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'I/A' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee (Part 2)/Council
Subject: Draft Council conclusions on Special Report No 24/2016 by the European Court of Auditors "More efforts needed to raise awareness of and enforce compliance with State aid rules in cohesion policy"
- Adoption

1. On 4 October 2016, the European Court of Auditors published Special Report No 24/2016 entitled "More efforts needed to raise awareness of and enforce compliance with State aid rules in cohesion policy".
2. Pursuant to the rules laid down in the Council conclusions on improving the examination of special reports drawn up by the Court of Auditors¹, the Permanent Representatives Committee (Part II), at its meeting on 26 October 2016, instructed the Working Party on Structural Measures to examine this report according to the rules laid down in the above-mentioned conclusions.

¹ Doc. 7515/00 FIN 127 + COR 1.

3. The Working Party on Structural Measures examined the above-mentioned Special Report on 14 and 24 November and on 8 December 2016. An agreement on the draft Council conclusions was reached on 14 December 2016 following a silence procedure.
 4. The Permanent Representatives Committee is therefore invited to recommend to the Council to adopt, as an "A" item, these draft Council conclusions as set out in the Annex to this note.
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Draft

**Council conclusions on Special Report No 24/2016 by the European Court of Auditors
"More efforts needed to raise awareness of and enforce compliance with
State aid rules in cohesion policy"**

THE COUNCIL OF THE EUROPEAN UNION:

- (1) WELCOMES the Special Report No 24/2016 by the European Court of Auditors (hereafter referred to as "the Court") and the Commission's observations to the Report;
- (2) NOTES that the assessment set out in the Report concerns compliance with state aid rules under the European Regional Development Fund (ERDF), the Cohesion Fund and the European Social Fund (ESF) in the 2007-2013 programme period with a focus of the analysis on 2010-2014, as well as measures taken for the 2014-2020 period;
- (3) TAKES NOTE of the main findings of the Report, namely that:
 - during the period 2007-2013, the Commission did not have at its disposal records designed in a way which would have allowed it to undertake a comprehensive analysis of state aid errors;
 - the detection rate of state aid errors by Member States' audit authorities was lower than the rates detected by the Court and the Commission;
 - action was taken to simplify the applicable state aid legislation for the 2014-2020 programme period;
- (4) TAKES NOTE of the conclusions and recommendations of the Report and that there is a need for more awareness of the applicable rules at Member State level and for continued Commission support to effectively prevent, detect and correct infringements of state aid rules;

- (5) TAKES NOTE of the level of infringements of state aid rules detected by the Court and the Commission, as well as of the Court's findings that the majority of audit authorities considered the legal framework for state aid rules fairly complex and that state aid errors were an important factor contributing to the estimated error level in cohesion policy;
- (6) WELCOMES the implementation of the Commissions' State Aid Action Plan² and the enhanced cooperation between the competent Commission services, as well as efforts made by Member States, which are expected to result in less state aid errors; and ENCOURAGES the Commission to continue enhancing internal cooperation between its services to ensure simple and consistent state aid rules and their application, which is needed for better synergies between the European Structural and Investment Funds and other programmes such as Horizon 2020;
- (7) SHARES the consideration of the Commission that it is implementing available corrective measures when cases of non-compliance with state aid rules are detected;
- (8) TAKES NOTE that the Commission has already taken first steps to improve the structure of information recorded in its IT tools MAPAR and IMS, and ENCOURAGES the Commission to systematically record and analyse detected state aid errors in view of developing focused preventive measures for Member States, and to provide targeted support, training activities and guidance material where they are most needed;
- (9) SHARES the consideration of the Court that major projects in the 2014-2020 period should be approved by the Commission only after internal state aid clearance; AGREES with the Commission that, in order to provide stability to Member States and beneficiaries, Member States should not be obliged to systematically re-examine, in view of the closure of the 2007-2013 programme, all major projects approved before the end of 2012;

² http://ec.europa.eu/regional_policy/index.cfm/en/policy/how/improving-investment/state-aid/

- (10) WELCOMES the assessment of the Court, confirmed by the Commission, that significant improvements have been made in the recent past regarding the quality of state aid checklists used by audit authorities;
- (11) WELCOMES the simplification of the applicable state aid rules for the 2014-2020 period, the Commission Notice on the notion of State aid³ and the measures taken by the Commission to support Member States in the exercise of their increased responsibilities under the new rules through guidance and training; CONSIDERS, however, that still more simplification efforts are needed given the high level of complexity of the state aid legal framework and its significant impact on the implementation of cohesion policy;
- (12) RECALLS that ex-ante conditionalities were introduced in the 2014-2020 period as a preventive measure, which contributes to raising awareness of Member States with regard to state aid and promotes their administrative capacity; SHARES the view of the Court that the fulfilment of ex-ante conditionalities might reduce infringements of state aid rules.
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³ Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, OJ C 262 of 19.7.2016, p. 1.