European court of auditors: the financial conscience of the European union

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EUROPEAN COURT OF AUDITORS:

THE FINANCIAL CONSCIENCE OF THE EUROPEAN UNION

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ABSTRACT

This thesis presents and analyses the legal dispositions concerning the European Court of Auditors. The Court is the institution responsible for the external audit in the European Union. After a short presentation of the Court's historical background, there is an examination of this institution's structure. Provisions regarding its Members, Personnel and Internal Organisation are analysed in an attempt to assess the Court's structural framework

An analysis of the Court's mission, namely to examine all the accounts (revenue/expenditure) of the Communities and of all bodies set up or simply financed by them, is next. The analysis focuses on the audit regarding the regularity/legality of the transactions and the soundness of the financial management. The method used for these audits, called the "systems based approach" is presented and explained. The reporting activities of the Court (Annual Report, Statement of Assurance, Special Reports), being of essential importance since they include the findings of the Court along with the replies of the audited institutions, are given much attention. Because of its competences the Court is a major player in the battle against fraud in the Communities and its role in that issue is also assessed.

The thesis includes also an examination of the Court's auditing competences regarding expenditure for the second and third pillar of the European Union.

The collaboration between the Court and the other institutions (Commission, Parliament, Council, European Investment Bank) is presented, focusing on the possibilities of improving it.

The dependence of the Court on the assistance of the National Audit Institutions of the Member States, especially regarding on the spot checks is highlighted along with other aspects of their collaboration.

The Court's estimations regarding the policies of the European Union (Common Agricultural Policy, Structural Policies, Measures outside the Union) are also included.

Finally, the institutional nature of the Court is discussed and proposals regarding granting the Court judicial authority and restructuring it are made.

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"We must not have a judge or a high-ranking official who will judge or rule without accounting to anyone, and it is necessary, in order for the accounts to be judged, to have specialized high-ranking officials who will be gifted with all kinds of qualities and then the city will make progress."

Plato (427-347 B.C.)

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ABBREVIATIONS

Art.	Article
AthLRev.	Athens Law Review
BCC	Budgetary Control Committee
CEEC	Central and East European Countries
CMLRev.	Common Market Law Review
Dir.	Directive
EAGGF	European Agricultural Guidance and Guarantee Fund
Euratom	European Atomic Energy Community
ECA	European Court of Auditors
ECB	European Central Bank
ECF	European Cohesion Fund
ECJ	European Court of Justice
ECSC	European Coal and Steel Community
EC Treaty	European Community Treaty
ECU	European Currency Units
EDF	European Development Fund
E.E.	Scientific journal in Greece
EEA	European Economic Area
EEC	European Economic Community
EJPR	European Journal of Political Research
ELRev.	European Law Review
EurPL	European Public Law
ERDF	European Regional Development Fund
ESF	European Social Fund
EU Treaty	Treaty on the European Union
HelRevEL	Hellenic Review of European Law
IJGA	International Journal of Government Auditing
LIEI	Legal Issues of European Integration
OJ	Official Journal of the European Communities
Reg.	Regulation
RFFP	Revue Francaise des Finances Publiques
Rev.Trim.Dr. Europ.	Revue Trimestrielle de Droit Europeen
VAT	Value Added Tax
YBEL	Yearbook of European Law

INTRODUCTION

It was on 19 September 1946, when Winston Churchill, in a speech in Zurich, suggested the foundation of the "United States of Europe". This suggestion was not a new idea since in February 1848, a French newspaper called "Le Moniteur" had presented an idea about a united Europe.[1] But Churchill's speech had a very large impact. After the Second World War, the European Nations were seeking a way to establish peace in the tormented and practically destroyed continent. Churchill's idea came as a response to this wish and activated a chain reaction.

In 1950, the French Minister of Foreign Affairs, Robert Schuman, in a speech written by his consultant Jean Monnet, suggested the creation of the European Coal and Steel Community, presenting a fully developed plan for this idea. And on 18 April 1951 the Treaty establishing the European Coal and Steel Community was signed in Paris by France, Germany, Italy, the Netherlands, Belgium and Luxembourg. During the fifties many attempts were made to establish a European Political Community but they were unsuccessful. The result was the creation of the European Economic Community and the European Atomic Energy Community. The respective Treaties were signed in Rome on 25 March 1957 by the same states that have founded the European Coal and Steel Community.

Like every organization, the European Communities have their system of audit of financial management. This system has been amended repeatedly throughout the years. The reason for these amendments has been that the finances of the European Communities have developed dramatically, especially after the continuous enlargements of the Communities and the provision for the creation of the European Union in the Treaty of Maastricht, signed on 7 February 1992. The actions taken within the

[1] T. Judt, A Grand Illusion? An essay on Europe, Penguin Books Publications, 1997, p. 6.

framework of the various policies included in the three pillars of the Union (European Communities, Common Foreign and Security Policy, Cooperation in the Filed of Justice and Home Affairs) involve an enormous number of transactions that must be controlled. Currently, it can be said that there are four levels of audit in the European Union's audit. First, there is the internal control performed by the institutions that are actually performing the financial activities, namely the Commission.[2] The 20th (XX) Directorate General of the Commission is responsible for the financial control of the actions taken by the Commission within its executive competence. The Commission also is responsible for the ex ante examination of the Union's actions in order to see whether the funding of these actions has been reassured, within the framework of the Union's budgetary discipline. Secondly, there is the external audit, performed by the European Court of Auditors. Thirdly, there is the parliamentary audit, performed by the European Parliament. There is a parliamentary committee charged with the control of the implementation of the Union's budget. The Parliament also discharges the Commission in respect of the implementation of the budget.[3] The fourth kind of audit is the audit performed by the audit institutions of the Member States with regard to the revenue and expenditure of the Union. This audit, although being performed on a national level, is very interesting for the Union because the national audit institutions have a very good idea of the European resources' management in their respective countries. So, such an audit could be characterized as "decentralized audit" of the European Union's financial management. After all, the audit institutions of the Member States have developed a good working relationship with the audit institutions of the European Union.

All of the above levels of audit have their importance in the financial management's system of the European Union. But it is commonly accepted that external

[2] For a detailed analysis of the Commission's system of internal control see Annual Report of the Court of Auditors for the Financial Year 1988, OJ 1989, C-312/37.
[3] Art. 206(1) [276(1)] of the EC Treaty.

audit is essential in an organization because it ensures the effective management of public money and the accountability of those who make decisions about it.[4] And the competent institution for such an audit is the European Court of Auditors.

[4] I. Harden, F. White, K. Donnelly, The Court of Auditors and Financial Control and Accountability in the European Community, EurPL, Vol. 1, p. 599-632 (626).

Chapter One

Background and Structure

A. Historical Background

The historical development of the European Court of Auditors (referred to throughout this text as ECA or the Court) has not been exactly parallel with the respective development of the European Communities. In 1951 when the dream of Jean Monnet and Robert Schuman was realized in Paris with the signing of the Treaty for the European Coal and Steel Community (ECSC) and later in 1957 in Rome with the signing of the Treaty for the European Economic Community (EEC) and the Treaty for the European Atomic Energy Community (Euratom), there was no provision for a Court of Auditors.

Initially, the audit of accounts was carried out within each Community.[1] The financial control bodies instituted by the original Treaties comprised the Audit Board for the EEC and Euratom plus the ECSC Auditor.

The Audit Board was set up by Art. 206 of the EEC Treaty and Art. 180 of the Euratom Treaty. Both articles had the same wording:

> *"The accounts of all revenue and expenditure shown in the budget shall be examined by an Audit Board consisting of auditors whose independence is beyond doubt, one of whom shall be chairman".*

This Board covered both Communities and the number of its members was determined by an unanimous decision of the Council, which also appointed the auditors and the chairman for a period of five years.[2] Initially there were six members (in 1973 they became nine) one of each Member state, appointed on a part-time basis, and the

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[1] D. O' Keeffe, The Court of Auditors, in D. Curtin, T. Heukels, (ed.), Institutional Dynamics of European Integration-Essays in Honour of H. G. Schermers, Vol. II, Martinus Nijhoff, 1994, p. 177-194, (177).

[2] D. Strasser, The Finances of Europe, Office for Official Publications of the European Communities, 1991, p. 270.

