the rule of law taking broad support into account (also ref to CoE checklist).

**3. In addition to the existing dialogue, do you see a need to organise thematic ad hoc discussions on current rule of law challenges?**

- CC's already provide possibility for thematic discussions, which could focus on best practices and lessons learned.
- NL would be open to the possibility of a reactive ad hoc dialogue in the Council, in case of acute situations that would benefit from discussion in the Council. For example following specific reports of CoE or FRA, or following steps taken by the Commission under its pre-article 7 procedure (MS's would be able to react).
- The possibility for thematic and ad-hoc dialogues should be used to create synergy and real follow-up with regards to relevant CoE and FRA reports.
- The theme chosen by the NL Presidency has several RoL aspects that could be discussed.

Cooperation with other EU Institutions, international organisations and NGOs

**4. Do you consider the cooperation with relevant stakeholders during first two rounds of the dialogue as sufficient? In particular, do you see a need for a stronger involvement of the Commission or/and the European Parliament in the preparatory phase of the Council dialogue? If yes, how could this involvement look like in practical terms?**

Short term:

- For NL important that all institutions play their own specific role, that they work together and that they complement each other.
- Currently it is up to the Presidency to come up with a theme and approach for the RoL Dialogue. While this is a healthy experience, there are institutions (such as CoE and FRA) that could play a supporting role in the preparatory phase.
- Alternatively, the General Secretariat of the Council could be tasked to play this role and additionally support/monitor follow-up actions (similar to current initiatives for improving follow up of European Council decisions).

- It is beneficial to consult with civil society in preparatory phase of dialogues, including invitation to preparatory seminar, share updates, report and follow up note.

(Middle) long term:

- In time, a more cyclical approach could be envisaged with clear (complementary) roles for all institutions:
- Council: priority setting; exchange best practices; build culture of dialogue; signaling potential risks (in MS); evaluating agreement follow up and make new commitments at the end of the year.
- Commission: independent monitoring developments in MS with potential for action through its RoL framework.
- EP: yearly debate on basis of Commission report; signaling and discussing potential risks in MS; possibility for yearly inter-parliamentary debate on the basis of Commission report or other trend reports.
- FRA: feeding Council and Commission with objective information.
- Note: need to prevent (over)politicization of Dialogue. Maintain synergy with JHA Council Conclusions.

**5. Are you in favour of involving in the preparation of the Council dialogue representatives of other EU bodies (in particular FRA), relevant international organisations (e.g. the Council of Europe, the UN) and/or NGOs? If yes, how could this involvement look like in practical terms.**

- For NL important that all institutions play their own specific role, that they work together and that they complement each other.
- Seeking synergies between existing instruments and existing reporting is essential. In order to prevent unnecessary duplication external expertise and existing reporting -by the Council of Europe and Fundamental Rights Agency- should be involved structurally into the Council activities regarding RoL. They can actively feed the Commission and Council with objective information about developments in the EU (and MS).
- NL Presidency chose to involve both the FRA and CoE extensively in preparations of the dialogue (rule of law seminar in Strasbourg and continuous contact) and to invite both to the Dialogue (FRA participated; CoE was unfortunately unable to attend).

Preparation of the dialogue

**6. As for the preparatory works, was the time allocated to prepare for each dialogue sufficient? What time period (between the first submission of the discussion paper and the date of GAC meeting) is necessary for Member States to prepare the contribution for the dialogue?**

NL during Presidency decided on an inclusive approach in the following way:

- Organize preparatory seminar in Strasbourg +/- 3 months in advance to explore and prepare the topic for debate.
- Close cooperation with both CoE and FRA in both seminar and debate (CoE unable to attend).
- Share preparation seminar shortly report afterwards.
- Contact with NGO's / stakeholders: participation in seminar, preparatory briefing ahead of dialogue in Council and report afterwards.
- Share non-paper including discussion questions two weeks in advance of RoL Dialogue to allow for adequate preparation.
- For next RoL Dialogue existing reports by CoE or FRA could be used as basis for discussion.
- Participation in Council Dialogue by relevant NGO / stakeholders (ie. UN) could be considered for a more inclusive approach.

With regards to preparations in working party, Antici +1 and/or CRP: diverse contributions of MS and no real dialogue versus saving actual discussion for the political level.

**7. Do you have ideas about making the preparation more broad-based and systematic (discussions at technical level, seminars in different Member States, trio seminars, consultations with civil society etc.)?**

- See under point 1, 2 and 3 above.
- A transparent approach during preparations could be beneficial: publish preparatory paper, inform civil society about content and process.

#### Conduct of the dialogue

**8. How should the Council dialogue be conducted? Would you be in favour of a more interactive discussion (e. g. representatives speaking on behalf of like-minded states, help of an external moderator, lunch discussions)?**

- The common goal should be to contribute to a culture of dialogue on the rule of law. Ideas that may improve interactivity are welcomed. There should be no need to move away from a formal setting.

## Follow up of the dialogue

**9. What kind of follow up would increase the impact of the Council dialogue? At the same time, how should this output be evaluated?**

**10. How to disseminate, implement the outcomes of each dialogue while ensuring continuity between the different editions of the dialogue?**

- As part of the conclusions the Presidency / Council should outline the results and way forward, in order to avoid the debate having a one-off character. The General Secretariat of the Council could be tasked to compile and monitor a follow up note: see under *Cooperation* point 1 above.
- Transparency about preparations and outcome is key.
- Ideas and topics discussed in the Council could be taken into account by the Commission, FRA and others in their work and vice versa.

## AUSTRIA

General discussion and/or thematic discussion combined with a periodic review

### **1. What elements of the dialogue should be improved while respecting the current framework set by the Council conclusions? On the other hand, what should be retained as a good practice for the future rounds?**

While acknowledging that with only two editions so far the instrument of the rule of law-dialogue is still in its early stages, the initial experience gained has highlighted a couple of aspects that merit our attention with a view to possible improvement. Amongst these we identify, in particular, a more systematic and co-ordinated preparation (see answers to Q 6+7) including a closer involvement of other relevant stakeholders (see answers to Q 4 to 7) on the one hand, and a substantial implementation and follow-up in order to increase the impact and practical relevance of the dialogue (see answers to Q 8, 9+10) on the other.

### **2. What is your view on turning this dialogue into or complementing it with an annual review process enabling periodical evaluation of rule of law related issues?**

We would see considerable merit in shifting from the current method, where the topics for the dialogue are chosen ad hoc and upon short notice by the Council Presidency, to a systematic review pattern, which could be thematic-driven. The aim for the future should be to identify the topics to be addressed in the dialogue through a thorough preparation process of analysing existing information and reports about rule of law challenges in EU MS that have already been examined by international and regional mechanisms. Those thematic areas, including recommendations thereto, covered mostly and repeatedly in different reports, could form the basis for discussions in the Rule of Law dialogue of the Council as they show common issues relevant for the European Union as a whole. This would contribute to enhancing the practical relevance of the findings of the dialogue as much for the Member States as for the relevant Union institutions and bodies and would, at the same time, allow to cover a wider range of rule of law-related problems than is currently the case.

