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Briefing by
Mr. Werner Druml, Chairperson
Committee on Budget and Finance

World Forum, King Willem Alexander room
7 December 2022, 10:00 – 11:30

Madam President,

Your Excellencies and Distinguished delegates,

Ladies and gentlemen, I would like to thank you for the opportunity to address you today and to present the main outcomes of our discussions at the thirty-eighth, thirty-eighth resumed and thirty-ninth sessions of the Committee on Budget and Finance (“the Committee/CBF”).

At the outset, I would like to take this opportunity to thank my fellow colleagues from the Committee for their devotion and hard work during 2022, and to the representatives of the Court for their availability and cooperation. I also extend my thanks and appreciation to the Executive Secretary to the CBF and his team for their quality and outstanding support, which is essential for the fulfilment of the Committee’s mandate.

Let me start with some of the challenges the Court will be facing in 2023.

Challenges the Court will face in 2023

The Committee observed with great concern that outstanding status for the payment of contributions and, consequently, the outlook for the liquidity of the Court, had significantly worsened. As of 30 November 2022, a grand total of €40.9 million in contributions was outstanding, out of which €31.2 million from prior years and 12 States Parties with combined arrears of €14.0 million would not be able to vote in accordance with article 112 of the Rome Statute.

As far as the liquidity situation is concerned, the Committee noted that by the end of the financial year 2021, a liquidity shortfall of about €9.9 million¹ had only been averted because some States Parties had been prepared to pay their contribution for the fiscal year 2022 in advance in December 2021. Commendable as these early payments by some States Parties are, they have potentially exacerbated the liquidity situation in the fiscal year 2022. As for 2022 fiscal year, the Court received, again, from some States Parties, cash in advance of their 2023 assessed contributions, which resulted in not depleting the entire Working Capital Fund (“WCF”). Over the years many recommendations had been made to improve the financial situation of the Court, by the External Auditors, by this Committee and also by the Independent Experts. All these recommendations had not had the desired effect. The Committee urged States Parties to pay their contributions, immediately after receiving the *Note Verbale* from the Court at the beginning of the year.

In the context of the ongoing challenging liquidity situation the Committee was concerned that with the expected significant increase in activities that the current level of the precautionary reserves would not be sufficient to ensure the adequate functioning of the Court. A replenishment of the Contingency Fund (“CF”) up to its notional level of €7.0 million, as recommended by the Committee at its May session, and the approval and replenishment of the level of the WCF at one twelfth (1/12) of the previous year’s approved budget appropriation would be necessary. In light of an expected nearly 100 per cent implementation rate of the 2022 approved budget, the replenishment of the CF by the unused amount of this year’s budget may for the first time not be possible.

A further challenge will be the longer term impact of significant increases of the budget. Most of new staff requested are GTA positions, which will be, if approved, only funded partially in 2023 for a range between three and nine months and will highly likely have to be fully funded for 2024 and beyond.

A significant increase in staff raises also a challenge for the Court since it requires the capacity to recruit in a timely manner an appropriate workforce. As pointed out in the Court’s last

¹ As reported by the Court in January 2022.

report the additional voluntary fund could also lead to asymmetrical growth across the organs and could result in an increased requirement of resources. The injection of voluntary contributions creates additional pressure on the ordinary budget for the main organs of the Court.

The new posture of the Court introduced by the Prosecutor with more extended reliance on digitalisation and data science will – accelerated by the extra budgetary resources from the OTP-Trust Fund and as a response to rapidly evolving technological environment – have an impact on the Court’s operation. Those necessary changes will lead to resource demands increases and co-ordination challenges across the Court with financial implications for future budgets.

A longer term challenge will also be the upkeep of the premises and the capital replacement. On the basis of a new fully impartial evaluation of a medium and long-term plan of capital replacement – as advised by the pro-bono expert – a decision has been made at the HWG facilitation on Premises to hire an independent consultant to conduct an external evaluation. All solutions have in common that they require commitment to a reliable long-term funding from States Parties.

A final challenge may be the evolution of the inflation in the coming years. Further increases in the UN Common System cannot be excluded. The Court has managed to limit the inflationary impact on non-staff costs but expects prices to be significantly higher in 2024.