Board had a staff of only 25.[3] The Board did not publish its reports, which instead were sent to the auditee, the Commission, the Council and to the European Parliament for information alone while there was little follow-up by the Council of the Audit Board observations.[4]

With regard to the ECSC Auditor, the original ECSC Treaty in Art. 78(6) stated that

> *"The Council shall appoint an auditor for a term of three years, which shall be renewable. He shall be completely independent in the performance of his duties. The office of the auditor shall be incompatible with any other office in any institution or service of the Community".*

This provision was changed by Art. 21 of the Merger Treaty of 8 April 1965, which instituted two new external bodies: first, an Audit Board which was to examine the accounts of all ECSC administrative expenditure included in the general budget (new Art. 78d of the ECSC Treaty) and secondly, an auditor whose audit was to relate solely to the operational expenditure and revenue of the ECSC (new Art. 78e), his original status being preserved in other respects.[5] Thus the ECSC was audited for both its operational activity and its administrative activity.[6]

At the same time the Merger Treaty included provisions concerning the replacement of all the audit institutions of the Communities. More specifically, Art. 22 of the Merger Treaty created the "Audit Board of the European Communities" to replace all the Audit Boards of the ECSC, the EEC and Euratom and to

> *"exercise under the conditions laid down in the Treaties establishing the three Communities the powers and jurisdiction conferred on those bodies by the Treaties".*

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[3] T. M. James, The Court of Auditors of the European Communities and the external audit bodies of the Member States in Honorary Volume for the 150 years of the Greek Court of Audit, Athens 1984, p 469-486 (470, note 6) & National Audit Office, State Audit in the European Union, London 1996, p. 220.
[4] National Audit Office, op. cit., p.220.
[5] D. Strasser, op. cit., p. 270.
[6] Ibid, p. 273.

The Audit Board of the European Communities had as its main task the production of a report.[7] After the examination of this report, the Council and the Parliament of the Communities were to give to the Commission a discharge in respect of the implementation of the budget.[8] So, the audit function of the Board was a part of the annual discharge decision system.[9]

This first institutional audit scheme, could not control, to an acceptable extent and depth, the continuously developing finances of the Communities. Developments like the adoption of the "Own Resources" system by the Communities, on 22 April 1970 with the Treaty of Luxembourg, or the several problems noted during the application of the Treaties' provisions about external financial control, persuaded those at the functional and structural levels of the Communities to see the necessity of creating an independent organization to perform the external control of the budget's implementation. Indeed, the Audit Board was inadequate to cope with the constantly changing conditions of the Communities' finances. This resulted in several long delays in the production of the Board's report, something that has given rise to much parliamentary criticism.[10] The Board itself had pointed out two major reasons that prevented it from being effective:[11] First, the narrow interpretation of its auditing powers. It is true that the Treaties did not define them clearly, enabling the institutions subjected to audit, and mainly the Commission, to interpret them narrowly (one of the main problems was that according to that narrow interpretation the Board could not begin the audit of the accounts until these have been closed) and thus the Board had been reluctant to give an extensive

[7] For a complete description of this Board's duties, see the Financial Regulation of 1973, OJ 1973, L-116/1.

[8] Art. 206 (4) of the EEC Treaty, Art. 78d of the ECSC Treaty and Art.180 (4) of the Euratom Treaty as amended by the Treaty of Luxembourg, 22.4.1970.

[9] G. Isaac, La renovation des institutions financieres des Communautes Europeenes depuis 1970, Vol. 13, Rev. Trim. Dr. Europ., (1977), p. 736-810 (780).

[10] F. Wooldridge, M. Sassela, Some recent legal provisions increasing the budgetary powers of the European Parliament, and establishing a European Court of Auditors, LIEI (1976/2), p. 13-52 (14, note 9).

interpretation to the meaning of the term "sound financial management", showing too much deference to the views of the Commission.[12] For example in 1971 the Commission issued a general instruction to its services, the practical consequence of which was to give the right to these services to limit the interventions of the Board of Auditors on issues that the services themselves had determined.[13] Secondly, the financial operations of the Communities had started by the late 1960s to be performed not by the Communities' services and agents but by the respective authorities of the public administrations of the Member States. The expenditure caused in this way could not be controlled, since the Treaties did not include any provisions about on-the-spot audits by the Audit Board in the Member States. The main volume of this expenditure was related to the European Agricultural Guarantee and Guidance Fund (EAGGF)-Guarantee Section while other expenditure related to the European Social Fund (ESF) or to the Guidance Section of the EAGGF was monitored by the Commission through the general accounts sent to it.[14] Several times the Commission was satisfied just by the internal audit procedures carried out by its own services and in that case (of internal control) the Audit Board could not interfere unless the Commission's services allowed it to do so.[15] And with regard to the follow-up of the Audit Board's remarks, this body complained that they remained "a dead letter".[16]

But these were not the only reasons that made the Audit Board less efficient in its results. According to the Rules concerning this body its members could not take instructions from governments or other bodies (Art. 4), they could not undertake any other Community activity (Art. 5) and they could be dismissed from their office by the

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[11] Report on the accounts for the financial year 1970 (p. 192 and so on) & Report on the accounts for the financial year 1971 (p. 188 and so on).
[12] F. Wooldridge, M. Sassela, op. cit., p.21 & G. Isaac, op. cit., p. 785, 786.
[13] G. Isaac, op. cit., p.785.
[14] F. Wooldridge, M. Sassela, op. cit., p.21 & G. Isaac, op. cit., p. 788, note 238.
[15] G. Isaac, op. cit., p. 789.
[16] Report on the accounts for the financial year 1971, p. 169.

European Court of Justice (ECJ) if sufficient cause was found(Art. 7). But in these limitations there was no provision preventing the members of the Board from engaging in outside non-Community work, creating serious doubts about their independence.[17] But besides the problem of indepemdence, this situation had practical negative effects since the auditors, being engaged in other duties, could not dedicate much time to the audit of the Communities, transforming it into a part-time occupation with all the consequences that follows. Additionally, because of their limited personnel (only 25 persons based in Brussels and 5 based in Luxembourg-the latter were the ECSC auditors), they had to do most of their work on the Commission's files in Brussels and Luxembourg.[18] All this considered, it is easily understandable why the Audit Board could not keep up with the development of the Communities' finances. The Audit Board itself had pointed out the necessity of being able to perform on-the-spot audits in the Member States.[19] It also made an attempt in that direction by making agreements with several Member States (Belgium, the Netherlands, Germany and France) to allow it to perform on-the-spot audit concerning the EAGGF.[20] In general though, the audit performed by the Audit Board was more of a purely formal ex post audit of expenses based on checking the supporting vouchers.[21]

Under these circumstances, the demand for a more complete audit in the European Communities finances became more and more persistent. There have been two principal factors, besides the Board's ineffectiveness, that accelerated the procedure for a reform in the financial system of the Communities. The first one was the enlargement of the Communities in 1973 by the admission of Denmark, Ireland and the United Kingdom because these three countries have a strong tradition of independent public sector

[17] F. Wooldridge, M. Sassela, op. cit., p.21.
[18] Sir N. Price, The Court of Auditors of the European Communities, YBEL, Vol. 2, 1982, p. 239-248 (239).
[19] Report on the accounts for the financial year 1974, p. 10.
[20] G. Isaac, op. cit., p. 789-790.

auditing the results of which are conveyed in reports which are closely examined by the Parliaments. It was logical that the other existing Member states, which considered the then auditing system of the Communities as less than adequate, would cooperate with the new ones in order to strengthen it.[22] The second factor was the European Parliament's growing pressure to have a greater role in the financial affairs of the Communities.[23] In order to do that, the Parliament recognized that it would need the critical comments of an independent body on the financial activities and that a strong audit presence would be the means of making this available.[24]

The Parliament's first attempt was to try to increase the powers of the Audit Board. In February 1973 an amendment was tabled proposing that the Board should adopt special reports and opinions besides the annual report, not only upon request by the Council or the Parliament (as Art. 90 of the then Financial Regulation stated) but also on its own initiative, something that the Commission did not accept.[25] The Parliament's second move was to propose the replacement of the Audit Board with a European Court of Auditors on the analogy of the national Courts of Auditors of the Member states.[26] The Chairman of the Parliament's Sub-Committee (now it is a full Committee) on

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[21] D. O' Keeffe, op. cit., p. 178.

[22] Sir N. Price, op. cit., p. 239, & A.G. Toth, The Oxford Encyclopaedia of European Community Law, Vol I: Institutional Law, Clarendon Press, 1990, p. 144.