**3. In addition to the existing dialogue, do you see a need to organise thematic ad hoc discussions on current rule of law challenges?**

According to the Council Conclusions on Ensuring Respect for the Rule of Law adopted in 2014, the EU and its Member States agreed that the Council will consider, as needed, to launch debates on thematic subject matters what we would also support. There is consensus on the key role of the General Affairs Council (GAC) within the existing Rule of Law dialogue of the Council and, if required, topics may be added to the agenda at short notice. The GAC not only serves as the proper forum for addressing current rule of law challenges but also provides a satisfactory framework for responding quickly and flexibly.

Cooperation with other EU Institutions, international organisations and NGOs

**4. Do you consider the cooperation with relevant stakeholders during first two rounds of the dialogue as sufficient? In particular, do you see a need for a stronger involvement of the Commission or/and the European Parliament in the preparatory phase of the Council dialogue? If yes, how could this involvement look like in practical terms?**

**5. Are you in favour of involving in the preparation of the Council dialogue representatives of other EU bodies (in particular FRA), relevant international organisations (e.g. the Council of Europe, the UN) and/or NGOs? If yes, how could this involvement look like in practical terms?**

Following the proposal as outlined in Q 2, which implies a more substantive and longer preparation time, in our view it would be very useful to strongly involve in particular the Fundamental Rights Agency in this preparatory phase. The FRA could be tasked by the Council to analyse existing information material and distil from it the most frequently addressed topics including recommendations thereon and prepare a summary and/or issues paper on it. This summary could be used by the Council as a basis for further discussions. In a next stage the FREMP, as the competent Council working group on an expert level, could discuss the FRA summary/issues paper and prepare a report to be forwarded to the Council.

Concerning a possible closer cooperation with other stakeholders we are open to new proposals and developments in the future. For the time being we base our considerations on the Council conclusions of 16 December 2014 establishing the annual Rule of Law dialogue within the Council.

## Preparation of the dialogue

**6. As for the preparatory works, was the time allocated to prepare for each dialogue sufficient? What time period (between the first submission of the discussion paper and the date of GAC meeting) is necessary for Member States to prepare the contribution for the dialogue?**

According to the Council Conclusions on Ensuring Respect for the Rule of Law adopted in 2014, the EU and its Member States agreed that the Rule of Law dialogue will be conducted – among others - on an evidence based approach. It seems that this has not yet been put into practice in the best possible way so far and leads to the question what could serve as evidence in line with the Council Conclusions.

One possibility to address this gap and to allow for a thorough preparation by the Member States is for the Presidency to elaborate a discussion paper as the basis for the exchange of views by the ministers in the Council, which should be available at least two or three months in advance. In accordance with the ideas expressed in our answer to Q 2, 5 and 7, the issues for the discussion paper including the 2-3 concrete questions put to the ministers would be identified and elaborated during the first semester in an expert-driven process within the FREMP working group of the Council. Consequently the FRA would submit its preparatory analysis to the FREMP in early spring of each year. An illustrative example of a possible timeline is being outlined at the end of the document.

**7. Do you have ideas about making the preparation more broad-based and systematic (discussions at technical level, seminars in different Member States, trio seminars, consultations with civil society etc.)?**

See answers to Q 2 and 5.

## Conduct of the dialogue

### **8. How should the Council dialogue be conducted? Would you be in favour of a more interactive discussion (e. g. representatives speaking on behalf of like-minded states, help of an external moderator, lunch discussions)?**

In an effort to strengthen the substance of the dialogue, we should strive for more focused contributions by the ministers. One way of achieving this would be for the Presidency, in its discussion paper deriving from the deliberations in the FREMP, to put a set of questions (two or three, for example) upon which the ministers would be invited to reflect in their interventions. This would not exclude an open discussion or keynote contributions by special invitees.

## Follow up of the dialogue

### **9. What kind of follow up would increase the impact of the Council dialogue? At the same time, how should this output be evaluated?**

Consequently to our ideas expressed in our answers to Q 5 to 8, several results should be the product of the yearly dialogue process. First, the outcome-document of the respective Council meeting would reflect the fact that the dialogue has taken place and the main topics addressed by the Presidency discussion paper as well as the ministers (and others) in their interventions. Secondly, the Council would endorse the report submitted by the FREMP working group which would be annexed to the outcome-document of the Council meeting. And thirdly, the GAC would adopt, at its next meeting, the main conclusions drawn from the dialogue, including possible policy recommendations for the issues addressed. These conclusions would be prepared by FREMP and forwarded via Coreper to the Council.

In terms of implementation and evaluation of the output of the regular dialogue, further reflection could be given at a later stage to establishing a light follow-up process to the Council conclusions during the subsequent year or years. Possible elements thereof could include a review of the measures taken by the Member States and relevant Union institutions and bodies in order to tackle the problems identified or to exploit the potential for improvement highlighted in the policy recommendations. A presentation and discussion of best practices in doing so could be of particular interest here.

