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**NOTE**

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From:	Presidency
To:	Delegations
Subject:	Revised draft Council Conclusions on the European Court of Auditors' Special Report No 16/2018 "Ex-post review of EU legislation: a well-established system, but incomplete"

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Delegations will find attached revised draft Council Conclusions on the European Court of Auditors' Special Report No 16/2018 "Ex-post review of EU legislation: a well-established system, but incomplete" to be examined at the Working Party on Competitiveness and Growth (Better Regulation) on 9 November 2018.

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***Revised draft Council Conclusions  
on the European Court of Auditors' Special Report No 16/2018  
"Ex-post review of EU legislation: a well-established system, but incomplete"***

**THE COUNCIL OF THE EUROPEAN UNION:**

1. WELCOMES the Special Report No 16/2018 from the European Court of Auditors (hereafter referred to as “the Court”) entitled “Ex-post review of EU legislation: a well-established system, but incomplete”. UNDERLINES the importance of sustaining and enhancing the competitiveness of the EU economy and in this context RECALLS in particular the Council Conclusions of December 2014<sup>1</sup> and May 2016<sup>2</sup>, which highlighted a need to ensure that EU regulation is transparent, simple and achieved at minimum cost.
2. EMPHASISES that ex-post reviews are and should remain a key element of the EU legislative cycle and in this context TAKES NOTE of the Court’s conclusion that the Commission has, as a whole, a well-designed system of evaluations and fitness checks. SUPPORTS, however, the Court’s view that ~~some~~ weaknesses remain.
3. UNDERLINES the importance of the Interinstitutional Agreement on Better Law Making (hereafter referred to as “the IIA”), its relevant aims - such as legislative focus on areas with greatest added value for European citizens, simplifying Union legislation and avoiding overregulation - and principles like subsidiarity, proportionality, legal certainty and transparency. STRESSES its full commitment to the ongoing implementation of the IIA in cooperation with the Commission and the European Parliament.

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<sup>1</sup> Doc. 16000/14

<sup>2</sup> Doc. 9580/16

4. RECALLS the Commission's guidelines for ex-post reviews including monitoring and review clauses. TAKES NOTE of the Court's observation that neither the European Parliament nor the Council have guidelines of their own on drafting monitoring and review clauses. STRESSES its readiness to discuss with the Commission and the European Parliament the possibility of adopting common definitions for the various types of review and monitoring clauses. HIGHLIGHTS at the same time that reporting and monitoring obligations need to be proportionate and that administrative burdens for citizens, businesses and administrations should be minimised.
5. CALLS ON the Commission to define a set of minimum quality standards for ex-post reviews other than evaluations; to grant the Regulatory Scrutiny Board (RSB) the right to scrutinise ex-post reviews other than evaluations; and to incorporate in its minimum quality standards for ex-post reviews with an evaluative element the requirement to include a detailed outline of the methodology used, a justification of its choice, and the limitations.
6. INVITES the Commission **in particular** to improve its ability ~~to generate and collect data and in particular~~ to maximise the (re-)use of existing data required for producing **sound** evidence-based ex-post reviews in order to limit the burdens for citizens, businesses and administrations.

7. NOTES the Court's observation that the "evaluate first principle" is still not respected in around a quarter of cases. EMPHASISES the importance of this principle while fully respecting the Commission's right of initiative and STRESSES the key role of evaluations as a basis for solid impact assessments as an important step towards an evidence-based approach to policy-making on the European level. URGES therefore the Commission and the Regulatory Scrutiny Board to ensure the better implementation of the "evaluate first principle". UNDERLINES the important role of the RSB in the policy cycle. ~~SHARES, however, the Court's concerns regarding its independence.~~ **NOTES, however, the Court's observation regarding the lack of an RSB dedicated secretariat hierarchically separate from the Secretariat-General of the Commission.**
8. EMPHASISES the important role that the REFIT programme and REFIT platform should play in the realisation of the Better Regulation Agenda **to eliminate unnecessary regulatory costs and to ensure that EU legislation remains fit for purpose.** SUPPORTS **NOTES** the Court's ~~recommendation~~ **observation** that ~~the Commission should clarify the REFIT concept and mainstream its presentation and use to avoid the perception that REFIT is in some way separate from the standard Better Regulation cycle~~ **the extent to which these aims still define and shape REFIT is unclear, as are REFIT's defining/exclusion criteria and expected outputs.** **RECALLS the Council Conclusions of March 2018, which underline the importance of concrete targets for the reduction of unnecessary regulatory burdens, whilst respecting existing protection standards.** CALLS ON the Commission **to clarify the REFIT concept and** to improve the REFIT-Scoreboard in terms of user-friendliness and clarity.
9. RENEWS its commitment to keep Better Regulation a main priority on its agenda and work together with the Commission and the European Parliament to that cause for the benefit of all European citizens and businesses.
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