[23] Sir N. Price, op. cit., p. 239 & A.G. Toth, op. cit., p. 144. For a detailed analysis of the Parliament's positions concerning its involvement in the budgetary proceedings throughout the years and the other institutions' point of view see F. Wooldridge, M. Sassela, op. cit., p. 13-43, G. Isaac, op. cit., p. 737-775, M. R. Emerson/T. W. K. Scoot, The financial Mechanism in the Budget of the European Community: The hard core of the British re-negotiations of 1974-1975, CMLRev, Vol. 14, 1977, p. 209-225, Sir. Ch. Sopwith, Legal Aspects of the Community Budget, CMLRev, Vol. 17, 1980, p. 315-347, P. Dankert, The Joint Declaration by the Community institutions of 30 June 1982 on the Community Budgetary Procedure, CMLRev, Vol. 20, 1983, p. 701-712, H. Wallace, A budget made in Strasbourg and unmade in Luxembourg, YBEL, Vol. 6, 1986, p. 263-282, P. Zangil, The interinstitutional agreement on Budgetary Discipline and improvement of the budgetary procedure, CMLRev, Vol. 26, 1989, p. 675-685, G. Isaac, L' encadrement a moyen terme des finances publiques communautaires. L' Accord interinstitutionnel sur la discipline budgetaire et l' amelioration de la procedure budgetaire. Bilan et avenir, RFFP, No 45, 1994, p. 9-49.

[24] Sir N. Price, op. cit., p. 240.

[25] G. Isaac, op. cit., p. 790-791.

[26] Resolution of 9 May 1973 on problems connected with the practical arrangements for the Audit Board's performance of its duties, OJ 1973, C-37/42. This idea though was much older as it had been expressed in the Parliament's Resolution of 24 September 1964, OJ 1964, C-153.

Budgetary Control, Mr H. Aigner expressed the Parliament's view in a booklet entitled "The Case for a European Audit Office" published in September 1973. The Commission in its proposal to amend the Treaties (June and October 1973) accepted the strengthening of the Parliament's budgetary powers, but did not propose anything else on terminating the post of the ECSC Auditor[27] (which was functioning outside the framework of the Audit Board). On 4 June 1974 the Council issued joint guidelines modifying the Commission's proposals. These included amendments to Articles 203, 204, 205a, 206, 209 of the EEC Treaty, and the establishment of a Court of Auditors (replacing the Audit Board and the ECSC Auditor), something which the Commission saw no reason to oppose.[28] The draft of the Treaty concerning among other matters the establishment of a European Court of Auditors (ECA) had been the subject of negotiations between the three institutions[29], but in everything that concerns the provisions on the ECA, there had been no important disagreement.

Thus, on 22 July 1975, the Treaty "amending certain financial dispositions of the Treaties establishing the European Communities and of the Treaty instituting a single Council and a single Commission of the European Communities", also known as the Second Budget Treaty, was signed in Brussels, establishing in Article 15 a European Court of Auditors (Articles 206 of the EEC Treaty, 78e of the ECSC Treaty and 180 of the Euratom Treaty as amended by the Second Budget Treaty).[30]

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[27] D. Strasser, op. cit., p. 270 & F. Wooldridge, M. Sassela, op. cit., p.19-20.
[28] F. Wooldridge, M. Sassela, op. cit., p.21-22 & D. Strasser, op. cit., p.270.
[29] See F. Wooldridge, M. Sassela, op. cit., p. 22-23 for more details.
[30] From now on and in order to reduce the mentioning of too many articles of the Treaties (especially after the Maastricht and Amsterdam amendments) that might be very confusing, reference will be made mainly to the articles of only the EC Treaty since the context of these articles is exactly the same with the context of the respective articles of the ECSC Treaty and the Euratom Treaty. The articles of these two Treaties will be mentioned and analyzed only in case that their context is different than the context of the EC Treaty. Also throughout the text, it is used the numbering of the Treaties' articles as modified after the Maastricht Treaty and the numbering modifications of the Treaty of Amsterdam are mentioned in square brackets. The numbering of the articles of the Financial Regulation of 21 December 1977 used in the text, is according to the consolidated version of the Regulation as issued on 20 December 1996 by the Office for Official Publications of the European Communities.

B. The Structure of European Court of Auditors

I. Members

According to Art. 188b(1) [247(1)] of the EC Treaty[31], as amended by the accession of Austria, Finland and Sweden in 1995,

"The Court of Auditors shall consist of fifteen members".

There is no provision in the Treaty concerning the nationality of the members of the ECA[32] but in practice each Member state "is represented" by a member of the ECA.[33] It has been suggested to adopt the Commission's proposal, to include in the provisions about the ECA a disposition like the one of Art. 165 (4) [221(4)] of the EC Treaty about the possibility of the Council to increase the members of the European Court of Justice upon request of the Court itself.[34]

The article Art. 188b(3) [247(3)] provides that

> *"The members of the Court of Auditors shall be appointed for a term of six years by the Council, acting unanimously after consulting the European Parliament.*
> *However, when the first appointments are made, four members of the Court of Auditors, chosen by lot, shall be appointed for a term of office of four years only.*
> *The members of the Court of Auditors shall be eligible for reappointment".*

When this provision was applied for the first time, in 1977, it constituted a very important point in the history of the Communities' institutions, since for the first time the Council asked the Parliament to give its opinion on the appointment of members of a

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[31] According to Art. Z.1 of the Treaty of the European Union, the term European Economic Community (EEC) is replaced by the term European Community (EC) throughout the text of the EEC Treaty.
[32] On the contrary, in Art. 2 of the Rules of the Audit Board it was required that only nationals of Member States may act as auditors. See F. Wooldridge, M. Sassela, op. cit., p. 44.
[33] G. Th. Tenekidis, Members of the Court of Auditors of the European Communities, HelRevEL, 2/1981, p. 623-624, P. D. Dagtoglou, European Community Law, A. N. Sakkoulas Publications, 1985, p. 292-293, K. Stefanou, European Integration, A. N. Sakkoulas Publications, 1991, p.71, I. Harden, F. White, K. Donnelly, op. cit., p.609, note 47, & D. O' Keeffe, op. cit., p. 179.
[34] G. Isaac, op. cit., p. 794 & G. Th. Tenekidis, op. cit., p. 623.

(quasi) institution.[35] The system of appointment of ECA members is completely different from that of the members of the Commission or the European Court of Justice.[36] This has supported the opinion that the ECA was not an institution of the Communities. Right from the beginning, in 1973, the Commission had suggested that the members of the ECA should be appointed by a common agreement of the governments of the Member States. The Council, however, had rejected this proposal and proposed the current provision, stating that the Parliament's opinion would be seriously considered.[37] As it has been noted though, according to Art. 188(3) [247(3)] the Parliament has no right to veto a candidate and its views have been ignored on occasions.[38] Despite that, the Parliament is exercising its right of consultation at this stage, examining each of the proposed candidates thoroughly and not hesitating to express its disapproval of any candidate it considers to be unsuitable.[39] There have been parliamentary Resolutions outlining the procedures and criteria used in forming opinion about the suitability of a candidate.[40] These Resolutions accused the Member States of having nominated unsuitable candidates and the Council of having made appointments without always having due regard to the professional competence and independence of members that are required by the Treaties.[41] This is a good indication that consulting with the Parliament in order to appoint the ECA members ensures that the criteria set by the Treaties are actually met and the governments of the Member States are thoughtful before making a nomination.[42]

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[35] Detailed presentation of the proceedings held by the Parliament on that occasion see in G. Isaac, Les Finances Communautaires, Rev. Trim. Dr. Europ., Vol. 16, 1980, p. 302-353 (347-348). Whether the ECA was an institution of the Communities before 1993 or not, will be discussed in Chapter Six.

[36] The other two institutions whose members are appointed but by agreement between the Member States. See Art. 158(2) [214(2)] and 167 [223] of the EC Treaty.

[37] G. Isaac, Renovation des institutions...., op. cit., p. 794-795.

[38] National Audit Office, op. cit., p. 220.

[39] P. Graig, Gr. De Burca, EC LAW, Text, Cases and Materials, Clarendon Press, 1995, p. 88.

[40] See for instance the Resolution of 17 November 1992 on the procedure for consulting the European Parliament on the appointment of Members of the Court of Auditors, OJ 1992, C-337/51.

[41] I. Harden, F. White, K. Donnelly, op. cit., p. 609-610.

[42] D. O' Keeffe, op. cit., p. 180.