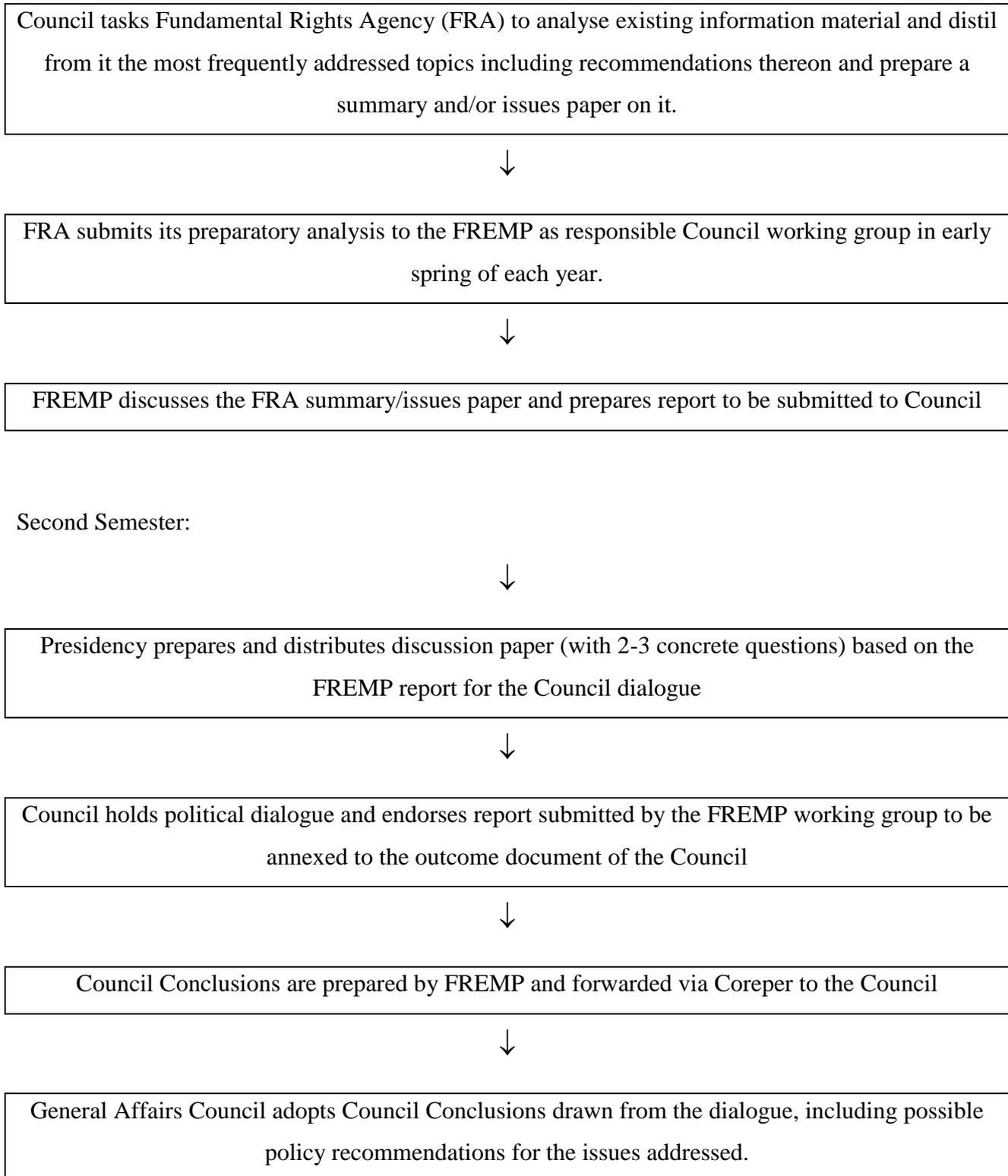
**10. How to disseminate, implement the outcomes of each dialogue while ensuring continuity between the different editions of the dialogue?**

With regard to implementation of the outcome of each dialogue and ensuring continuity between the different editions thereof, see our answers to Q 8+9.

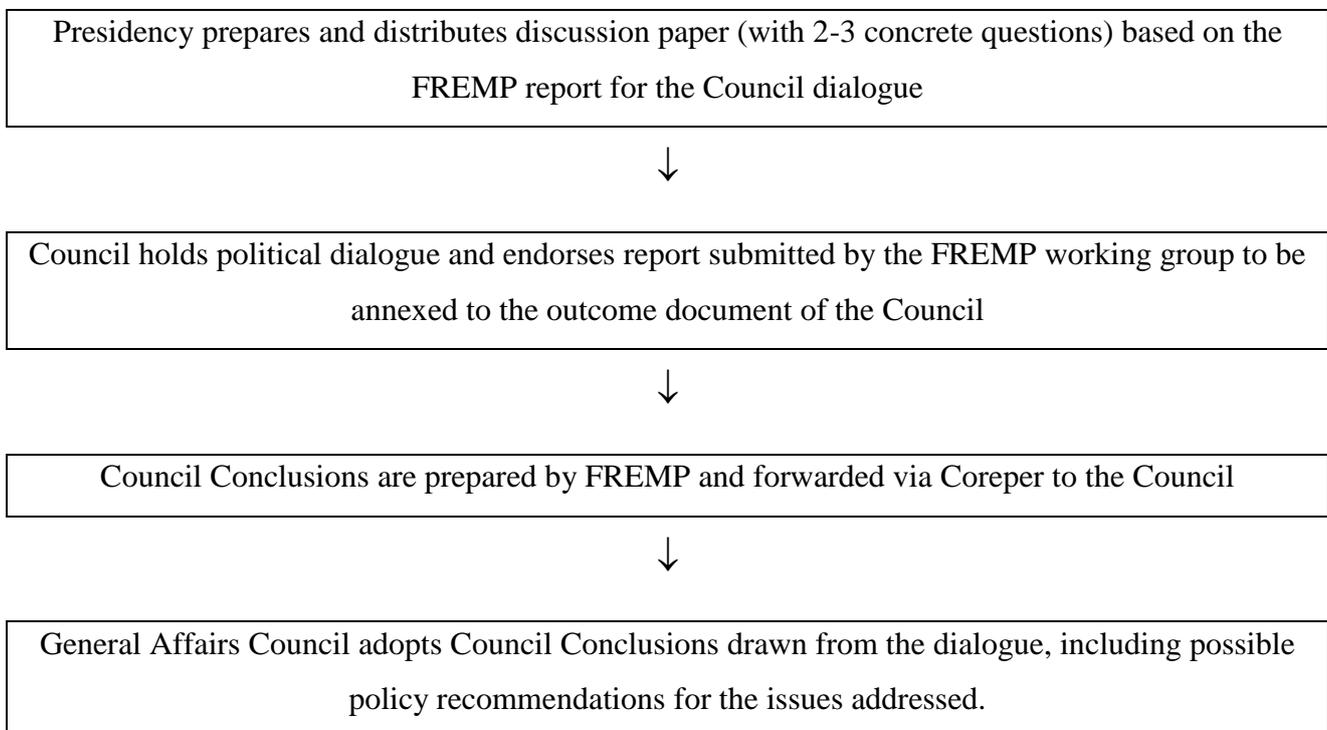
In addition to the follow-up process in the respective Council formations, broader publicity and dissemination of the outcomes of each dialogue can be gained by ensuring greater parliamentary involvement in the Member States. However, for a more substantial debate at the parliamentary level earlier communication of the preparatory work and the Council draft conclusions will be required.

## Proposal for a timetable for the yearly Rule of Law dialogue process:

First semester:



Second Semester:



## **POLAND**

Enhancing the rule of law shall be based on consensus and the acknowledgement of common values and shared experiences. A constructive, transparent, non-partisan, evidence-based and consensus-seeking dialogue at a political level among the Member States is an appropriate way to promote and safeguard the rule of law in the framework of the Treaties. As we decided in December 2014 the dialogue among Member States should be conducted without prejudice to the principles of conferred competences, as well as the respect of national identities of Member States inherent in their fundamental political and constitutional structures.

That is why Poland would like to thank the Italian Presidency for the approach of supporting Member States to address challenges by means of collective political dialogue. We also thank the Slovak Presidency for the efforts made in order to evaluate the experience acquired during two rounds of the dialogue organized by the Luxemburgish and Dutch Presidency.

### General discussion and/or thematic discussion combined with a periodic review

In order to increase understanding and common trust, and contribute to the strengthening of confidence in the Member States, a dialogue amongst partners with a focus on mutual assistance, should be continued. This dialogue shall be invariably conducted in a way that is respectful of the principles of objectivity, non-discrimination and equal treatment, without “naming and shaming” practices. Respecting the current framework and principles set by the conclusions is crucial in this regard.

