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'I' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee (Part 2)

Subject: Draft Council conclusions on Special Report No 22/2020 of the European Court of Auditors entitled 'Future of EU Agencies - Potential for more flexibility and co-operation'
- Decision to use the written procedure for adoption

1. On 22 October 2020, the European Court of Auditors published Special Report No 22/2020 entitled "Future of EU agencies – Potential for more flexibility and cooperation"¹ (hereinafter "the report").
2. Under the rules laid down in the Council conclusions on improving the examination of special reports drawn up by the Court of Auditors², the Permanent Representatives Committee instructed the Working Party on the Staff Regulations³ to examine the report in accordance with those rules.
3. The presentation of the report took place at the informal meeting of the members of the Working Party on Staff Regulations meeting on 20 November 2020.

¹ ST 12267/20

² ST 7515/00 FIN 127 + COR 1

³ ST 12268/20

4. The members of the Working Party on Staff Regulations examined the Presidency proposal for draft Council conclusions at their informal meetings on 4 and 16 December 2020. During the most recent meeting, all delegations confirmed that they can accept the text set out in the Annex.

5. Given the current exceptional circumstances, in which no Council meetings are scheduled to take place, the Permanent Representatives Committee is invited to:
 - confirm its agreement to the text of the draft Council conclusions set out in the Annex;

 - decide, in accordance with the first sub-paragraph of Article 12(1) of the Council's Rules of Procedure and Article 1 of Council Decision 2020/430, that the Council is to use the written procedure for its adoption of the text.

**Draft Council conclusions on the European Court of Auditors Special Report No 22/2020
"Future of EU agencies - Potential for more flexibility and co-operation"**

THE COUNCIL OF THE EUROPEAN UNION:

1. WELCOMES the Special Report of the European Court of Auditors No 22/2020 (hereinafter "the Court") which constitutes its first overall assessment of the conditions implemented by the EU to ensure that the agencies are effectively delivering EU policies for the benefit of all citizens, including its observations, conclusions and recommendations, and which is a valuable contribution for the improvement of their performance and inter-agency co-operation;
2. UNDERLINES the significant relevance of EU agencies for contributing to the implementation of EU policies and supporting co-operation between the EU and national governments by acting as centres of technical and evidence-based expertise as well as networking;
3. WELCOMES the efforts undertaken by the EU institutions since 2012 with respect to the implementation of the Common Approach signed by the Commission, Council and Parliament¹, to ensure essential conditions for their performance-orientated management and monitoring instead of a compliance-based approach;
4. WELCOMES the most efficient use of the Single Programming Documents (SPDs) as set out in the new Framework Financial Regulation² and the related Commission guidelines (C (2020)2297)³, which are expected to allow a more thorough review of evolving needs also in the perspective of the 2021 - 2027 Multi-annual Financial Framework (MFF);
5. NOTES all efforts, including the setting up of the EU Agencies Network, for maximising the agencies' visibility and communication potential while enhancing exchange of information and guidance together with common tools and parameters for a more harmonised regular assessment;

¹ https://europa.eu/european-union/sites/europa.eu/files/docs/body/joint_statement_and_common_approach_2012_en.pdf

² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R0715>

³ <https://ec.europa.eu/transparency/regdoc/rep/3/2020/EN/C-2020-2297-F1-EN-MAIN-PART-1.PDF>

6. RECALLS the European Council conclusions of 17-21 July 2020 (Paragraph 130) and the recommendation of the inter-institutional working group on agency resources⁴; WELCOMES the unilateral statement of the Commission⁵ in the Common understanding agreed for the 2021 budget, which refers to the Court's Report; SHARES the Commission's interest in making sure that the decentralised agencies of the EU deliver on their mandates, including strengthening and streamlining their governance, as well as supporting harmonised planning and reporting; EXPRESSES ITS READINESS to engage constructively with the Commission with a view to building up a collaborative follow up as soon as possible, and at the latest for the 2022 budget procedure;

7. RECALLS the Council Conclusions on Special Report No 15/2019 of the European Court of Auditors, entitled 'Implementation of the 2014 staff reform package at the Commission - Big savings but not without consequences for staff';⁶

8. CONSIDERS essential for the European Commission, the European Parliament and the Council to discuss how full adherence to the Common Approach of 2012 can be achieved; UNDERLINES the importance it attributes to the EU Financial Regulation⁷ and to the Better Regulation Guidelines⁸;

9. STRESSES the necessity for EU member states to provide EU agencies with any necessary support to fulfil their mandate;

⁴ ST 13795/2017

⁵ Unilateral statement by the Commission of 4 December 2020 on governance of the decentralised agencies: "The Commission has a keen interest in making sure that the decentralised agencies of the EU deliver on their mandate, including strengthening and streamlining their governance, as well as supporting harmonised planning and reporting by all decentralised agencies. The Commission considers that the Special Report of the European Court of Auditors no 22/2020, and the replies thereto, could form the basis for collaborative follow-up which will require the support of Council and Parliament."