It is generally considered unorthodox for the ECA members not to be appointed through the same mechanism as the members of the Commission and the European Court of Justice.[43] Especially after the amendments made by the Maastricht Treaty regarding the ECA's institutional status. Maintaining this appointing method for the ECA members has been seen -correctly from a point of view- as an implication that the ECA is not considered to be as important as the Commission and the European Court of Justice.[44]

As a final remark, it is obvious that the special provision concerning the first appointments was made in order to assure the continuance of the ECA function and to avoid the case of a simultaneous end of all the members' term of office.[45]

The qualifications of the ECA's members are stated as follows in Art. 188b(2) [247(2)]:

> *"The members of the Court of Auditors shall be chosen from among persons who belong or have belonged in their respective countries to external audit bodies or who are especially qualified for this office. Their independence must be beyond doubt.".*

From these provisions it seems that mainly two qualifications are necessary for the appointment: a) suitability for the office and b) independence.[46] These qualifications, which must exist before the appointment, are common to appointment in other similar bodies. But in order to reassure the ECA's independent and unhindered function there are also the following provisions: Art. 188(4) [247(4)]:

> *"The members of the Court of Auditors shall, in the general interest of the Community, be completely independent in the performance of their duties.*
> *In the performance of these duties, they shall neither seek nor take instructions from any government of from any other body. They shall refrain from any action incompatible with their duties."*

Art. 188(5) [247(5)]:

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[43] Ibid, p. 179.
[44] Ibid, p. 179.
[45] P. Lelong, La Cour des Comptes des Communautes et le controle externe des finances publiques europeenes, RFFP, No 4, 1983, p. 99-118 (101) & G. Isaac, Renovation des institutions...., op. cit., p. 795
[46] P. D. Dagtoglou, op. cit., p. 293.

"The members of the Court of Auditors may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits."

These dispositions are based on the experience of the function of the Audit Board. The disposition of Art. 188(5) [247(5)] aims to guarantee the independence of ECA, but also to establish the full time occupation of ECA members, preventing the repetition of the Audit Board's precedent, the members of which could undertake other occupations, becoming thus part-time auditors for the Communities.[47] It is also noteworthy that ECA members, according to Art. 188(4) [247(4)] will perform their duties having as guidance the general interest of the Communities. It is one of the few times that the Treaties refer to the Communities' interest. The fact that this reference is done within the dispositions concerning the ECA is a very significant indication of the Court's importance in the European institutional system.

The termination of the duties of an ECA member is regulated by the following provisions: Art. 188b(6) [247(6)]:

"Apart from normal replacement or death, the duties of a member of the Court of Auditors shall end when he resigns, or is compulsorily retired by a ruling of the Court of Justice pursuant to paragraph 7.
The vacancy thus caused shall be filled for the remainder of the member's term of office.
Save in the case of compulsory retirement, members of the Court of Auditors shall remain in office until they have been replaced."

Art. 188b(7) [247(7)]:

"A member of the Court of Auditors may be deprived of his office or his right to a pension or other benefits in its stead only if the Court of Justice, at the request of the Court of Auditors, finds that he no longer fulfills the requisite conditions or meets the obligations arising from this office."

[47] G. Isaac, Renovation des institutions...., op. cit., p. 796, F. Wooldringe/M. Sassela, op. cit., p.45 & T. M. James, op. cit., p. 471 .

These dispositions strengthen the guarantees provided by the Treaty of the ECA's independence. The Court of Auditors itself is competent to determine whether its members are meeting the Treaty's conditions. It can ask the ECJ to remove whoever should not be a member of the ECA. It is noteworthy that the Treaty practically states the exact context of the decision of the ECJ[48] ("...finds that he no longer fulfills the requisite conditions or meets the obligations arising from this office.") giving thus the impression that the ECJ will not do anything else but simply declare the unsuitability of the person involved and deprive the person of the office. The fact that only the ECA can ask for such a removal highlights its independence.[49]

A provision with a purely administrative and procedural character is contained in Art. 188b(8) [247(8)]:

> *"The Council, acting by a qualified majority, shall determine the conditions of employment of the President and the members of the Court of Auditors and in particular their salaries, allowances and pensions. It shall also, by the same majority, determine any payment to be made instead of remuneration."*

Art. 188b(9) [247(9)] stipulates that:

> *"The provisions of the Protocol on the Privileges and Immunities of the European Communities applicable to the Judges of the Court of Justice shall also apply to the members of the Court of Auditors."*

The importance of this disposition will be assessed when the nature of the ECA as an institution of the European Union will be examined.

Some other dispositions concerning details about the exact procedure for the appointment of ECA members and how they must perform their duties are included in the Internal Regulation[50] of the Court. In Art. 2 it is stated that the term of office of the ECA members starts from the date mentioned in the appointment's Decision or if there is no such date, from the date of that Decision. The oath of ECA members is regulated by

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[48] G. D. Drisis, From the European Idea to the New Europe of Maastricht, Athens 1995, p. 95.
[49] D. O' Keeffe, op. cit., p. 181.
[50] Internal Regulation of the European Court of Auditors, as approved by the Court on 21st of May 1981 and modified on 27th of January 1994. (Not published in the OJ)

Art. 3 according to which newly appointed members, before assuming their duties or immediately after that, must undertake the obligations stated in Treaties. These obligations are described mainly in Art. 188b(4) [247(4)] and the oath given each time by the new members is based on this article.[51] The members of the ECA can be temporarily replaced in case of absence by one or more temporary members according to the provisions of Art. 12. Also, as Art. 13 provides, members may authorize members of staff of the Court to sign on their behalf and responsibility any document concerning the sector for which this member is competent. The only exception to the rule is mentioned in Art. 14, according to which in everything that concerns the execution of the ECA's budget, the only people competent for that matter are exclusively the ECA's members and the ECA's General Secretary. The President must be informed about the absence of an ECA member as soon as possible and the same rule applies for other members and auditors working within the group of the absent member (Art.15).

II. Personnel

As opposed to the very detailed dispositions concerning the members of ECA, the Treaty does not include even one provision about ECA personnel. So, the ECA itself had to decide what kind of staff it would hire in order to perform the duties in the best possible way. This is stated also in Art. 16 of the ECA's Internal Regulation.

Initially there have been some difficulties in staffing the Court, mainly because there has not been an exact estimation of the Court's functioning needs. The original estimation did not include translating activities and supplementary budgets had to be prepared.[52] But the new personnel could not be recruited soon enough, so the ECA was

[51] N. Themelis, The European Economic Community and its Court of Auditors, in Honorary Volume for the 150 years of the Greek Court of Audit, Athens 1984, p 113-124 (119).
[52] G. Isaac, Les finances...., op. cit. p. 350.

staffed by the personnel of the institutions it had replaced (Audit Board, ECSC Auditor).[53]

The staff are divided into two categories: the auditors and the administrative personnel. The administrative personnel are also divided according to their occupation: those staffing the administrative services in general (personnel, budget, administration); those dealing with the translation and the interpretation of in-coming and ECA issued documents (this service like in every European institution is one of the most important with regard to the ECA's effectiveness); and those concerned with general services (library, professional training, bailiffs).[54] Among them there also those who work within the cabinets of the members of Court, since each member has a cabinet of five administrative staff, usually but not always drawn from the same country.[55] Some of those spend part of their time effectively working as auditors.[56] It is anyway stated in Art. 83(1) of the Financial Regulation that the ECA and its members may, in carrying out their task, be assisted by officers of the Court.

The auditors are classed into category A or B, according to their qualifications. Sometimes according to the ECA's practical needs they are assigned to administrative duties as well (some having a category B appointment are essentially documentation clerks), while there are also among them the directors and heads of division which have largely supervisory duties.[57] Most auditors are officials of the ECA and the rest are on short term contracts.[58] The auditors are recruited from a wide range of professional backgrounds in the public or private sector, and their qualifications are most commonly in accountancy, audit, law, economics or finance.[59] Because of their limited number in

[53] Ibid, p. 350.
[54] P. Lelong, op. cit., p. 103.
[55] National Audit Office, op. cit., p.222.
[56] T. M. James, op. cit., p. 473.
[57] Ibid, p. 473.
[58] National Audit Office, op. cit. p. 222.
[59] T. M. James, op. cit., p. 473.

relation to the wide range and geographical spread of the ECA's audits, the individual auditor's ability to work in several languages is a most important additional qualification, since if an auditor cannot read and understand easily the documents brought to him, he has a very restricted auditing ability.[60] Some are seconded from national audit institutions and other bodies of each member state.[61] Recently, the ECA issued Decision 97-12[62], according to which some temporary posts will be occupied by staff coming from national audit institutions of the Member States. This way of staffing is not unusual in the ECA. In the second chapter of that Decision, stipulating the qualifications of the candidates, it is mentioned that the candidates must be part of the staff of the specific audit institution. It is possible however for the ECA to accept, after consulting with the national audit institution, candidates from another administrative institution of the Member state, provided that the candidate will have "A level" experience in financial control and audit of the Communities' expenses.[63] It is easy to understand that dispositions like this one may endanger the ECA's efforts to obtain the best possible control of the Communities' financial management. People working in institutions different than the audit institutions, even if they have experience in financial control, cannot perform the auditing task as someone who has been working in an audit institution. The professional training provided in an audit institution and the experience gained is useful in dealing with the complicated audit system of the Communities.