Thus turning this dialogue into, or complementing it with, an annual review process enabling periodical evaluation of issues related to the rule of law would be against the idea negotiated in December 2014. It was agreed that this dialogue is complementary with existing instruments and institutions which are authorised to carry out evaluations. We have committed ourselves to establishing a dialogue in which Member States can learn from each other but not evaluate each other.

Regarding launching thematic ad hoc discussions, we need to ensure that they respect the principles of objectivity, non-discrimination and equal treatment, which means that they cannot be directed against an individual Member State.

## Cooperation with other EU Institutions, international organisations and NGOs

We find it beneficial, while framing the rule of law dialogue, to involve different parties - including various European institutes, NGOs and civil society organisations. They can be engaged, together with other bodies and institutions relevant to the subject matter, and feed into a seminar or conference preparatory to the dialogue. Then the presidency can report back on the main conclusions of the event or discussion during the debate.

### Preparation of the dialogue

As for the preparatory works increasing the amount of time allocated to prepare for the dialogue is necessary. Apart from the auxiliary role performed by seminars, conferences and consultations, the preparatory function to be fulfilled, according to the conclusions by the COREPER, should be expanded in practice. The COREPER should be more actively engaged in preparation of the direct dialogue set-ups. Moreover, the preparatory discussions within the COREPER can contribute to identify good practices to be shared during the General Affairs Council.

### Conduct of the dialogue

On the basis of acquired experience, we have to assume that the dialogue on the rule of law is a relatively open, but rather self-reflective presentation, made by each Member State. Thus we will opt for a more interactive discussion involving a genuine exchange of views during the dialogue. We can achieve this result by encouraging Member States to offer good practice solutions.

### Follow up of the dialogue

The rule of law dialogue should be seen as a forum facilitating the exchange of views, best practices as well as exploring effective methods and policies to respond to the challenges linked to aspects related to the rule of law. In order to add value to these proceedings it can be agreed to develop a guide that will compile key findings and best practices for dissemination amongst relevant governmental bodies. It must be pointed out however that receptiveness to the results of the dialogue depends on present abilities and policies adopted by the national government.

## PORTUGAL

General discussion and/or thematic discussion combined with periodic review

**1. What elements of the dialogue should be improved while respecting the current framework set by the Council Conclusions? On the other hand, what should be retained as a good practice for future rounds?**

**2. What is your view on turning this dialogue into or complementing it with an annual review process enabling periodical evaluation of rule of law related issues?**

As it stands, we do already have a regular exercise. The point is to add more substance and acumen to our Dialogues thus allowing their impact to be leveraged.

We consider positive a periodical evaluation of rule of law issues. Yet, to do so we should focus on the three main tenets set out in article 2 TEU: democracy, human rights and rule of law. We should also not neglect the fact that there is no common notion for what the rule of law means. Yet, the various dimensions identified by the Venice Commission could guide our workings. Our understanding of the Dialogue can be summarized in a few words: a political process, an objective exercise, and avoiding any overlapping with work already carried on in other fora.

We do not envision a comprehensive periodic review of Member States legal systems. We should stick to our aim: a periodical review centered on the rule of law. In this context, the creation of a “European Semester” for the rule of law can be considered.

**3. In addition to the existing dialogue, do you see a need to organize thematic ad hoc discussions on current rule of law challenges?**

Our societies face complex and difficult challenges. Some are technological; that is the case of the Digital. Others, like Migration, are testing our society’s openness, our ability to adapt and frame a changing world, where transnational and hybrid actors play an increasing role. We are aware of that. The first two Dialogues reflected those concerns: both Digital and Migration are two topical issues.

We should look into other relevant horizontal areas – and give them more acumen. The thematic discussion should generate political debate, not a divisive one.

**4. Do you consider the cooperation with relevant stakeholders during first two rounds of the dialogue as sufficient? In particular, do you see a need for a stronger involvement of the Commission or/and the European Parliament in the preparatory phase of the Council dialogue? If yes, how could this involvement look like in practical terms?**

We could envision the Council to refer to existing expert's advice or to relevant existing reporting and data from different institutions and Agencies – already in the preparatory phase. As to the Commission it is essential its preparatory work and the European Parliament participation and we are open to their participation, as guests, in the Council Dialogue, allowing them to express their concerns and state their priorities. We should not duplicate other *fora* work and should involve all relevant Council formations in the debate.

**5. Are you in favour of involving in the preparation of the Council dialogue representatives of other EU bodies (in particular FRA), relevant international organisations (e.g. the Council of Europe, the UN) and/or NGOs? If yes, how could this involvement look like in practical terms.**

We would like Dialogues to be substantive, evidence-based and capable of giving us an added-value. For that reason, we have no objection against relevant EU entities and relevant organizations to provide us with, as appropriate, their input in the preparatory phase.

Preparation of the dialogue

**6. As for the preparatory works, was the time allocated to prepare for each dialogue sufficient? What time period (between the first submission of the discussion paper and the date of GAC meeting) is necessary for Member States to prepare the contribution for the dialogue?**

It depends on our level of ambition - and this refers both to the time allocated to prepare the Dialogue as well as to the Dialogue itself. As scoped currently, we faced no major hurdles in preparing our input. Yet, if we agree on the Dialogue to be more than a tour de table - it's our position - we may require more time. This also implies additional work for the Council Secretariat/Presidency, in screening, scoping and structuring the Dialogue. Also, conclusions would gain in being substantive and, if so agreed, to have, as appropriate, a way ahead.

**7. Do you have ideas about making the preparation more broad-based and systematic (discussions at technical level, seminars in different Member States, trio seminars, consultations with civil society etc.)?**

Once the topic for the Dialogue has been agreed, which should be done with the necessary advance, there may be merit in holding seminars in different Member States and also at European level open to the civil society, allowing the participation of relevant experts.

Conduct of the dialogue

**8. How should the Council dialogue be conducted? Would you be in favour of a more interactive discussion (e.g. representatives speaking on behalf of like-minded states, help of an external moderator, lunch discussions)?**

Although subgroups of like-minded states can be useful outside the Council to exchange views or to prepare Council meetings, we are not in favour of having one Member State intervening on behalf of other Member States. That would go against the non-discriminatory and objectivity nature of the Dialogue in the Council. The Dialogue is held among peers bound by the TEU and the principles enshrined therein. The idea is to have a constructive approach not a divisive one.

Follow up of the dialogue

**9. What kind of follow up would increase the impact of the Council dialogue? At the same time, how should this output to be evaluated?**

As stated above, we could envision having a periodical review centered on the rule of law among Members – political and flexible in nature – including the possibility of issuing political recommendations.

**10. How to disseminate, implement the outcomes of each dialogue while ensuring continuity between the different editions of the dialogue?**

We are open to disseminating the output of our dialogues, for instance, through a Presidency's press conference. We are also open to receive, as appropriate, the input provided by other institutions and relevant experts. As to the continuity of the Dialogue, by having such political recommendations, we would be both incorporating a stock-taking input and furthering the process by creating synergies between each Dialogue held.

