Council of the
European Union

Brussels, 12 November 2018
(OR. en)

14137/18

BETREG 23
ECOFIN 1042

'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 1)/Council
Subject:	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" (*Non-legislative activity)* - Adoption

1. On 12 June 2018, the European Court of Auditors published Special Report No 16/2018 entitled "Ex-post review of EU legislation: a well-established system, but incomplete"[1].

2. Under the rules laid down in the Council conclusions on improving the examination of special reports drawn up by the Court of Auditors[2], the Permanent Representatives Committee instructed the Working Party on Competitiveness and Growth (Better Regulation) to examine the report in accordance with those rules.

1 This special report is available in all official languages on the Court's website: http://eca.europa.eu.

2 Doc. 7515/00 FIN 127 + COR 1.

3. This Special Report was presented by the Court of Auditors to the above Working Party in the presence of the Commission on 5 October 2018. At this occasion delegations had a general exchange of views on the content of the report and its observations.

4. Based on the observations of the Special report, the Austrian Presidency prepared draft Council Conclusions which have been examined by the Working Party at three meetings and consensus was reached on them at the meeting on 9 November.

5. The Permanent Representatives Committee (Part I) is therefore invited to recommend to the Council (Competitiveness) to adopt, as an "A" item of its agenda, the 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", as set out in the Annex to this Note.

ANNEX

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[3] and May 2016[4], 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 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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[3] Doc. 16000/14
[4] 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 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. 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. NOTES the Court´s observation that 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[5], which underline the importance of concrete targets for the reduction of unnecessary regulatory burdens, whilst respecting existing protection standards and without undermining the underlying objectives of the legislation. 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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[5] Doc. 7037/18