Generally speaking the auditors (including those of the ECA) in order to be able to perform their duties in the best possible way, must: a) have high professional standards, b) be independent from any personal or external interventions and pressures so that there will be no doubt about their impartiality, c) be alerted and perform a

[60] Ibid, p. 473 & Sir N. Price, op. cit., p. 244.
[61] National Audit Office, op. cit. p. 222.
[62] Decision 97-12 regarding the listing, selection and ranking of personnel hired in temporary posts in accordance with the National Audit Institutions, 7th April 1997.

complete audit including the preparation of the relative reports, d) comprehend the system of internal audit already existing in the organization under audit and try to review it in order to improve its effectiveness.[64] In everything that concerns their independence, there are three kinds of reasons that may effect it.[65] The first is personal reasons, e.g. a personal or financial relationship, prejudiced ideas against people, groups or organizations, social or political beliefs, previous association with the audited organization, and economic interest. The second includes the organizational ones caused by the auditors' position in the hierarchy of the organization. This category can not apply to the ECA auditors themselves because they are external auditors and do not interfere in the audited organizations hierarchy. The third kind are the external reasons meaning mainly interventions from external factors that influence the audit by selecting the object of audit, the time of audit, the persons who are going to perform the audit, or by cutting the funding of the auditing organization. This category also is difficult to apply to the ECA auditors because an interference like that would demand for an institutional amendment of the Communities concerning the ECA, something which is now very difficult.

ECA personnel come from all the Member states of the Communities. So, it is natural to have a certain heterogeneity in everything that concerns the language, the culture, the qualifications, which the ECA has considered as an advantage in facing the multiplicity of the various audit forms necessary by the materials subjected to its control[66]. But this situation constituted also a danger for the internal cohesion of the Court's works. The Court has to elaborate on a vast amount of material, collected from many countries and concerning several issues, and without a common notion of the

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[63] "A level" experience means that the candidate will be eligible to be placed in category A of the ECA auditors.
[64] A. Maggina, Governmental Accounting, A. N. Sakkoulas Publications, 1995, p. 140-141.
[65] Ibid, p. 141-143.
[66] T. M. James, op. cit. p. 473 & P. Lelong, op. cit., p. 103-104.

appreciation of the sound financial management, it is difficult to obtain an effective and impartial audit of a public finance system like thatone of the Communities.[67] So in order to develop a common approach to audit, the ECA has established a Training and Working Methods Service which is headed by one of the Court's directors. Staff training programs have been developed and guidelines to auditors in the form of a manual have been prepared and distributed.[68]

It is interesting to note that in 1980 the ECA' s establishment plan included 237 permanent and 22 temporary posts[69] while today there are 500 staff at the Court comprising 240 auditors, 55 translators, 140 administrators and 65 other staff.[70] It is true though that the size of the material that needs to be audited requires more staff, especially after new tasks have been assigned to the Court (Statement of Assurance, audit of the expenses of the European Union's second pillar etc) by the Treaties.

Something noteworthy is the trade-union actions of the ECA personnel, which caused an intensive disagreement between the personnel and the administration (meaning the President) of the ECA in 1987. More specifically, the Trade Union of the European Communities' Personnel in Luxembourg accused the ECA for its decision to increase its temporary staff instead of hiring permanent staff, adding that this kind of policy downgraded the european public service and threaten the ECA's independence and role as "financial conscience" of Europe. The ECA's President responded by sending to a member of the ECA staff, who was member of the executive committee of the Union, a letter in which, after condemning the Union's statement, he informed him that from then the Union's Bulletins would not be circulated via the internal post service of the ECA, but only through the personnel committee of the ECA and any other way of distribution

[67] P. Lelong, op. cit., p. 104 & Sir N. Price, op. cit., p. 244.
[68] T. M. James, op. cit. p. 473 & P. Lelong, op. cit., p. 104.
[69] European Yearbook, Vol. XXVIII, 1980, p. 431. In order to have an idea of how the number of personnel has increased through out the years see European Yearbook, Vol. XXIX, 1981, p. 435, Ibid, Vol. XXX, 1982, p. EC 16, Ibid, Vol. XXXIII, 1985, p. EC 16 & T.M. James, op.cit., p. 473.

should be carried out only on the Union's initiative. In addition to that, the President of the ECA denied leave of absence to the members of the ECA staff which belonged to the Union's representative committee, in order for them to participate in the Unions meetings, something that the Union had requested. The ECJ, after an appeal from the Union and an ECA official, in its judgment[71] stated that the first decision of the ECA not to allow the distribution of the Union's Bulletins via its internal post service, simply denied an advantage to the Union's members but did not obstruct the union activities. Furthermore the freedom to take an active part in the union movement -freedom that all ECA staff enjoy- is not so extensive as to include an obligation of the ECA to place at the Union's disposal its internal post service. Also the European Court of Justice, in the same judgment, pointed out that all institutions and authorities of the Communities, including the ECA, should not obstruct the representatives of the Union to take part in the meeting held by the Union in order to prepare itself for its participation in collective bargaining. So, according to that judgment the ECA personnel have every right to participate in Unions and enjoy all the freedoms deriving from this right.

III. Organization

The EC Treaty does not contain much of information concerning the ECA's organization. According to Art. 188b(3) [247(3)]

> *"The members of the Court shall elect the President of the Court of Auditors from among their number for a term of three years. The President may be re-elected".*

This is the only disposition in the Treaties on how the ECA must be organized. The prediction of a President's election[72] is the basic point of the ECA's organization. So, the ECA is completely free to draw up and adopt its own rules of organization and

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[70] National Audit Office, op. cit., p. 222.
[71] Cases 193/1987 and 194/1987, *Maurissen and Union Syndicale vs ECA*, [1990] ECR, p. 95-123.
[72] There is an annex presenting all the Presidents of the ECA at the end of the text.

procedure, having as its only obligation to respect the dispositions and the principles set by the Treaties.[73] This self-organizing authority is also provided for by Art. 16 of the ECA's Internal Regulation.

The ECA, using this freedom and in an attempt to obtain the best possible internal organization adopted in 1978 its first Internal Regulation which was not published in the Official Journal but it was accessible to the public.[74] This internal Regulation mainly dealt with three issues: a) the election and the powers of the President of the Court in Art. 2-3, b) the allocation of duties and the collective responsibility of the Court's members in Art. 4-7 and c) the function of the Court (quorum, voting, decision-making procedure) in Art. 8-9.[75] In 1981 the ECA adopted a new Internal Regulation, which also was not published in the Official Journal. This Regulation, with some amendments, is the document containing the Court's current Rules of Procedure.

According to Art. 1 of the Internal Regulation, the Court is organized and acts as a corporate body. This provision is supported by Art. 188c(4) of the Treaty which states that

> *"The Court shall adopt its annual reports, special reports or opinion by a majority of its members"*

and by the disposition of Art. 22 of the Internal Regulation that describes the majorities necessary for the adoption of every ECA decision. This emphasis on the corporate nature of decision making was made to resolve any potential conflict between the collective responsibility of the ECA's members and the need for the efficient conduct of day to day business.[76] However this collegiality is not considered to be an obstacle for an internal allocation of responsibilities and competence among the members of the Court. This is done. in order to facilitate the general function of the Court and the preparation and

[73] T. M. James, op. cit., p. 471 & P. Lelong, op. cit., p. 102.
[74] G. Isaac, Les Finances..., op. cit., p. 349.
[75] Ibid, p. 349.
[76] T. M. James, op. cit., p. 472.

implementation of the Court's decisions in particular areas.[77] So, even if the ECA is a collective institution, each of its members is responsible for a specific sector of audit.[78]

The tasks within the ECA are divided vertically and horizontally.[79] The vertical division covers the audit operations and the investigation activities of the Court. The horizontal division concerns the internal functions of ECA (personnel administration, working schedule, intersectional coordination etc).[80] According to Art 9(1) of the Internal Regulation the Court forms groups among its members and to each group a sector of activity is assigned. Art. 9(2) states that responsibilities should be allocated equally among the Members of each group. Members are responsible to the group and the Court for the conduct of the sectors assigned to them.