**ROMANIA**

**DELETED**

**DELETED**

**DELETED**

**DELETED**

**1. What elements of the dialogue should be improved while respecting the current framework set by the Council conclusions? On the other hand, what should be retained as a good practice for the future rounds?**

Majority of the relevant stakeholders that cooperated during first two rounds of the dialogue expressed the need – firstly, to raise awareness of the importance and the role of the dialogue and – secondly, to ensure continuity of the work that would allow them to follow up developments concerning dialogue and consequently to be more responsive.

Fields of possible improvements are: enhancing the understanding of the concept and the clarity of the organization of dialogues; as well as developing understanding of the methods, structure and procedures regarding the conduct of the dialogue, selection of themes and monitoring of the follow-up.

The dialogue should be based on the cooperation with all the relevant stakeholders. More precisely, the relevant stakeholders should be involved in the preparatory part of the dialogue (annual colloquium on fundamental rights last year was a good example) in order to get an objective picture. However, the subsequent first discussions should be open primarily for the Member States, enabling them to provide their honest input regarding a discussed thematic.

Regarding retaining good practices we strongly advocate the “tour de table” method, as a “soft” commitment and engagement of any Member States. We believe that this method should remain a standardized practice for the future rounds.

---

<sup>1</sup> There were also general remarks from relevant stakeholder about the sent questioner; the structure and the questions are framed in a way that it was challenging for relevant stakeholder to address all the questions as they were not following the developments regarding the rule of law dialogues sufficiently.

**2. What is your view on turning this dialogue into or complementing it with an annual review process enabling periodical evaluation of rule of law related issues?**

We support complementarity in order to avoid duplications and to ensure coherence with other rule of law tools/mechanisms (such as annual review); at the same time we believe that continuity would contribute to the enhanced procedural and substance/topical understanding.

**3. In addition to the existing dialogue, do you see a need to organise thematic ad hoc discussions on current rule of law challenges?**

We are positive to address challenges the EU and Members States are facing. Moreover, we are of the opinion that concrete actions should follow discussions, if necessary. In addition, we would like to emphasize that a good coordination among different formations of the Council is crucial to ensure a coordinated approach. (Since GAC is not the only formation dealing with the rule of law issues.)

<b>Cooperation with other EU Institutions, international organisations and NGOs</b>
---

**4. Do you consider the cooperation with relevant stakeholders during first two rounds of the dialogue as sufficient? In particular, do you see a need for a stronger involvement of the Commission or/and the European Parliament in the preparatory phase of the Council dialogue? If yes, how could this involvement look like in practical terms?**

We believe it is not necessarily the lack of cooperation as it might be more the lack of successful introduction of the relevance of the dialogue and sporadic information sharing.

We encourage the effective use of data on respect for democracy, rule of law and fundamental rights in Member States that are collected by other international organizations including the Council of Europe (CoE), United Nations (UN), FRA (Fundamental Rights Agency) to which all EU Member States are parties for monitoring of compliance with the rule of law. It is important to pay attention to the coherent and coordinated approach when gathering and synchronizing existing information and analysis.

**5. Are you in favour of involving in the preparation of the Council dialogue representatives of other EU bodies (in particular FRA), relevant international organisations (e.g. the Council of Europe, the UN) and/or NGOs? If yes, how could this involvement look like in practical terms.**

We support the cooperation with relevant stakeholders but within some limitations (see supra). We would like to emphasize, that the Council dialogue is the dialogue among Member States.

We think that especially FRA could play a more prominent role; as well the NGOs: their input (due to their expertise) could prove very valuable.

However we would also like to emphasize the importance of transparent selection of potentially participating NGOs. Related to that setting up selection criteria for NGOs and publication of information are an open issues that need to be addressed.

The FREMP WG should play a role at the preparatory stage. The FREMP conclusions/analysis should be a basis for first discussion that will be held in GAC. As already emphasized supra, the first debate should be open primarily to the Member States. Therefore, we do not envisage an active role for the EP or the Commission at the first stages of discussions.

<b>Preparation of the dialogue</b>
------------------------------------

**6. As for the preparatory works, was the time allocated to prepare for each dialogue sufficient? What time period (between the first submission of the discussion paper and the date of GAC meeting) is necessary for Member States to prepare the contribution for the dialogue?**

For member States a necessary time to prepare the contribution for the dialogue would be at least one month.

**7. Do you have ideas about making the preparation more broad-based and systematic (discussions at technical level, seminars in different Member States, trio seminars, consultations with civil society etc.)?**

We believe that even more than the preparation part, the evaluation phase of the dialogue is important. After receiving the relevant opinions (see reply under 4 nad 8) there are many possibilities where and how to discuss further ideas. It is important to have a focused approach and to avoid any unnecessary duplications.

We support the idea of organizing a broader and more systematic approach when it comes to the preparation of the dialogue with a special emphasis on the interactive discussions and peer-learning activities. Peer-learning activities should be organized inclusively, namely open to the broad network of stakeholders that are actively engaged at public, policy and executive level. This approach could lead to more concrete implementation of the theoretical discussions into the practice.

<b>Conduct of the dialogue</b>
--------------------------------

**8. How should the Council dialogue be conducted? Would you be in favour of a more interactive discussion (e. g. representatives speaking on behalf of like-minded states, help of an external moderator, lunch discussions)?**

We suggest as follows:

1. Preparatory phase at the level of the Council's relevant working parties (especially role for FRA and NGOs);
2. Discussion at the GAC only among Member States (introductory part of the dialogue can be presented by the relevant stakeholders);
3. Follow up: obtaining follow up from the bodies that participated in the preparatory phase and to examine and evaluate them within the Council by the relevant working parties (involving the bodies, participated already in the preparatory phase) – help of an external moderator possible;

5. Concretizing (working with smaller groups involved in consensus-building efforts: use in-person and hands-on types of communication);
6. Final examination within the Council by the relevant working parties;
7. Discussion and final approval by the GAC;
8. Sharing information with public: need to promote global awareness and understanding of the work of the GAC/EU. The Commission could undertake this goal through radio, television, print, the Internet, video-conferencing and other media tools.

<b>Follow up of the dialogue</b>
----------------------------------

**9. What kind of follow up would increase the impact of the Council dialogue? At the same time, how should this output be evaluated?**

Evaluation is doable after at least 2 years. We should develop indicators to evaluate. Please consider also reply under 8<sup>th</sup> question.

**10. How to disseminate, implement the outcomes of each dialogue while ensuring continuity between the different editions of the dialogue?**

Comparability is almost impossible as the themes proposed for each dialogue are different. Only technical structure of dialogue (see answer 8) can ensure continuity and consistency.

Another suggestion would be that reporting should include examples of best practices; especially from those countries that are successfully facing threats to the rule of law, such as for example corruption or xenophobia. At the same time key findings, conclusions of MS reports should be more broadly available and transparent to the general public as well. There is a special concern that different reports get dissipated inside state departments or specialized units, this poses additional concern that this can lead to lack of coordination and consequently to the unnecessary multiple reporting on same issue regarding the similar questions posed to various departments.