Human Resources

The Committee considered the proposed changes to the Financial Regulations and Rules on inter-organ mobility, especially on temporary assignment of staff members across organs and noted that this would both encourage internal workforce mobility and enable the Court to allocate resources to its highest priority areas and should further enhance the learning and development opportunities to staff during their career in the Court. Therefore, the Committee recommended the Assembly of States Parties (“the Assembly”) to approve the amendments.

The Court’s initiative on the National Professional Officer (“NPO”) category was welcomed by the Committee and it recommended that the Court develop clear guidelines – such as on the temporary nature of NPO, the conversion of vacant posts to NPO’s, and concerning the heads of country offices. The Committee wished to be informed on the developed guidelines.

The Committee recognised the advantages provided by the United Nations Voluntary Programme (“UNV”), and recommended that the Court report, at its forty-first session in May 2023, on how it will be used as part of the Human Resources force, and whether amendments to the Staff Regulations and Rules will be required.

The Committee analysed the tenure policy, which had been assessed positively by the Review Mechanism. The Committee recognized some advantages of a tenure policy, such as the introduction of fresh thinking, an objective pointed out in R105. However, it noted important challenges, which would deserve careful examination such as effects on productivity, financial implications, and the legal risks due to unequal treatment between current and newly appointed staff in the area of pension and After Service Health Insurance (organizations consulted by the Court have followed the tenure policy since inception).

OTP Trust Fund and secondment of personnel

Now, I would like to refer to the OTP Trust Fund and the secondment of personnel, which have been intensely discussed with the Court.

As informed by the Court, the total amount received for the Trust Fund is €6.3 million, excluding the EU grant² of €7.25 million to enhance the technological tools used by the Office in collection, processing, and storage of evidence.

The Trust Fund was established by the Registrar according to Article 116 of the Rome Statute and Regulations 7.2 to 7.4 of the Financial Regulations and Rules (“FRR”), which govern voluntary contributions in the Court. Resolution ICC-ASP/1/Res.11 delegates to the Registrar the evaluation that offered contributions do not affect the independence of the Court and fulfill the criteria established by the Assembly. The Court came to the conclusion that the donations to the OTP Trust Fund are consistent with the nature and function of the Court and do not involve additional liabilities to the Court. According to the rules, the voluntary contributions will be subject to the Court’s regulatory framework and the accounting principles, as well as subject to auditing by the external auditors.

A total of 74 national experts from judicial, law, military and law enforcement agencies were committed by some States Parties on a secondment basis for all situations. A proper integration of seconded personnel in the various teams of the OTP is essential. The OTP and the Registry developed, in close cooperation, standard procedures for the selection and on-boarding of these seconded national experts, building on existing precedents. Secondees report to the Head of their respective team. They are required to sign an Oath of Office and a Confidential undertaking where they commit to avoid any action, which may reflect adversely on their status as members of the teams of the OTP, or the integrity, independence and impartiality required by their status. Their salaries and entitlements are funded by the lending agency, the costs of deployment while deployed to a unified team will be covered by the OTP.

The relationship between extra-budgetary and regular budget funds has been carefully considered by the Committee. The contributions are seen as complementary and supplementary to the core resources requested in the 2023 proposed programme budget (“PPB”); they do, however, have an impact on the overall budget.

The Committee requested the Court to update it on the OTP Trust Fund Spending Plan and the secondment of personnel at its forty-first session in May 2023.

Consideration of the 2023 proposed programme budget

The Court requested a PPB of €186.8 million, including the host State loan. The 2023 PPB represented an increase of 20.6 per cent (or €32 million) against the total approved budget for 2022 of €154.3 million.

After carefully reviewing the 2023 PPB and the justifications provided, the Committee concluded that total reductions could be achieved in the amount of €7.2 million. This represents an adjusted total increase of €24.7 million (or 16.0 per cent) compared to the 2022 approved budget including the host State loan. Therefore, the Committee recommended that the Assembly approve a budget of €179,576.6 thousand including the instalments for the host State loan.

Given the substantial unavoidable cost factors due to the inflationary pressures for non-staff costs and the UN Common System adjustment totalling €13.4 million, the substantial reductions recommended by the CBF resulted in a real increase of €11.3 million (or 7.3 per cent).

The Committee considered that, in spite of these substantive reductions, the operations of the Court will not be negatively impacted.

This concludes my remarks. Thank you for your attention.

² Budget facilitation 2022, Consolidated list of queries with answers from the Court - Set 6, 9 November 2022.