Currently the Court is divided into three Audit Groups, an Audit Development and Report Group (called ADAR) and a Statement of Assurance Group (in total five groups) and each group is composed of between three and five members of the Court.[81] Audit group 1 audits both sections (Guidance and Guarantee) of the EAGGF (European Agricultural Guidance and Guarantee Fund), Audit Group 2 covers the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund, the ECSC and some other areas like tourism, measures to assist Central and Eastern Europe, energy etc, while Audit Group 3 audits the European Development Funds, the administrative expenses of the Institutions, Communities "Own Resources" and cooperation with non European Union countries.[82] The ADAR group coordinates the Court's annual report, provides training and computer audit support, advises on the Court's reports and opinions, coordinates the Court's work program, oversees the

[77] Ibid, p. 472 & P. Lelong, op. cit., p. 102.
[78] G. D. Drisis, op. cit, p. 94.
[79] G. Isaac, Les Finances...., op. cit., p. 348 & P. Lelong, op. cit., p. 102.
[80] G. Isaac, Les Finances...., op. cit., p. 348 & P. Lelong, op. cit., p. 102. There is an annex at the end of the text presenting the division of tasks among the first members of the ECA in 1977 and among the current members.
[81] National Audit Office, op. cit., p. 221.

Court's working methods and its Audit Manual, while the Statement of Assurance Group is responsible for drawing up the Statement of Assurance and coordinating the financial audit and general accounting work supporting this Statement.[83] Art. 9 of the Internal Regulation states that these groups have a preparatory nature, and their role mainly is to provide a forum for more detailed discussion of an issue than is generally possible in the Court's plenary sessions.[84]

In each of these groups there is a member who is the head of the group. This member is responsible for organizing the work of his group in order to meet the needs of audit that the Court is requested to perform annually. The other members of the group in association with ECA staff, audit or accomplish the tasks assigned to them. At the end they present the results in a draft which they analyze in front of the other members of the group. This way a verification of the materials is made and every detail is being confirmed. These meetings are very important because during this procedure the main problems are located and the groups focus on them, creating also in this way the main substantial framework of the ECA's reports and opinions.[85]

A very important disposition concerning the cooperation between the members of the Court is that of Art. 11 of the Internal Regulation according to which each member is entitled to have access to information concerning the various sectors of activity of the Court. In addition to that every member is obliged, if he has information concerning another member's sector or information that could be of general interest to the Court, to notify the competent member(s) or to announce it to all the members. These provisions reaffirm the corporate nature of the ECA. Following this direction, the ECA introduced in 1995 a "contra rapporteur" system in which members discuss reports from their sectors with another member from a different Audit Group, while cabinet staff also

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[82] Ibid, p. 221.
[83] Ibid, p. 221.
[84] T. M. James, op. cit., p. 473.

provide written comments, which are examined by the originating Audit Group and suggestions are integrated into the reports.[86]

The President of the ECA, as mentioned before is elected by its members for three years. In Art. 6 and 7 of the Internal Regulation there are detailed provisions about the election proceedings and the replacement of the ECA's President: The election of the next President is held immediately prior to the expiration of the previous presidency and if the current President wants to participate in the election, the procedure is organized by the senior member of the Court. There is a secret vote and the candidate who obtains two thirds (2/3) of the votes is elected President. If nobody obtains two thirds, there is a second secret vote and the candidate who obtains an absolute majority is the President. According to Art. 8 of the Internal Regulation the President's tasks are: calling and chairing meetings of the Court and to be responsible for the proper conduct of the sessions; seeing to the implementation of the Court's decisions; ensuring that the various activities of the Court and of its sections are properly conducted; appointing the ECA's legal representative in judicial proceedings; and representing the Court in all his external relations (mainly those with the other institutions of the Communities and the national audit institutions). Generally speaking the President is considered to be "primus inter pares" among the members of the ECA.[87]

In the Internal Regulation there is also a provision concerning the General Secretary of the ECA (Art.10). According to this provision, the Court appoints its General Secretary by a secret vote for a term of office of six years (like the members of the Court). The Secretary is a member of the Court's staff with major responsibilities: To take care of the minutes of all the Court's meetings, to keep and file the original documents of all the decisions of the Court, its preparatory groups and the President's

[85] For a detailed description of the proceedings in these groups see P. Lelong, op. cit., p. 103.
[86] National Audit Office, op. cit., p. 227 & I. Harden, F. White, K. Donnelly, op. cit., p. 610.

official letters, and to help the President in preparing the meetings of the Court and attend to other duties. The General Secretary is also the Court's Authority for staff appointments unless the Court itself has appointed someone else for this task. In general, the Secretary is responsible for the personnel's management and the administration of the Court.

The operation of the Court's plenary sessions is regulated by Art. 17-26 of the Internal Regulation. According to these dispositions the ECA must adopt its Annual Report, its Statement of Assurance, its ECSC reports, its special annual reports (Berlin Centre, Dublin Foundation, European Schools, Euratom Supply Agency, Joint European Torus), its opinions, its decisions concerning the appointment of the General Secretary and the formation of the preparatory groups, the amendments made by it concerning its predicted expenditure, the execution of its budget and its Internal Regulation in a plenary session and by a majority of its members (this latter disposition is based on Art. 188c(4) [248(4)] of the EC Treaty). The schedule of the sessions is arranged by the Court itself twice a year, before Christmas holidays and before summer holidays. There is the possibility of extra sessions. The agenda is given to the Court's members five days before session (in exceptional circumstances this can change) and at the beginning of every session the Court may decide unanimously to consider issues not mentioned in that session's agenda. The necessary quorum for the Court to begin a session and reach a decision is eight members. The Court's sessions are not public (Art. 23). This disposition should be combined with the disposition of Art. 11(4) according to which the ECA will decide whether or not its documents will be published in the Official Journal or elsewhere (unless of course the publication of the documents is obligatory according to the Treaties stipulations i.e. the Annual Report). In Art. 25 of the Internal Regulation

[87] European Court of Auditors, Auditing the Finances of the European Union, Office for Official Publications of the European Communities, 1996, p. 8.

there are provisions concerning the minutes of the Court's sessions while in Art. 26 there is a provision for a different procedure of the Court as an alternative to the one of the sessions. According to this, the President prepares a document which is delivered to all the members of the Court and they have the right to propose amendments within at least seven days. If nobody objects, the document is considered as approved. If there are objections then the issue mentioned in the document, is included in the agenda for the following session. This procedure "in writing" (as it is called) can be used also for the most important documents of the Court (Annual Report, Statement of Assurance etc.) but only if these documents have been discussed in a previous session.

All these proceedings and administrative structures are expensive. The necessary expenses are included in the ECA's section of the general budget of the Communities and for 1996 the appropriations for ECA amounted to 56 millions ECU (1.3% of the administrative expenditure of the European institutions or 0.06% of the general budget total).[88] External audits of the utilization of these appropriations are carried out by the Court's staff who are responsible for the administrative expenditure of all the institutions but in order to guarantee the greatest possible transparency the ECA has an independent audit for its expenses, carried out every year by a private firm of accountants.[89]

A final question about the ECA's organization is the Court's Seat. According to a decision by the representatives of the governments of the Member states, the Court was provisionally located in Luxembourg.[90] This choice was confirmed by the European Council in its Decision on the seats of the existing institutions.[91] There have been some reservations as to how the audit can be performed from a two hundred kilometers distance between Brussels and Luxembourg, but in practice "this distance from the

[88] Ibid, p. 10.
[89] Ibid, p. 10.
[90] Council Decision 77/323/EEC, OJ 1977, L-104/40.
[91] Council Decision on the location of the Seats of the Institutions and of certain bodies and departments of the European Communities, OJ 1992, C-341/1.

Commission, who is the main object of audit, has not been always a disadvantage".[92] Furthermore, a large part of the on-the-spot audits is now being performed in the Member States since the implementation of the Communities' policies has been "delegated" to administrations at the national level, so it would be a sensible solution to have liaison offices of the ECA in the Member States, located within the national audit institutions.[93]

[92] Ch. Kok, The Court of Auditors of the European Communities: "The other European Court in Luxembourg", CMLRev, Vol. 26, 1989, p. 345-367 (349).
[93] Ibid, p. 349.

Chapter Two

The Competences of the European Court of Auditors

A. Description and Analysis of Competences

I. Extent of the Auditing Competences of the Court

Art. 188a [246] of the EC Treaty states that

"The Court of Auditors shall carry out the audit".

This is a very general provision, having as its aim to set the limits of the Court's jurisdiction. It was included in the Treaties just in 1993 by the Treaty of the European Union. The context of the article does not add anything legally substantial but it is a broad specification of what the ECA is competent of doing and it gives the impression of enlarging the ECA's competences.[1] In any case, this disposition should be regarded as introductory to the Treaties' provisions about the ECA's tasks.

