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'I' ITEM NOTE

From: Budget Committee

To: Permanent Representatives Committee

Subject: Feedback for the European Court of Auditors' performance audit on the application of Regulation 2020/2092
- *Approval of a letter*

1. On 15 February 2023, the European Court of Auditors (ECA) sent a letter to the Secretary-General of the Council requesting the views and position of the Council's Budget Committee on the Commission's work and dialogue in the application of Regulation 2020/2092 (the "Conditionality Regulation")¹, including a set of questions regarding the requirements and role of the Commission in the Conditionality Regulation vis-à-vis the Council's preparatory bodies assigned to that file.
2. On 13 March 2023, the Budget Committee discussed ECA's request and decided to provide a Council reply to ECA's aforesaid letter. On that basis, the Presidency prepared a draft reply for the consideration of the Budget Committee.

¹ Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget (OJ L 433I, 22.12.2020, p. 1).

3. The Budget Committee discussed the Presidency's proposal for a draft reply at its meeting on 18 April 2023 and was able to agree to it.
 4. In view of the above, the Permanent Representatives Committee is invited to approve the letter set out in the Annex to be sent on behalf of the Council to Ms Annemie Turtelboom, member of the European Court of Auditors, in accordance with point (k) of Article 19(7) of the Council's Rules of Procedure.
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DRAFT LETTER

from: Chair of the Permanent Representatives Committee
to: Ms Annemie Turtelboom, Member of the European Court of Auditors
Copy: Ms Thérèse Blanchet, Secretary-General of the Council of the European Union

Subject: Feedback for the European Court of Auditors' performance audit on the application of Regulation 2020/2092

Dear Ms Turtelboom,

Thank you for your letter requesting the Budget Committee's view on the Commission's work and dialogue in the application of Regulation 2020/2092 (the "Conditionality Regulation")¹ and your questions regarding the requirements and role of the Commission in the Conditionality Regulation vis-à-vis the Council's preparatory bodies assigned to that file. The Council is committed to continue fulfilling its responsibility for the protection of the EU budget as foreseen in the Conditionality Regulation. As made clear by the Regulation, respect for the rule of law is an essential precondition for compliance with the principles of sound financial management².

¹ Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget (OJ L 433I, 22.12.2020, p. 1).

² Recitals 7 and 13 of Regulation 2020/2092.

Article 6 of the Conditionality Regulation provides for a clear allocation of roles between the Commission and the Council. The Council decides on the adoption of measures based on a proposal made by the Commission, which has the power, and the capacity, to assess the facts and circumstances that may trigger the procedure set out in the Regulation. As made clear by Recital 16 of the Conditionality Regulation, such an assessment should be objective, impartial and fair, and should take into account relevant information from available sources and recognised institutions. The decision of the Council should then rely on the facts and circumstances as assessed and substantiated by the Commission. Sincere cooperation and constructive dialogue between the Council and the Commission is therefore of essence for an effective and timely implementation of the Conditionality Regulation.

The procedure under the Conditionality Regulation has so far been triggered on one occasion concerning Hungary. The Council notes that the following procedural steps were taken by the Commission¹:

- On 27 April 2022, by letter, the Commission informed the Council in line with Article 6(1) of the Conditionality Regulation that it had transmitted to Hungary a written notification².
- On 22 July 2022, by letter, the Commission informed the Council that it had transmitted a letter to Hungary pursuant to Article 6(7) of the Conditionality Regulation setting out the measures that the Commission intended to propose to the Council³.
- On 18 September 2022, the Commission submitted to the Council its proposal for a Council implementing decision on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary (the “proposal”)⁴. The proposal was submitted pursuant to Article 6(9) of the Conditionality Regulation.

¹ See for a complete account of steps Council Implementing Decision (EU) 2022/2506 of 15 December 2022 on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary (OJ L 325, 20.12.2022, p. 94).

² Letter from Commissioner Hahn to Mr Clément Beaune, Minister of State for European Affairs of France, dated on 27 April 2022 (Ares(2022)3273846).

³ Letter from Commissioner Hahn to Mr Mikuláš Bek, Minister for European Affairs of Czechia, dated on 22 July 2022 (Ares(2022)5343708).

⁴ COM(2022) 485 final (+ Annexes).

- On 13 October 2022¹, the Council decided to extend the deadline for the Council to act by two additional months, until 19 December 2022, in accordance with Article 6(10) of the Conditionality Regulation. In connection with the extension of the deadline a letter was sent by the Council to the Commission².
- On 30 November 2022, the Commission transmitted to the Council its assessment on the implementation of the remedial measures notified by Hungary³.
- On 6 December 2022, in line with Article 241 TFEU, the Council requested the Commission to present an updated assessment of the additional remedial measures taken by Hungary in the context of the conditionality mechanism⁴. On 9 December 2022, the Commission presented its updated assessment⁵.
- On 15 December 2022, the Council adopted its Implementing Decision 2022/2506.

Regarding the Commission's dialogue with the Budget Committee, the Council preparatory body assigned to that file, it may be noted that since the submission of the proposal, the Commission was present during the discussions on and the examination of the proposal, which took place at the Council's Budget Committee meetings on 22 and 28 September, 25 October, 9 November, and 2, 8 and 12 December 2022. The Commission presented in detail the proposal and the grounds on which it was based. It also provided information on the state of play of the implementation of the remedial measures in Hungary as well as answers -orally and in writing- to the questions posed by delegations on both substance and process. During those meetings, Hungary had the opportunity to respond to the Commission's arguments and informed delegations -both orally and in writing- about the state of play of the implementation of the remedial measures undertaken by the Hungarian Government in the framework of the procedure under the Conditionality Regulation.

¹ Doc. 13207/22.

² Letter from Ms Edita Hrdá, Chair of the Permanent Representatives Committee, to Commissioner Hahn, dated on 26 October 2022 (doc. SGS 22/04727).

³ Communication from the Commission to the Council on the remedial measures notified by Hungary under Regulation 2020/2092 for the protection of the Union budget, 30 November 2022 (COM(2022) 687 final).

⁴ Letter from Mr Zbyněk Stanjura, Minister of Finance of Czechia, to Commissioner Hahn, dated on 6 December 2022 (doc. SGS 22/05374).

⁵ Doc. 15890/22.

As regards the Commission's obligation pursuant to Article 9 of the Conditionality Regulation to submit a report by 12 January 2024 on the application of the Regulation, the Council expects that the Commission will consider, in addition to the effectiveness of the measures adopted, the overall effectiveness of the procedure set out in the Regulation and the complementarity of this instrument with others¹.

Please note that your letter has been circulated to the Member States, which may decide to complement this information by submitting answers to your questions on an individual and voluntary basis.

(Complimentary close)

¹ Recital 28 of Regulation 2020/2092.