## FINLAND

Finland would like to thank the Presidency for the opportunity to provide an input for the evaluation of the Council conclusions of 2014 on the rule of law. Finland would like to reiterate that the EU is founded on common values, such as respect for human dignity, freedom, democracy, respect for human rights and the rule of law. It is vital that all Member States are committed to these values and comply with the principles. It is also a question of the credibility and legitimacy of the European Union. It also affects the mutual trust between the Member States and has links with business growth. The regular dialogue among all Member States within the Council provides us important means to promote the respect of the principle of rule of law in the European Union. It is also important that the methods to ensure the respect for the rule of law are continuously developed.

Our views on the questions of the presidency (doc. 12205/16) are the following.

### **1. What elements of the dialogue should be improved while respecting the current framework set by the Council conclusions? On the other hand, what should be retained as a good practice for the future rounds?**

The Council conclusions of 2014 on the Rule of Law provide the basis for the dialogue between the Member States in the Council. The Council (GAC) should hold annually a ministerial level general dialogue which would allow identification of general trends of the development of the rule of law in the EU. The Council may also consider, as needed, to launch debates on thematic subject matters.

The discussions thus far could be further developed. We should aim at finding even a better balance between identification of general trends and thematic discussions. The Council should focus more on general level discussions. Thematic discussions could be held in addition to the general discussions.

The Council's annual dialogue be kind of "annual audits". This would allow the Council to gain an overall picture and also observe the general trends and development since the previous dialogue.

These discussions should be better linked to the work already done by the Commission and the EU's Fundamental Rights Agency (FRA). Council discussions could be based on or could take advantage of the reports published by the aforementioned actors.

In preparing the discussions at a general level the Commission's and the FRA's annual reports listed underneath under the question 4 should be better utilized. The discussion of the Council could take place after the publication of such reports, e.g. in September. This would allow enough time for the presidency to prepare the discussions.

The discussions at a general level should assess the development of the rule of law in the EU during the preceding year and also identify possible forthcoming common challenges.

We need to reinforce continuity of the dialogue. Continuity could be enhanced by providing a more fixed structure for annual dialogue and by a proper follow-up. A more fixed structure for the annual dialogue could be provided by determining that a particular meeting of the GAC would discuss the rule of law every year in September.

Informal meetings of Ministers and State Secretaries for European Affairs could also be used.

Discussion in the Council could be preceded by an opening statement by e.g. the Commission or the FRA.

## **2. What is your view on turning this dialogue into or complementing it with an annual review process enabling periodical evaluation of rule of law related issues?**

See our answer to the question 1. Having an annual discussion at a general level assessing the preceding year would constitute an annual review with periodical evaluation of the rule of law related issues.

## **3. In addition to the existing dialogue, do you see a need to organise thematic ad hoc discussions on current rule of law challenges?**

As the Council conclusions of 2014 provide, the Council may consider, as needed, to launch debates on thematic topical subject matters. Thematic discussions, including exchange of best practices, practical suggestions on ways to strengthen the respect for the rule of law, can bring added value. The discussions in the GAC could be followed by a discussion in the Council configuration responsible for the subject matter. This would allow more thorough/in-depth discussions on a particular subject matter. The Council configuration responsible would then report back to the GAC.

**4. Do you consider the cooperation with relevant stakeholders during first two rounds of the dialogue as sufficient? In particular, do you see a need for a stronger involvement of the Commission or/and the European Parliament in the preparatory phase of the Council dialogue? If yes, how could this involvement look like in practical terms?**

It would be useful to better take into account the work of the Commission and the FRA. The Council could make use of:

- Commission's annual report on the application of the Charter of Fundamental Rights (which reviews how the MSs have applied the Charter and summarizes the relevant ECJ case law)
- Commission's justice scoreboard (which has a link to the European Semester)
- Commission's annual Colloquium on Fundamental Rights
- Commission's other seminars, events on related subject matter
- FRA's annual report
- FRA's other reports and events on related subject matter

**5. Are you in favour of involving in the preparation of the Council dialogue representatives of other EU bodies (in particular FRA), relevant international organisations (e.g. the Council of Europe, the UN) and/or NGOs? If yes, how could this involvement look like in practical terms.**

Duplication of work should be avoided. Cooperation with international organisations can bring better synergy and added value. The work of the FRA should be utilized more effectively. The work of the Council of Europe should be taken into account. One possibility would be that a representative of the Council of Europe is invited to the Council, as appropriate, to give an introduction to the dialogue.

## Preparation of the dialogue

### **6. As for the preparatory works, was the time allocated to prepare for each dialogue sufficient? What time period (between the first submission of the discussion paper and the date of GAC meeting) is necessary for Member States to prepare the contribution for the dialogue?**

It is of central importance that the dialogues are well prepared by the Presidency. The discussion papers should be as concrete as possible, and contain precise questions so that the discussion can be properly stimulated and guided. If discussions are focused on defined questions the discussions are more likely to turn into a true dialogue where Member States will be able to respond to each other's interventions.

Where appropriate the *antici+1* format in addition to Coreper could be helpful in preparing the Council discussions. There have been good experiences in using the *antici+1* format (*antici* + e.g. the Perm Rep civil servant responsible for the substance).

### **7. Do you have ideas about making the preparation more broad-based and systematic (discussions at technical level, seminars in different Member States, trio seminars, consultations with civil society etc.)?**

A diverse range of methods could be utilized. For example in the preparatory phase technical level (substance working group and/or FREMP) discussions could work well for the identification of common challenges and exchange of best practices.

It would be important to take into account the results of relevant recent conferences and seminars organised by the Commission and the FRA in the area of the rule of law. If seminars are used as means of preparation, they should be followed by a concise summary usable also at the political level.

A vital element is good coordination and interaction between different actors so that the same topic or theme would be discussed at different fora. Thematic dialogues could be preceded by a preparatory seminar. This could enable a broader-based involvement of different actors, e.g. civil society, representatives of national justice systems, human rights institutions but also representatives of the FRA, the Council of Europe, the UN. It would be useful if the topic for the seminar was connected with the topic chosen for the Council dialogue.

## Conduct of the dialogue

### **8. How should the Council dialogue be conducted? Would you be in favour of a more interactive discussion (e. g. representatives speaking on behalf of like-minded states, help of an external moderator, lunch discussions)?**

Using the method of representatives speaking on behalf of like-minded Member States has proved as an efficient way to conduct discussion in the Council. This should be further used. Also, as already mentioned earlier an introduction e.g. by a representative of the Commission or the FRA could precede the discussions of the Council.

## Follow up of the dialogue

### **9. What kind of follow up would increase the impact of the Council dialogue? At the same time, how should this output be evaluated?**

It is essential that the discussions have a follow-up. As the general trends of the rule of law would be identified in the EU the Council should be able to assess the development of these trends. The annual discussion would estimate the development of the rule of law during the preceding year.