According to the first sub-paragraph of Art. 188c(1) [248(1)]

> *"The Court of Auditors shall examine the accounts of all revenue and expenditure of the Community. It shall also examine the accounts of all revenue and expenditure of all bodies set up by the Community in so far as the relevant constituent instrument does not preclude such examination".*

In comparison to Art. 188a [246], this is a more detailed description of what the ECA must do. Its primary task is to examine the accounts of all revenue and expenditure. There is a big difference between the audit performed by the Audit Board and the ECA's one: the Audit Board could audit only revenue and expenditure shown in the budget while for the ECA there are no limits and it can control all revenue and expenditure of the Communities, even those not included in the general budget.[2] This extension of the ECA's power attributed greater importance to the general principle which has hitherto been included in Art. 87 of the Financial Regulation only:

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[1] D. Strasser, Les disposotions financieres du Traite de Maastricht, RFFP, No 45, 1994, p. 195-205 (196-197).

[2] F. Wooldridge, M. Sassela, op. cit., p. 45, G. Isaac, Renovation des institutions...., op. cit., p. 796, & G. Orsoni, La Cour des Comptes des Communautes Europeenes, RFFP, No 36, 1991, p. 77-90 (79).

> *"The grant of Community funds to beneficiaries outside the institutions shall be subject to the agreement in writing by the recipients to an audit being carried out by the Court of Auditors on the utilization of the amounts granted."* [3]

In complete accordance with these dispositions, the Member States, when signing the Second Budget Treaty that established the ECA, included a declaration in its annex stating that the ECA will be competent to control the operation of the European Development Fund. Thus the uncertainty about this Fund was ended, since it was claimed that it was not founded by the Community but by the Member states, so the ECA should not audit it.[4] The ECA audits also the ECSC since according to Art. 78d of the ECSC Treaty (as modified by the EU Treaty), it has to prepare an annual report concerning the regularity of the expenditure, the revenue and the financial management of the ECSC, and this means that it will control the operating budget of the ECSC and its borrowing/lending activities.[5] Another sector where the ECA takes action is the European Economic Area. According to Art. 7 of Protocol 32 of the Agreement on the European Economic Area

> *"The control of the determination and of the availability of all income as well as the control of the commitment and of the scheduling of all expenditure corresponding to the participation of the EFTA States, shall take place in accordance with the provisions of the Treaty establishing the European Economic Community, of the Financial Regulation and of the applicable regulations in the fields referred to in Art. 76 and 78 of the Agreement. Appropriate arrangements shall be established between the auditing authorities in the Community and in the EFTA States with a view to facilitating the control of income and expenditure corresponding to the participation of EFTA States in Community activities in accordance with paragraph 1."*

This means that the Member States of European Free Trade Association (EFTA),[6] will participate in areas of Community activity making the respective financial contributions

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[3] D. Strasser, The Finances...., op. cit., p. 271-272.
[4] F. Wooldridge, M. Sassela, op. cit., p. 45, G. Isaac, Renovation des institutions...., op. cit., p. 796, & G. Orsoni, op. cit., p. 79.
[5] D. Strasser, The Finances...., op. cit., p. 274 & G. Orsoni, op. cit., p. 80.
[6] Now only Iceland, Norway and Liechtestein, since Austria, Finland and Sweden are already members of the EC and the EU.

to the budget and the audit of this additional revenue and expenditure shall be carried out by the ECA according to the EC Treaty's provisions.[7]

The ECA's audit includes the Decentralized Community Bodies as well. These can be divided into three types of agency: a) the so called "first generation decentralized bodies", given a discharge from the Council and the Parliament (the European Centre for the Development of Vocational Training in Salonica, the European Foundation for the Improvement of Living and Working Conditions in Dublin), b) the "non self-financing second generation bodies", given a discharge from their own Governing or Management Boards (the European Environment Agency in Copenhagen, the European Training Foundation in Turin, the European Monitoring Center for Drug and Drug Addiction in Lisbon, the European Agency for Safety and Health at Work in Bilbao), and c) the "self-financing second generation bodies", given a discharge by their own Governing or Management bodies (the European Agency for the Evaluation of Medicinal Products in London, the Office for Harmonization in the Internal Market in Alicante, the Translation Center for bodies of the European Union in Luxembourg).[8] Also the ECA audits the Euratom Supply Agency, the Joint European Torus research undertaking, the European Schools and the Community Plant Variety Office in Brussels.[9] The Court in its Annual Report for the Financial Year 1996 has noticed some defaults in their accounting systems. These agencies have two accounting systems, one that records budget entries and one that records general accounts entries.[10] The first system for the budgetary accounts is nothing more than an application allowing ex post modifications and sometimes it cannot be linked with the second system of the general accounts.[11] Possible shortage of appropriations cannot be detected so the agencies are spending more than

[7] European Court of Auditors, op. cit., p.16.
[8] Annual Report of the Court of Auditors for the financial Year 1996, OJ 1997, C-348/360.
[9] European Court of Auditors, op. cit., p. 16 and 17.
[10] Annual Report of the Court of Auditors for the financial Year 1996, OJ 1997, C-348/360.
[11] Ibid, p. 360.

their available appropriations.[12] The Court has recommended the using of more complex accounting systems including analytical accounts in order to have the opportunity to compare the real cost of all the works and projects carried out.[13]

II. Reporting Competences

The EU Treaty added another subparagraph to the Art. 188c(1) [248(1)] concerning the Statement of Assurance. According to that amendment,

> *"The Court of Auditors shall provide the European Parliament and the Council with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions."*

This disposition was amended by the Treaty of Amsterdam which provides that this Statement will be published in the Official Journal of the European Communities. This latter amendment has a very important significance in everything that concerns the way information is provided by the ECA. From a legal point of view though, it did not change anything because even before the Amsterdam Treaty, the ECA's Statements of Assurance were being published in the Official Journal by virtue of Art 11 (4) of the ECA's Internal Regulation that allows the Court to decide which documents will be published in the OJ. The Financial Regulation also contains a disposition about the Statement of Assurance (Art. 88a) which has a context similar to the one of the Treaties' articles.

From the provisions concerning the Statement of Assurance it is obvious that the ECA has been obliged to extend its audit coverage across the whole range of Communities' expenditure.[14] With that Statement the Court must declare that, after having conducted all the necessary audits, it has reached a point of assurance that all the accounts presented reflect the reality and that all underlying transactions are legal and

[12] Ibid, p. 361.
[13] Ibid, p. 361.
[14] National Audit Office, op. cit., p. 225.

regular.[15] The amount of work required by the Court to produce such a Statement is enormous (especially after the Court's decision that it needs to audit expenditure down to the level of the final recipient of the Community spending[16]), so completing this Statement has become a major focus for the Court's financial audit.[17] But if the ECA cannot conduct all the audits that it thinks necessary in order to assure the legality and regularity of the accounts or if during its audits it locates important anomalies that effect a substantive part of the accounts, then it has the right to refuse to produce the Statement of Assurance.[18] Something like that has happened for the financial years 1995 and 1996. The ECA, because of the high rates of substantial and formal errors concerning transactions and payments, and because of not obtaining sufficient evidence to reach an opinion as to the correct use of Community funds, declined to provide a positive global assurance as to the legality and regularity of the transactions underlying the payments for the financial years 1995 and 1996.[19] This has been considered to be giving the ECA a formidable power of sanction:[20] the institution concerned would be required to make the necessary rectifications in order to avoid any qualifications in the Court's Annual Report or a complete refusal of producing the Statement of Assurance. With regard to the Statement of Assurance as a completely new competence, its objectives include a) providing a basis for the Parliament to make a global judgment about the work of the Commission during the discharge process, b) providing a lever for the ECA to use in getting better access to information and c) putting pressure on the ECA to adopt a more coherent approach to its work.[21] It must be said though that such a statement was not provided before 1993 by the Treaties because as the European

[15] D. Strasser, Les dispositions....., op. cit., p. 200.
[16] Statement of Assurance of the Court of Auditors for the Financial Year 1995, OJ 1996, C-395/19.
[17] Audit Office, op. cit., p. 225.
[18] D. Strasser, Les dispositions...., op. cit., p. 200.
[19] Statement of Assurance of the Court of Auditors for the Financial Year 1995, OJ 1996, C-395/9, Statement of Assurance of the Court of Auditors for the Financial Year 1996, OJ 1997, C-348/8.
[20] D. O' Keeffe, op. cit., p. 187.

institutions were presumed to keep accurate accounts, the certification of these accounts was not regarded to be essential or even necessary.[22] The ECA itself had interpreted the provisions of the Treaties and concluded that they were not obliging it to examine the accuracy of the EC accounts as a whole.[23] This situation had caused a criticism against the ECA that it looked only in areas where it expected to find mistakes and did not praise areas of management where things were satisfactory.[24] The Statement of Assurance, providing a global view of the Communities' financial management, has eliminated this criticism.

