



Enhancing the effectiveness of EU Rule of Law Mechanism

Introduction

Our societies and the cooperation between EU Member States depend on the functioning of the rule of law. It promotes stability, protects human rights, supports resolving disputes and enables Member States and their citizens to cooperate on a broad range of affairs, including strengthening cross-border justice, tackling cross-border crime and fostering economic cooperation. It is therefore crucial and the joint and legal responsibility of Member States and EU institutions to protect and promote the rule of law across the European Union.

For that purpose and as part of the EU Rule of Law Mechanism, the annual Rule of Law Report of the Commission is an important tool in the EU's broad toolbox. The Report helps Member States to gain insight into each other's legal and institutional frameworks, promotes mutual understanding, and enables the identification of emerging trends, challenges and solutions. Based on their horizontal responsibility, the annual horizontal dialogue on the Rule of Law Reports' country chapters in the General Affairs Council has proven a valuable step in the Rule of Law Mechanism, allowing for a broad dialogue at the political level and an exchange of views on the issues at stake. The evaluation of the Rule of Law Mechanism provides an opportunity to further strengthen the commitment to upholding the Rule of Law throughout all domains, broadening and enriching the discussions on the Rule of Law will strengthen the effectiveness of Rule of Law Mechanism.

This paper proposes to achieve this by more directly and structurally involving the sectoral Councils. It focuses specifically on how the role of the Justice and Home Affairs (JHA) Council can be structurally reinforced enabling in-depth and thematic exchanges between ministers that hold the domestic responsibility for the follow-up of the judicial and anti-corruption aspects of the Rule of Law Report.

Proposals

1. Directly and structurally involving the JHA ministers in the discussion on the legal system and anti-corruption domains of the Rule of Law Report.
2. We suggest to organize thematic discussions each year around a general trend or clusters of similar/related recommendations on the basis of that year's report.
3. To improve the quality of the focused exchange at the political level, and strengthening the Rule of Law Report's follow-up, a substantive preparation in the relevant committees and working groups (for example CATS and COPEN) will be paramount.

Rationale and elaboration

Embedding the role of the JHA Council in the Rule of Law Mechanism

While the General Affairs Council holds general responsibility, sectoral Councils and in particular the ministers attending them have specific competences which will enrich and strengthen the Rule of Law dialogues. Directly and structurally involving the JHA ministers in the discussion on the legal system and anti-corruption domains of the Rule of Law Report would allow for additional in-depth and focused exchanges between ministers who hold the domestic responsibility for these domains. The JHA Ministers are able to bring more substantial and practical knowledge regarding the legal system and the anti-corruption framework of their respective countries to the table and are better positioned to discuss the more technical aspects. Moreover, given their national responsibility, they play a direct role in shaping the follow-up to recommendations of the Rule of Law Report and can give concrete application to the points for attention of the Report.

Towards more substantive and focused exchanges

It will be essential to embed the dialogue in the JHA Council in a structural framework, allowing for durable focused exchanges.

To allow for the most relevant topics of the Rule of Law Report to be addressed, we suggest to organize thematic discussions each year around a general trend or clusters of similar/related recommendations on the basis of that year's report. This will help make the thematic discussions in the JHA Council more concrete and deepen mutual understanding while also enhancing the possibility for a targeted exchange of specific challenges and best practices between Member States. These topics for the discussion could be pre-selected by the Council Presidencies in close consultation with the Commission in order to allow for a discussion that encompasses the most relevant domains at that point in time.



On the basis of this year's Report several topics would lend themselves for the initial constructive and in-depth discussions in the JHA Council. For example, The Netherlands received a recommendation on the digitalization of justice. There are more countries with similar recommendations and countries that are well advanced in this area. By putting this topic on the agenda and substantively preparing it at a technical level, we could reach meaningful understanding of the challenges and best practices to further progress on this matter in Member States. In addition, access to justice is a topic that receives a lot of attention. Exchange of knowledge between Member States, on both the technical and political level, in which challenges and best practices are shared, will contribute to an EU-wide strengthening of access to justice and the understanding of it among citizens. Another relevant topic could be the appointment of judges and judiciary boards. In most Member States this topic has been highlighted by the Commission. Some Member States are in the process of reforming their procedures, while the situation in other Member States gives reason for concern in this area. The JHA Council will provide a useful platform to conduct a dialogue on this subject and try to help solve challenges, also based on the dialogues the responsible ministers have at national level with their parliaments and the judiciary.

Improve the quality of the focused exchange at the political level

To improve the quality of the focused exchange at the political level, and strengthening the Rule of Law Report's follow-up, a substantive preparation in the relevant committees and working groups (for example CATS and COPEN) will be paramount. In this regard, the example of the European Semester is inspiring. A successful discussion and follow-up also requires involvement of experts and executive organizations, like councils for the judiciary and public prosecutors, and existing networks, like the European Judicial Network. This could help to jointly identify challenges, improve possible solutions and ensure broader ownership of resolving the challenges of the Rule of Law at national level. These exchanges could be organized, as appropriate, through dedicated meetings or committee meetings (like CATS and COPEN). We also strongly support the initiative of the Commission for stakeholder dialogues as a follow up to the Report since this can contribute to the exchange of views between experts and stakeholders. Additionally, communication and information to the public about policy development regarding the Rule of Law also contributes to raising awareness and increasing ownership of the Rule of Law within the Member States.