



Brussels, 13 May 2016
(OR. en)

8774/16

JAI 365
FREMP 73
COHOM 44
POLGEN 40

NOTE

From:	Presidency
To:	Permanent Representatives Committee/Council
No. prev. doc.:	16936/14 and 13744/15
Subject:	Presidency non-paper for the Council (General Affairs) on 24 May 2016 - Rule of law dialogue

Rule of law dialogue

The conclusions of the Council and the Member States of December 2014 on ensuring respect for the rule of law establish an annual rule of law dialogue and foresee possible thematic debates in the Council (General Affairs) in order to promote and safeguard rule of law in the framework of the Treaties as one of the key values on which the Union is based.¹ The first dialogue took place during the Luxembourg Presidency in the Council (General Affairs) on 17 November 2015.

¹ The conclusions emphasize that the dialogue should be based on the principles of objectivity, non-discrimination and equal treatment of all member states and be conducted in a non-partisan and evidence-based manner, respecting the principle of conferred competences, and national identities of Member States. Moreover, the conclusions underline the importance of complementarity with the work of other EU institutions and international organisations, avoiding duplication and taking into account existing instruments and expertise in this area. The context of the annual dialogue is Article 2 of the Treaty on European Union, which states: “*The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.*”

The EU is currently facing multiple interrelated challenges in the context of the refugee and migration situation. One of these challenges for the EU is to safeguard its fundamental values, including the rule of law, fundamental rights, non-discrimination, tolerance and solidarity. In order to discuss this challenge, the Presidency organized a high level seminar on the topic of EU fundamental values, immigration and integration on 2 February 2016 in Strasbourg. The seminar brought together representatives from the EU Member States, EU institutions, the EU Agency for Fundamental Rights, the Council of Europe, civil society and academia. The outcome of the seminar (report in annex) will serve as the general framework for the second rule of law dialogue.

During the seminar the notion that rights come with obligations and that the freedom granted through these rights entails a duty to respect the freedom of others was a key issue. Member States have a obligation to adhere to EU fundamental values and rights when receiving and integrating refugees and migrants. Vice versa, refugees and migrants also have an obligation to fully respect these EU values and rights. In the end, Member States must ensure these values and rights for everyone.

The societal effects of the current (and also previous) migration flows are to a large extent dependent on the way refugees and migrants are integrated into European societies. Integration should take place in a framework that respects and protects fundamental rights and rule of law. It is therefore important, building on the Council discussion following the Paris declaration on promoting citizenship and the common values of freedom, tolerance and non-discrimination through education (8965/15), to continue the debate on the challenges for Member States in this regard. This is especially relevant in light of the forthcoming EU Action Plan on Integration by the Commission.

The Presidency wishes to further discuss this issue during the second rule of law dialogue on the basis of the following questions:

Question 1: What can Member States do to ensure the respect for fundamental rights and rule of law in the context of integration? What can be expected from the receiving societies and migrants in this regard?

Question 2: From your national experience, do you have relevant lessons learned or best practices to share on how to help refugees and migrants to integrate smoothly in the receiving societies and embrace fundamental values and rule of law? Alternatively, which key challenges do you see in this respect?

Organization of the second rule of law dialogue

The thematic debate on EU fundamental values and migration will be introduced by the **Director of the EU Agency for Fundamental Rights Michael O’Flaherty**.

After the thematic introduction, Member States and the Commission are invited to share their thoughts on the basis of the questions. Following the discussions, the Presidency will draw up **Presidency conclusions**.



EU Fundamental Values, Immigration and Integration: A Shared Responsibility

A seminar on EU fundamental values, immigration and integration was held on 2 February 2016 in Strasbourg under the auspices of the Netherlands Presidency of the Council of the European Union. The seminar brought together civil society, experts and representatives of EU member states, EU institutions and the Council of Europe.

For years, the Netherlands has been committed to promoting European values, including respect for the rule of law, in the EU and in its member states. Current challenges around immigration and integration seem to put our commitment to our shared European values at risk. Participants in the seminar reflected on the handling of the refugee crisis in the EU, and explored options for strengthening the rule of law and attention to fundamental rights in our policy responses. The seminar's objective was to share different perspectives, thoughts and practical suggestions on the issue through an open exchange of ideas.

