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European Union

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COVER NOTE

From: Klaus-Heiner Lehne, President of the European Court of Auditors
date of receipt: 14 September 2020
To: Michael Roth, President of the General Affairs Council

Subject: Draft Decision regarding the amendment of Article 19 of the Rules of Procedure of the European Court of Auditors
- Letter from Klaus-Heiner Lehne, President of the European Court of Auditors to Michael Roth, Chair of the General Affairs Council
- Explanatory memorandum

Delegations will find attached the above-mentioned documents, accompanying the Draft decision regarding the amendments of Article 19 of the Rules of Procedure of the European Court of Auditors.

Encl. Letter from the President of the European Court of Auditors
Explanatory memorandum



EUROPEAN
COURT
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IF 008680 2020
21.09.2020

Klaus-Heiner Lehne
President

Mr Michael Roth
President of General Affairs Council
Council of the European Union
Rue de la Loi 175

B-1048 Brussels

Luxembourg, 14 September 2020
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Dear Mr Roth,

Please find enclosed, for the approval of the Council, a proposal for a revision of the Rules of Procedure of the Court of Auditors, adopted by the Court on 7 September 2020, and a note explaining the reasons for the proposed changes. Translations into the other languages will be sent to you shortly.

The Court's experience with the Covid-19 pandemic has shown that there was room for improvement regarding its current decision-making framework. Amendments are proposed to the Court's Rules of Procedure in order to enable the Court to adopt its decisions remotely in extraordinary circumstances.

The Court invites the Council to initiate the approval procedure provided for in the fifth sub-paragraph of Article 287(4) of the Treaty on the Functioning of the European Union (ex Article 248(4) TEC).

I am at your disposal for any additional information or documentation that you may require.

Yours sincerely,

Klaus-Heiner Lehne

Annex: - Draft Decision № XX-2020 regarding the amendment of Article 19 of the Rules of Procedure of the European Court of Auditors

- Explanatory Memorandum for the Council

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Klaus-Heiner Lehne
President

Luxembourg, 7 September 2020
CPR120893EN02-20BB-DEC061-20FIN-ORAN.docx

Subject: EXPLANATORY MEMORANDUM FOR THE COUNCIL

1. The Rules of Procedure of the European Court of Auditors do not provide for the possibility for the Court to adopt its decisions remotely by means of video or telephone conference, even in extraordinary circumstances, constituting *force majeure*. In particular, Article 19 of the Rules of Procedure stipulates that “the Court should make its decisions in formal sessions, save where it applies the written procedure laid down in Article 25(5)”. At present, the written procedure is the only form of decision-making not requiring the physical presence of Members.
2. The Court’s experience with the Covid-19 pandemic has shown that there was room for improvement regarding its current decision-making framework. Amendments are therefore proposed to the Court’s Rules of Procedure. Their purpose is to enable the Court to adopt its decisions remotely in extraordinary circumstances, constituting *force majeure*, and to ensure the continuity of decision-making by the Court in such circumstances without having to apply ad-hoc solutions.
3. Specifically, it is proposed to introduce amendments to Article 19 of the Rules of Procedure. The current text of this provision is numbered as paragraph 1. It lays down the rule according to which the Court should make its decisions in formal sessions requiring presence of its Members. Paragraph 2 provides an exception to this rule by stipulating that in duly justified and exceptional circumstances, constituting *force majeure*, such as in particular, major public health crises, natural disasters or acts of terrorism, determined by the President, the Court may make its decisions remotely by video or telephone conference. Under this provision, it is possible to hold hybrid sessions (“without all of the Members being physically present at the same location”) or virtual sessions (“without any of the Members being physically present at the same location”). Paragraph 3 stipulates that remote decision-making is possible at the level of the Court’s Chambers and Committees. For the sake of clarity, paragraph 4 provides that the Court may adopt decisions, which are taken by secret ballot, in remote sessions, if the secrecy of vote is ensured¹.

¹ The Rules of Procedure provide for three types of such decisions: a decision to refer the matter of a Member’s compulsory retirement and deprivation of the right to a pension or other benefits to the Court of Justice - Article 4(4), election the President - Article 7(2), election the Secretary-General - Article 13(1).

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4. Under the proposed amendments, meetings at formal sessions in the Court's premises remain the rule. It is only in extraordinary circumstances, constituting *force majeure*, that the application of the proposed amendments can be triggered.
5. The proposed amendment will not give rise to any additional operating costs for the Institution and will not have any negative impact on the Union budget.
6. After adoption of the proposed amendments by the Court, the Rules for implementing the Rules of Procedure will be adapted as necessary.