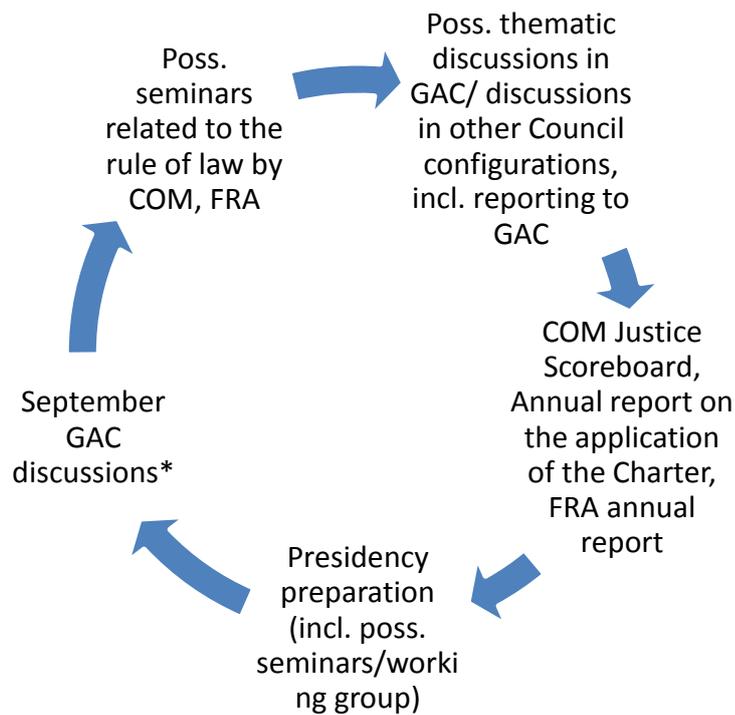
When other Council configurations report back on subjects referred to them in a preceding GAC dialogue, the GAC could also discuss the matter. This would ensure the continuity and follow-up also for the thematic discussions.

The aim of the follow-up should be at identifying whether the respect of the rule of law has improved, whether there are new challenges and how these challenges could be met.

The cooperation and interactions between the different actors, for example the Commission, the FRA and the Council, is vital also as regards the follow-up of the rule of law dialogue. Where appropriate the Commission could take account of the best practices, suggestions and ideas made during the Council discussions (as the Commission did after the Second dialogue) and the FRA could continue work with the themes identified in the Council dialogue.

**10. How to disseminate, implement the outcomes of each dialogue while ensuring continuity between the different editions of the dialogue?**

It would be important to enhance communications on the rule of law dialogue. The outcome of the Council discussions should be disseminated e.g. by a specific press release and a presidency note. These should contain concrete content on the issues discussed, the follow-up conducted by the Council etc. Where appropriate, the outcome paper should refer to the previous dialogue, previously identified challenges and specify how the challenges have been addressed during the past year and how they will be addressed during the following year. The press releases and/or presidency should highlight the commitment of the Council for the respect and the promotion of the rule of law in the EU.



\*Without prejudice to ordinary discussions within different Council compositions on rule of law related issues.

## SWEDEN

Sweden would like to thank the Presidency for a well prepared questionnaire on the evaluation of the rule of law dialogues in the Council. To safeguard and comply with our common fundamental values, including the Rule of Law (alt. the basic democratic and constitutional values of the Union) (RoL) should be a priority to all EU Member States. Developments over the last years however tell us that there is a need to further ensure that commitments to our common values are met not only *before* a country becomes a member, but continuously *as* a member of the Union. This is crucial to our mutual trust and ability to develop the cooperation within the European Union, as well as to our legitimacy and credibility in the external relations.

### **1. What elements of the dialogue should be improved while respecting the current framework set by the Council conclusions? On the other hand, what should be retained as a good practice for the future rounds?**

It is in itself an important instrument to have recurring discussions on the RoL among Member States at ministerial level. The two dialogues so far have started out well but a bit tentative, and should be developed further on a step by step basis. To Sweden it would be preferable to have an annual dialogue on general developments regarding the rule of law in the Union, in order to highlight both progress and setbacks. A dialogue on general developments and trends could allow for a more open exchange of views on challenges as a “periodic review light”. Such a dialogue could provide a good basis for a proper follow-up through further thematic discussion and other measures, and, if needed, initiatives on specific situations that require attention. The discussion should draw on relevant reports of the EU Commission, the Fundamental Rights Agency (FRA), the Council of Europe and other actors, and be followed up through thematic discussions on specific problems identified. In general transparency must be kept in mind when developing this process.

**2. What is your view on turning this dialogue into or complementing it with an annual review process enabling periodical evaluation of rule of law related issues?**

Sweden is at this stage hesitant to introduce a periodic review of all Member States, although a peer review system can have clear advantages. In a time when the EU is struggling with difficult issues and challenges we might have to make virtue of necessity and focus on strengthening existing instruments and on efforts to enhance the common understanding on compliance with the rule of law. A periodic review could, depending on the set up, also require both resources and new structures.

**3. In addition to the existing dialogue, do you see a need to organise thematic ad hoc discussions on current rule of law challenges?**

See answer to the first question. Thematic and ad hoc discussions should be used when needed in a more systematic follow up to the general dialogue on the development for the RoL in the Union.

**4. Do you consider the cooperation with relevant stakeholders during first two rounds of the dialogue as sufficient? In particular, do you see a need for a stronger involvement of the Commission or/and the European Parliament in the preparatory phase of the Council dialogue? If yes, how could this involvement look like in practical terms?**

**5. Are you in favour of involving in the preparation of the Council dialogue representatives of other EU bodies (in particular FRA), relevant international organisations (e.g. the Council of Europe, the UN) and/or NGOs? If yes, how could this involvement look like in practical terms.**

While taking into account the specific role of each stakeholder cooperation and consultation with the Commission, the FRA, the CoE, the EP and civil society is vital and could be increased. A collaborative approach would enhance the legitimacy of the Union internally by helping to address real issues for the citizens. Closer cooperation could create synergies and help avoiding duplication of work.

Especially the Fundamental Rights Agency (FRA) has good knowledge and expertise on the rule of law and fundamental rights and should be used more in the preparatory process by being tasked to analyse annual (and other relevant) reports and information from the Commission and the CoE, along with their own findings. The results could be compiled in a summary report to be discussed by FREMP in preparation to the Council dialogue.

Civil society has an important role and could be involved by contributing reports and information in the preparatory process to the dialogue, and by participating in seminars both before and in the follow-up to the dialogue.

This could work to the benefit of both the Council, by providing a grass root perspective on issues, and to civil society by strengthening their potential to contribute to the development of RoL and fundamental rights, and deepening and spreading awareness within their own ranks.