In his opening statement, Dutch Minister of Foreign Affairs Bert Koenders referred to the current migration situation as a 'stress test for European values' and challenged participants to face the uncomfortable questions at stake. Major, thought-provoking contributions from several other distinguished speakers set the stage for the day's discussions, bringing both principled and pragmatic views to the fore. The speakers offered different perspectives on the debate on fundamental values and migration. They agreed that cooperation among the key players is essential to find a comprehensive response. Participants were also encouraged to look at the bigger European picture, beyond immediate national concerns. Thorbjørn Jagland, Secretary-General of the Council of Europe, warned in his keynote speech that kneejerk responses to the migration crisis risk undermining European values.



Italian Secretary of State for European Affairs Sandro Gozi stated clearly that 'solidarity is not an option, [...] solidarity is an essential value and a legally binding principle'. He added that solidarity and close collaboration provide the only basis for practical solutions like hotspots and relocation. In the panel discussion, Director Michael O'Flaherty of the EU Agency for Fundamental Rights stressed the vulnerable position of unaccompanied minors, and emphasised that 'there is no hierarchy of rights holders: respect must be for everyone, and from everyone'. Nils Muižnieks, Council of Europe Commissioner for Human Rights, expressed his concern about recent developments and the 'toxic atmosphere' in Europe. From a local perspective, Rotterdam Mayor Ahmed Aboutaleb shared his experience with the intercultural dialogues he regularly organises and laid out his views on a 'we society', where cultural and religious differences are bridged and respect for the rule of law is a binding factor among all citizens.

In the discussion groups, participants discussed the main short-term and long-term challenges around four themes: 1) how to promote EU fundamental values in the EU member states; 2) how to address intolerance in European societies; 3) how to ensure that migrants embrace European values; and 4) how to deal with diversity and foster social inclusion.

This report focuses on a number of themes that featured prominently in many of the speakers' contributions and in the discussions. They are:

1. the idea that addressing this common problem requires solidarity and responsibility from all member states;
2. the reciprocal relationship between values and rights; and
3. the way that migration challenges are framed.

Structuring the report along these lines allows for a cross-cutting analysis.

1. A common response based on EU fundamental values

With an influx of about one million migrants in 2015, the challenge the EU is facing can hardly be overestimated. There was a general consensus that a common European response is needed, while taking national capacities into account. Many participants bemoaned the lack of solidarity. At the same time it was stressed, by Mr Koenders among others, that collective action means first and foremost implementing European legislation and agreements on migration policy. At the moment, different national governments are adopting different policy options in various areas, which may complicate follow-up on decisions taken at EU level. Some national policy choices were criticised for not being in line with EU fundamental values and the principle of solidarity, such as extended waiting times for family reunification, reception conditions for unaccompanied minors, and push-backs at the borders. Chiara Adamo, head of the Fundamental Rights and Rights of the Child unit of the Commission's DG Justice, pointed out that the Commission has adopted more than 50 infringement decisions against several member states for national decisions that may not be in line with European rules. A suggestion was made to develop a strategy to evaluate national legislation that risks infringing on EU fundamental values. Another suggested approach was checking national institutions' migration policy for compliance with European human rights standards. These ideas triggered a horizontal discussion on the desirability, feasibility and practical details of arrangements to ensure national compliance with European standards. Mr Gozi stated clearly that 'calling upon each of us to respect the rule of law is not a "foreign intrusion" in internal affairs'.

On the one hand, there was broad agreement that the rule of law and the protection of fundamental rights are a shared interest. Mr Koenders reminded participants that all EU member states have voluntarily endorsed the Union's founding values as enshrined in article 2 of the Treaty on the European Union, and that member states are accountable to each other as equal partners. Mr Jagland added that any legislation adopted by European states must meet the standards set by the European Convention on Human Rights and comply with the case law of the European Court of Human Rights. He stressed that the rule of law must not be confused with rule by law, nor with 'rule by my law'. Many speakers affirmed that the EU's fundamental values and the rule of law are not only Treaty principles but also an essential part of European identity. Therefore any departure from our values must be addressed as a matter of priority.

