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#### 'I/A' ITEM NOTE

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

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Subject: Draft Council conclusions on Special Report No 24/2021 entitled  
"Performance-based financing in Cohesion policy: worthy ambitions, but  
obstacles remained in the 2014-2020 period"  
- Approval

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1. On 21 October 2021, the General Secretariat of the Council received the Special Report No 24/2021 "Performance-based financing in Cohesion policy: worthy ambitions, but obstacles remained in the 2014-2020 period".
2. Pursuant to the rules laid down in the Council conclusions on improving the examination of special reports drawn up by the Court of Auditors<sup>1</sup>, the Permanent Representatives Committee, at its meeting on 27 October 2021, instructed the Working Party on Structural Measures and Outermost Regions to examine this report according to the rules laid down in the above-mentioned conclusions.

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<sup>1</sup> Doc. 7515/00 FIN 127 + COR 1.

2. The Court of Auditors presented the report at the meeting of the Working Party on Structural Measures and Outermost Regions of 28 October 2021. Draft Presidency conclusions were examined at the meetings of the Working Party on Structural Measures and Outermost Regions of 9<sup>2</sup> and 25 November 2021<sup>3</sup>. A silence procedure was launched on 29 November 2021 with a revised set of Council conclusions that took into account the comments received from delegations during the final discussion at working party level on 25 November 2021. Delegations agreed to the draft Council conclusions as set out in the Annex<sup>4</sup> to this note.
  3. The Permanent Representatives Committee is therefore invited to recommend to the Council to approve, as an "A" item at a forthcoming meeting, these Council conclusions as set out in the Annex to this note.
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<sup>2</sup> WK 12979/21.

<sup>3</sup> WK 12979/1/21 REV1.

<sup>4</sup> WK 14711/21.

**DRAFT**

**Council conclusions on Special Report No 24/2021 by the European Court of Auditors:  
Performance-based financing in Cohesion policy: worthy ambitions, but obstacles remained  
in the 2014-2020 period**

THE COUNCIL OF THE EUROPEAN UNION:

- (1) WELCOMES the Special Report No 24/2021 by the European Court of Auditors (hereafter referred to as "the Court") and the replies of the Commission to the Report);
- (2) NOTES that the Court's audit assessed the design, use and the impact of three elements aimed at reinforcing the performance orientation of cohesion policy in the 2014-2020 period: ex-ante conditionalities, the performance reserve and review and the performance-based funding models (Joint Action Plans, Financing not linked to costs and three types of Simplified Costs Options);
- (3) RECALLS that the European Structural and Investment Funds were the first EU funding instruments to introduce a performance framework based on measurable indicators;
- (4) STRESSES the need to preserve and further develop improving the performance orientation of cohesion policy as an important step towards the performance culture in the implementation of the policy and IS OF THE VIEW that the three elements examined had the potential to incentivise performance;
- (5) ACKNOWLEDGES that the audit work covered the period up to December 2020 but did not address the budget re-allocations made in 2020 in response to the COVID-19 pandemic and WELCOMES that the Report also identifies risks and opportunities for the 2021-2027 period;

- (6) TAKES NOTE of the findings of the Report, in particular that:
- Ex-ante conditionalities were not in all cases addressed in a timely manner and their assessment by the Commission was not always consistent due to broad criteria leaving room for interpretation. They were designed as a one-off exercise and their impact on the long-term effectiveness of spending has not been fully assessed;
  - Regarding the allocation of the performance reserve, the fact that the legislation providing the conditions and criteria for carrying out the performance review changed in the middle of the programming period, delivered additional flexibility for Member States;
  - On the performance-based models, Simplified Cost Options were the only performance-based funding model widely used in the 2014-2020 period; Member State's uncertainty on how to implement Joint Action Plans and Financing not linked to costs and the lack of clarity concerning their control and audit requirements hampered their use;
- (7) SUPPORTS the recommendations given by the Court:
- Making the best use of enabling conditions in the 2021-2027 period;
  - Preparing the ground early for an effective mid-term review for the 2021-2027 period;
  - Clarifying the rules underlying the 'financing not linked to costs' funding model;
  - Clarifying the approach for providing assurance on EU funding through the 'financing not linked to costs' model;
- (8) Broadly SHARES the replies of the Commission to the findings and recommendations included in the Court's Report, in particular that:
- In the field of ex ante conditionalities, the deficiencies encountered in the 2014-2020 period have been addressed in the design of the enabling conditions for the 2021-2027 period, mainly by moving from a one-off exercise towards a continuous fulfilment and monitoring of the enabling conditions;

- Regarding the performance framework and the performance reserve, the modifications of the conditions and criteria applicable to the performance review were justified by the need to address certain inconsistencies in the existing rules which did not allow for an accurate reporting of achievements;
- Concerning the use of the performance-based funding models, its late introduction in the programming period and its novelty profile had an impact on its limited uptake;
- The mid-term review in 2025 introduced for the 2021-2027 period constitutes a step forward towards a performance culture, bringing together a set of qualitative and quantitative elements;

(9) CONSIDERS the Report a very timely and worthwhile contribution to the effective implementation of cohesion policy for the 2021-2027 period;

(10) INVITES the Commission to:

- Regularly monitor the continued fulfilment of enabling conditions and report on Member States' fulfilment and its own enforcement activities, where relevant;
- Inform Member States at an early stage about the approach to be applied for the mid-term review in 2025;
- Clarify with Member States how managing and audit authorities should treat public procurement and state aid when using Financing not linked to costs and Simplified Cost Options models during the 2021-2027 period;
- Clarify with Member States when using Financing not linked to costs in the context of approving or amending the programmes, how the appropriateness of the amounts linked to the fulfilment of the respective conditions or the achievement of results should be ensured;
- Share best practices of performance-based funding models, including between funds, to encourage Member States on how to implement them.