⁶ ST 8635/20

⁷ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) Number 1296/2013, (EU) Number 1301/2013, (EU) Number 1303/2013, (EU) Number 1304/2013, (EU) Number 1309/2013, (EU) No 1316/2013, (EU) Number 223/2014, (EU) Number 283/2014, and Decision Number 541/2014/EU and repealing Regulation (EU, Euratom) Number 966/2012, *OJ L 193, 30.7.2018, Pages 1–222*

⁸ https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how/better-regulation-guidelines-and-toolbox_en

10. ENCOURAGES ALL PARTIES to proceed carefully to any forthcoming review or recast of the legal base of EU agencies by taking the necessary steps to ensure a proper impact assessment of their rationale, both the relevance and coherence of their expected objectives as well as envisaged effects in line with broader EU strategic planning; to keep a particular focus on streamlining the size of their management bodies and increasing the efficiency of their governance models; to maintain high standards in relation to their accountability and performance obligations by respecting all appropriate norms;

11. EMPHASIZES the importance of a coherent and consistent approach to be applied by all EU institutions involved in relation to the setting up and winding up of agencies, in particular through:

- a) comprehensive impact assessments before the adoption of any act setting up new agencies, taking into consideration any alternative options, such as mergers, change in mandates, collaborative working, overlaps or gaps related to policy delivery; any reservations expressed by the Regulatory Scrutiny Board before the presentation of a new proposal must be properly and sufficiently addressed by the Commission; any Commission proposals must include also a financial statement as set out in Chapter 7 (Articles 33-36) of Regulation 1046/2018 as well as a sunset or a revision clause;
- b) evaluation of existing agencies, including the use of cross-cutting performance and/or fitness checks to assess the coherence and relevance of their activities and their attained policy outcomes and
- c) alignment of existing agencies, to the maximum extent possible, in terms of governance structures, planning, programming and accountability;

These requirements should be laid down in the Regulations establishing agencies, or Regulations amending or recasting them, and follow all possible means for convergence without compromising the particular objectives and tasks of each specific agency;

12. INVITES THE COMMISSION to study and implement the Court's recommendations, in particular, as regards:

- a) ensuring that the set-up, functioning, and possible winding-up of agencies is flexible and directed to ensuring that agencies fulfil their mandate and accomplish their tasks with the aim of implementing EU policy and enhancing co-operation within the European Union, while using all possible synergies and economies of scale;
- b) monitoring the implementation of the revised Commission guidelines (C (2020)2297) on the performance information to be provided by agencies for external scrutiny by the European Parliament, the Council and EU citizens, thereby shifting the focus from reporting on output and activities to the agencies' actual contributions to EU policy;

- c) improving budgetary supervision of agencies, especially by timely reviewing and aligning resources with evolving needs;
- d) assisting and supporting the EU agencies in streamlining their implementing provisions and contributing to the exchange of best practices for accountability and performance review purposes;
- e) continuing monitoring the governance and implementation framework of EU agencies and to adapt them, where necessary, with a view to fully meeting their objectives;
- f) promoting the role of EU agencies as centres of excellence and networking in the design and implementation of EU policies as well as in the context of broader international co-operation;

13. INVITES ALL EU AGENCIES to study the Court's recommendations and draw their own conclusions, in particular, as regards:

- a) the relevance of their operational plans with a view to maximising the efficient use of resources and the development of synergies amongst them, whenever possible, to identify good practices on performance review and economies of scale for their planning and outputs, particularly in shared policy areas;
- b) the further improvement of their communication strategies in close co-operation with their network and its support office in Brussels, thereby raising awareness about their role and job opportunities at all levels while bringing them closer to the needs of EU citizens, taking the pandemic as an example;
- c) the geographical balance of their staff as a matter of priority, including as part of their respective HR strategies and
- d) ways to attract young talent;

14. ENCOURAGES THE COMMISSION AND EU AGENCIES ACTING TOGETHER to:

- a) improve governance, accountability and reporting on performance;
- b) strengthen the role of agencies as centres of expertise and networking;
- c) address ways to improve the attractiveness of agencies as employers;

15. INVITES THE BUDGETARY AUTHORITY to allocate in a flexible manner the agencies' budgetary and human resources in line with the results of their performance review and the overall EU political priorities in order to ensure a better match between real needs and allocated budgets, while respecting the ceilings of annual and multi-annual budgetary limitations;

16. INVITES THE COURT to:

- a) include Joint Undertakings in any upcoming reports;
- b) address the question of geographical balance of staff in EU agencies in any follow-up reports;
- c) report on a regular basis about the overall compliance with its recommendations and make any further observations deemed necessary.