On the other hand, it was stressed that states' humanitarian obligations to refugees are not unlimited and should be proportionate to what European societies can accommodate. While the right to protection is not limited, the capacity to offer protection is. Member states argued that their capacity to cope with the existing volume of refugee and migrant flows has already been stretched very far. Some participants saw a potential conflict between member states' adherence to European values and the cost of this adherence. Others were convinced that there can be no numerical or practical limits on the EU's humanitarian aspirations, especially if the burden is equally shared among all member states. A third perspective was that there does not have to be a trade-off between pragmatic and principled approaches. The key is to identify short-term investments that could yield long-term benefits. These could include closing the gap between agreed measures and their implementation, raising awareness of migrants' rights, providing more resources for the hotspots, and challenging the toxic narrative about migration and the general picture of a Europe in chaos.

On a somewhat different note, it was argued that there is no general 'right to migrate', since migration undermines the foundations of community and society. The concept of diversity and its supposedly positive effects were questioned. Instead, it was argued that the main and overarching objective of EU policies in this field should be to strengthen cooperation with the countries in the region, help them host the refugees present there, and give refugees economic prospects until they are able to return to their home country.

2. The reciprocal relationship between values and rights

The reciprocity of values and rights was a central theme of the day, introduced by Paul Scheffer, Professor of European Studies at Tilburg University and the University of Amsterdam. While member states and European societies have a responsibility to adhere to EU fundamental values, migrants also have an obligation to embrace – or at least fully respect – these values. After the events in Cologne and other European cities, the debate about a 'clash of cultures' has become more urgent. Reciprocity is key to integrating migrants into European societies and to building public support for immigration and diversity.



It was noted in the discussion that when individual self-determination is in conflict with the self-determination of a group, reciprocity becomes a problem. How do we respond when someone clings to beliefs which conflict with the rule of law and our fundamental freedoms? Mr Aboutaleb stated clearly that everyone has a right to participate in society, but there is no place in it for those who renounce shared European values.

The discussion made clear that there is no single interpretation of what reciprocity means in receiving and integrating migrants. It was argued that our own standards, as laid down in the Charter of Fundamental Rights of the EU and the European Convention on Human Rights, are the best guide to what we can ask of people who are new to our societies. According to Mr Jagland, we cannot accept any form of cultural relativism, but we must rely on the rule of law and the rights spelled out in the Convention and other international agreements to find the right answers in individual cases. Yet reciprocity is not a static legal concept but a dynamic normative notion, which can develop over time in conjunction with the general norms and values of society. It was made clear that we are still developing our conception of reciprocity and of the responsibilities that it entails.

For member states, reciprocity requires active self-reflection and a willingness to 'practise what you preach'. MEP Jeroen Lenaers (European People's Party) asked how we can expect newcomers to our societies to embrace equality between men and women, LGBT equality or freedom of religion when not all member states unequivocally apply and promote these values. The discussions showed that there was no overall consensus on whether reciprocity requires active tolerance and obliges member states to accommodate cultural and religious diversity. Some member states have more experience with diversity than others, so an exchange of best practices would be welcome. Mr O'Flaherty and others noted that efforts to improve human rights protection and raise awareness should not exclusively target migrants and ethnic and religious minorities living in the EU, but address the majority population as well. In other words, it is important also to discuss both majority prejudices against minorities and vice versa.

Reciprocity could also be a useful concept in the longer-term process of integrating migrants. Research by the EU Agency for Fundamental Rights on the integration and participation of migrants shows persistent school segregation and a tenacious employment gap between immigrants and natives. There are many lessons to be learned if EU member states want to break these patterns and tailor their integration policies to the present situation instead of past concerns. Professor Scheffer asked where promoting social and democratic cohesion demands limits to diversity. The idea of citizenship was described as important in promoting integration and engagement at local level, so as to offer non-nationals opportunities to fully integrate into political and societal life. It was noted that shared values at community level may not fully correspond to European values. To address this, education was described as pivotal. The Council of Europe is very active in this field, focusing for example on promoting inclusive citizenship and education about democratic society and culture.