**6. As for the preparatory works, was the time allocated to prepare for each dialogue sufficient? What time period (between the first submission of the discussion paper and the date of GAC meeting) is necessary for Member States to prepare the contribution for the dialogue?**

There is a need for a more systematic and thorough preparation, with more time allocated for the Member States internal discussions. The preparatory process could consist of

- analysis by the FRA (summer/autumn) of reports and information on developments regarding the Rule of Law within the EU, followed by
- discussions in FREMP resulting in a report, possibly including a first draft of Council conclusions.
- The Presidency in first semester issues a discussion paper to the Member States a couple of months before the GAC.
- Final preparations on Council conclusions in the Coreper, according to the Council conclusions of December 2014.

- Dialogue in the GAC (April/May) on general developments and trends regarding respect for the Rule of Law within the Union. Council (or Presidency) conclusions including follow up measures (such as thematic dialogues) and recommendations on the implementation.
- Taking stock-dialogue in the GAC early autumn.

**7. Do you have ideas about making the preparation more broad-based and systematic (discussions at technical level, seminars in different Member States, trio seminars, consultations with civil society etc.)?**

See answer to questions 5 and 6.

**8. How should the Council dialogue be conducted? Would you be in favour of a more interactive discussion (e. g. representatives speaking on behalf of like-minded states, help of an external moderator, lunch discussions)?**

Sweden would welcome a more open and interactive discussion which could be achieved by dividing the dialogue in two parts. The first part could be introduced by the Commission, the FRA and/or the CoE and focus on the situation in general and sharing of best practices. Representatives could speak on behalf of like-minded Member States, while the discussion must not be allowed to develop into different groupings making statements. The second part would be a restricted session with only Ministers/State secretaries/main representatives present, to give room for discussion on more sensitive issues.

**9. What kind of follow up would increase the impact of the Council dialogue? At the same time, how should this output be evaluated?**

**10. How to disseminate, implement the outcomes of each dialogue while ensuring continuity between the different editions of the dialogue?**

The dialogues should result in Council (or Presidency) conclusions including follow up measures, such as thematic dialogues, and recommendations on the implementation. A taking stock-dialogue should follow in the GAC during the next semester.

## **UNITED KINGDOM**

General discussion and/or thematic discussion combined with a periodic review

### **1. What elements of the dialogue should be improved while respecting the current framework set by the Council conclusions? On the other hand, what should be retained as a good practice for the future rounds?**

We consider that the basic approach to the dialogue as established under the previous two presidencies has worked well, with Member States exchanging their best practice and identifying shared challenges. There also were distinctive elements of each that proved particularly effective, such as Luxemburg initiative to bring the proposed topic for to an EU correspondents meeting early in its presidency to enable discussion and early sight of the theme. We also appreciated the more focused thematic debate introduced under the Netherlands, which ensured more coherence in the exchange, so would propose to continue this practice in the future.

In order to improve the dialogue further, we would suggest an approach that encourages greater interaction and active exchange between Ministers, and as such would agree with the suggestion below to hold the discussion in a lunchtime format.

### **2. What is your view on turning this dialogue into or complementing it with an annual review process enabling periodical evaluation of rule of law related issues?**

In the terms of reference that establish the dialogue, the Council agreed that the dialogue would be developed in a way in which is complementary with other EU Institutions and International Organisations, avoiding duplication. We think that replacing or supplementing the existing exchange with a review element would duplicate the process that already takes place in the Council of Europe, and thus is unlikely to add additional value.

**3. In addition to the existing dialogue, do you see a need to organise thematic ad hoc discussions on current rule of law challenges?**

As set out above, we found the Netherland's thematic approach to the discussion on rule of law to be a helpful and sensible way of narrowing the focus of the dialogue and facilitating an effective exchange. Whilst we support continuing that approach for future iterations of the annual discussion, we do not see the need to organise more ad hoc discussions alongside it.

Cooperation with other EU Institutions, international organisations and NGOs

**4. Do you consider the cooperation with relevant stakeholders during first two rounds of the dialogue as sufficient? In particular, do you see a need for a stronger involvement of the Commission or/and the European Parliament in the preparatory phase of the Council dialogue? If yes, how could this involvement look like in practical terms?**

We thought that there was a sufficient level of cooperation with relevant stakeholders during the first two rounds of the dialogue. The Council and Member State Conclusions are clear that this should be a dialogue among Member States, and whilst it is important that this dialogue should be developed in a way which is complementary with other EU institutions, we consider that this can be adequately safeguarded by the Presidency without the need for systematic involvement of the Commission or European Parliament in preparation.

**5. Are you in favour of involving in the preparation of the Council dialogue representatives of other EU bodies (in particular FRA), relevant international organisations (e.g. the Council of Europe, the UN) and/or NGOs? If yes, how could this involvement look like in practical terms.**

We would be content to leave it to the individual Presidency to determine what outside contribution they would wish to invite, but would in particular welcome Council of Europe involvement where they're engaged on a discussion in order to avoid duplication. Other relevant international organisations could be involved on a case by case basis, depending on their expertise, but to ensure the most open and interactive discussions possible, we would suggest this take the form of presentations before the interactive phase of the discussion, rather than participation in the dialogue itself.

## Preparation of the dialogue

**6. As for the preparatory works, was the time allocated to prepare for each dialogue sufficient? What time period (between the first submission of the discussion paper and the date of GAC meeting) is necessary for Member States to prepare the contribution for the dialogue?**

As indicated above, we would suggest that the Presidency propose the topic for discussion at the first EU correspondents meeting of the Presidency and then the discussion paper with the specific questions asked should be produced at least 2 weeks before the GAC.

**7. Do you have ideas about making the preparation more broad-based and systematic (discussions at technical level, seminars in different Member States, trio seminars, consultations with civil society etc.)?**

As indicated above, we think that correspondents meeting is a good opportunity for the Presidency (or indeed a trio) to introduce their proposed topic, but equally would wish to leave it to individual presidencies both to have the final say on the thematic topic for discussion, and also flexibility on how to best to prepare it, including through working level discussions if needed.

## Conduct of the dialogue

**8. How should the Council dialogue be conducted? Would you be in favour of a more interactive discussion (e. g. representatives speaking on behalf of like-minded states, help of an external moderator, lunch discussions)?**

As indicated above we would like to encourage more interactivity during the dialogue and consider that a lunchtime discussion – led by the Presidency - would be the best way to encourage a more free-flowing and open interaction.

Follow up of the dialogue

**9. What kind of follow up would increase the impact of the Council dialogue? At the same time, how should this output be evaluated?**

We support the approach adopted by the Netherlands and Luxemburg Presidencies in producing a Presidency outcomes paper drawing out themes that emerged in the discussions and ideas for how issues can best be addressed. Subsequent Presidencies might consider using this as a basis for a further round of discussion at a later time to evaluate progress. This would allow us to return periodically to the same themes.

**10. How to disseminate, implement the outcomes of each dialogue while ensuring continuity between the different editions of the dialogue?**

It is primarily for Member States to consider at a national level how best to draw on the outcomes of the discussion and possible actions to strengthen the rule of law, though as suggested above we think it could be helpful to return to the same theme after a set interval to enable a further discussion and review of progress in addressing the challenges identified in the earlier dialogue.

---