3. Developing an EU narrative on human rights and values

Many contributions discussed communication and a common narrative and vocabulary as important tools in promoting and upholding EU fundamental values in the migration crisis. It was noted that public attitudes towards migrants are often based on emotions rather than facts. In some member states, migration is discussed purely in terms of security. Mr Gozi referred to a negative narrative of fear: fear for our safety, of economic insecurity or even of a cultural threat. He asserted that fear makes political leaders and European societies at large insensitive to the fundamental rights of others. This could explain why fundamental rights and values are not central to migration politics today.

Participants saw a crucial role for political leaders in rethinking the way these problems are framed. European institutions and civil society organisations could help reshape the narrative on human rights protection in a positive way and counter prevailing narratives about ‘illegal’ migrants and ‘burden sharing’, which fuel negative images of migration. It was noted that this requires giving civil society enough space to operate and promote fundamental rights on the ground. In some member states restraints are being placed on civil society organisations, which fundamentally subvert the goal of mainstreaming European values and fundamental rights in the migration debate. Polish Ombudsman Adam Bodnar emphasised the importance of identifying allies and cooperating to strengthen EU values.

Several speakers highlighted the need to develop a common European narrative on values. The events in Cologne and other European cities and the image of a divided, panicky EU have unquestionably influenced the public debate on migration. Now that in the general public debate these fears are widely expressed, there is only a thin line left between a general discussion on migration and hate speech. Moreover, Mr Muižnieks argued, negative images of migrants and the race to the bottom in member states’ asylum standards are playing into the hands of xenophobes. However, others argued that we should not be quick to dismiss public expression of fears as xenophobic, as these fears are sometimes well-founded. The informal European Council Conclusions of February 2015 include a call for ‘communication strategies to promote tolerance, non-discrimination, fundamental freedoms and solidarity throughout the EU’. Mr O’Flaherty of the EU Agency for Fundamental Rights referred to the workshop that his agency organised jointly with the Austrian Federal Ministry of the Interior in December 2015 to discuss current practices and the development of new tools and approaches to ensure the effective communication of the EU’s core principles and values. An effective narrative on European shared values can also help raise

awareness of the rights and obligations of all the EU’s inhabitants.



In conclusion

The seminar sought to combine theoretical and pragmatic approaches to current challenges, focusing on common concepts and values that should underlie policymaking, on short- and long-term measures to ensure the implementation of agreed policies, and on our shared aspiration to continue to protect the EU's values.

There was broad agreement that fundamental values and the rule of law are a shared EU interest and thus call for a common approach, based on solidarity and the full implementation of agreed measures. This requires clear leadership and a change in the current narrative. At the same time, practical problems, limits to national reception capacity, and the impact of policy at local level cannot be neglected; these, too, must be an integral part of the discussion on upholding EU fundamental values. Many contributors emphasised that EU fundamental values entail not only rights and freedoms but also certain obligations that are binding on everyone on European soil.

This means that member states, broader European societies and new residents all have responsibilities.

Given the complexities of the current migration debate, the activities of the Council of Europe, the EU Agency for Fundamental Rights, EU institutions and civil society should be complementary and mutually reinforcing. All the key players have a shared responsibility to help promote values and rights in the member states. Departures from these values, whether in the form of hate speech or assaults on women, whether perpetrated by members of a minority community or a majority group, must be addressed in accordance with the rule of law.

The ideas shared, the questions raised and the discussions held during the seminar provide us with ample food for thought for the months to come. [The Netherlands Presidency will follow up on the seminar during the second rule of law dialogue in the General Affairs Council in May](#) with a view to continuing the discussions and strengthening synergy with our partners. The continuing need to strengthen the rule of law and the protection of European fundamental values in both the EU and the member states in the light of the migration crisis makes this an urgent debate.