The case though is different for the ECSC, for which the Court has been issuing annually a certificate on the financial statements of operational expenditure, annexed in the Court's Annual Report on the accounts of the ECSC, even though the ECSC Treaty did not include (until 1993) any such obligation.[25]

Art. 188c(4) [248(4)] provides for something that for many is considered to be the ECA's most important contribution to the European Communities' institutional system, its Annual Report:

> *"The Court of Auditors shall draw up an annual report after the close of each financial year. It shall be forwarded to the other institutions of the Community shall be published, together with the replies of these institutions to the Official Journal of the European Communities".*

The adoption of the annual report is the result of a long and complex procedure described in the Financial Regulation. According to Art. 78 and 81 of the Financial Regulation, each year the Commission shall draw up, not later than 1 May, a consolidated revenue and expenditure account of the general budget of the Communities for the previous financial year and a consolidated balance sheet of assets and liabilities of

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[21] I. Harden, F. White, K. Donnelly, op. cit., p. 614.
[22] D. Strasser, The Finances...., op. cit., p. 278.
[23] I. Harden, F. White, K. Donnelly, op. cit., p. 612.
[24] House of Lords, Select Committee on the European Communities, Financial Control and Fraud in the Community, Session 1993-1994, 12th Report, HL paper 75, para. 30.
[25] D. Strasser, The Finances....., op. cit., p. 278.

the preceding financial year. All these, according to Art. 80, will be escorted by an analysis of the financial management of the year in question. Art. 79 states that all institutions must transmit by 1 March to the Commission the information required for drawing up the account and the balance sheet. The Commission will forward to the European Parliament, the Council and the ECA these documents by 1 May (Art. 82). The ECA, after the auditing procedure of the general budget's implementation and also after every other issue within its jurisdiction has been carried out, shall transmit, according to Art. 88(1), to the Commission and the institution concerned by 15 July any comments which should, in its opinion, appear in the annual report. These comments are confidential and each institution shall address their response to the ECA by 31 October the latest. Indeed, the Court must transmit, by 30 November, to the authorities responsible for giving discharge, its Annual Report accompanied by the institutions' responses and must also ensure their publication in the Official Journal (Art. 88(4) of the Fin. Regulation). The Annual Report contains an assessment of the soundness of financial management (Art. 88(2)) and includes a section for each institution while the ECA must ensure that the responses of each institution are published immediately following its comments (Art. 88(3)).

The Annual Report's structure is basically the following: At the beginning there is an introduction concerning the financial management of the Communities, then there is a First Part containing the ECA's observations for the overall revenue and the operating appropriations of the Commission and the European Development Funds, followed by the respective responses of the Commission. A Second Part follows with the ECA's comments on the operating appropriations of the other European Communities' institutions and authorities, accompanied by their responses.[26] In other words, the Annual Report includes general observations on the management of the Communities' finances

during the previous financial year arising from both financial and value for money work along with the institutions' responses to these observations.[27] The Annual Report for the financial year 1996 had a different structure. There are two volumes, one with the actual report (structure of the financial perspectives) and one incorporating the Statement of Assurance for the financial year 1996.[28] This inclusion of the Statement of Assurance in the Annual Report does not reduce the importance of such a Statement. The reason for this change must be mainly practical, namely to have all the information concerning the annual estimation of the European Union's financial management gathered in one document.

It has been noted even from the very first two annual reports produced by the ECA, that the Court was searching for ways to establish a fruitful cooperation between itself and the other Communities' institutions, especially the Commission.[29] The Court has tried to achieve this by introducing innovations to its report (in comparison with the reports made by the Audit Board). The first one was to add after its Annual Report an important analysis with statistical information concerning the Communities finances, something that pleased the European Parliament.[30] The second one sought to facilitate the authority for the budget discharge. So the Court included in the report some comments on the institutions responses as a rejoinder,[31] something that the Commission contested intensively saying that the ECA had no authority to do that, otherwise the Court should allow the institutions to respond again to its comments.[32] Since the ECA had included in the annual report comments on the institutions replies (mainly on the Commission's responses), the Commission sent a document to the Parliament expressing

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[26] D. Strasser, The Finances...., op. cit., p. 275.
[27] National Audit Office, op. cit., p. 226.
[28] Annual Report of the Court of Auditors for the Financial Year 1996, OJ 1997, C-348/7.
[29] G. Isaac, Les Finances...., op. cit., p. 351.
[30] Ibid, p. 351.
[31] See the Annual Report of the Court of Auditors for the Financial Year 1979, OJ 1980, C-342/10, 16, 25, 53, 59, 128, 132 etc.

its opinions on the ECA's comments. The Court has since refrained from making additional comments but officially has never renounced this prerogative.[33] The European Parliament in its resolution giving a discharge to the Commission for the implementation of the 1979 budget had accepted that the ECA was entitled to add comments to the institutions' replies to its observations.[34]

The ECA and the Commission have however reached an agreement in 1982 that established the above mentioned procedure which has been successfully characterized as "preliminary".[35] The ECA sends to the Commission the observations which are going to be included in its Annual Report before 15 July. The Commission prepares a draft reply suggesting even amendments to the Court's observations and sends this draft to the ECA unofficially by the end of September. In early October the services of the ECA and of the Commission examine the points that create conflict between the two institutions. If necessary, the matter is referred to higher levels of the institutions' hierarchy for a solution and any amendments made from the one part are made known to the other the soonest possible (in practice, there have been meetings not only between audit staff from the ECA and personnel for the Commission but since 1995 these meetings involved Commissioners and Members of the ECA). After the Commission's submission of proposals on 31 October, the ECA prepares its Annual Report taking into account the findings of its collaboration with the Commission and refrains from including in the Report issues that have not been elaborated during this procedure.[36]

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[32] Ibid, p. 351, note 164, & D. Strasser, The Finances...., op. cit., p. 280

[33] Ibid, p. 351, note 164.

[34] Resolution of 18 June 1981 containing the comments accompanying the decisions granting a discharge on the implementation of the budget of the European Community for 1979, OJ 1981, C-172/80.

[35] Sir N. Price, op. cit., p. 241.

[36] G. Vitalis, Hearing of the Auditee, in Honorary Volume for the 150 years of the Greek Court of Audit, Athens 1984, p 125-132 (131), I. Harden, F. White, K. Donnelly, op. cit., p. 617, T. M. James, op. cit., p. 480, P. Lelong, op. cit., p. 112-113 & Sir N. Price, op. cit., p. 241.

The Annual Report, being considered as the ECA's primary mission[37], is not only a part of its competences but at the same time also the crowning of its auditing work, as the most vivid means of expression of the Court.[38] There are also other reporting activities from the ECA.

First there are also some annual reports that the ECA must produce. One of them is the ECSC Annual Report. It has been mentioned above that among the competences of the ECA is to audit the ECSC. According to Art. 78d of the ECSC Treaty the Court must draw up a report stating whether the accounting concerning operating activities of the ECSC has been effected in a regular manner. The administrative income and expenditure of the ECSC are covered by the Annual Report on the general Budget.[39] This report must be drawn up within six months from the end of the financial year to which the account refer and must be submitted to the Commission[40] and the Council, and then the Commission will forward it to the Parliament. This report is published in the Official Journal but its appendix which contains private financial information is not published, but only submitted to the Council and the Commission which must inform the Parliament of its existence.[41] Also the ECA has to present annual reports for the Decentralized Community Bodies but these reports are not published in the Official Journal.[42]

The second sub-paragraph of Art. 188c(4) [248(4)] of the EC Treaty provides that

> *"The Court of Auditors may also, at any time, submit observations, particularly in the form of special reports, on specific questions and deliver opinions at the request of one of the other institutions of the Community".*

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[37] G. Isaac, Les Finances...., op. cit., p. 350.
[38] R. Leonard, The Public Report of the Court of Auditors, in Audit of Public Finance in Greece and Abroad (Studies), Athens 1975,p. 225- 232 (226).
[39] T. M. James, op. cit., p. 481.
[40] After the EU Treaty, the High Authority of ECSC was renamed as the Commission (Art. 7 of the ECSC Treaty).
[41] D. Strasser, The Finances...., op. cit., p. 275.
[42] Ibid, p. 275-276, for more details.

Art. 90(1) of the Financial Regulation has exactly the same context. So it is clear that the ECA has two other ways of acting, its special reports and its opinions. According to the disposition of Art. 90(2) the special reports shall be transmitted to the institution or body concerned, which has two and a half months to make any comments on the Court's report. Should the ECA decide to publish the report in the Official Journal then, it has also to publish the comments of the institution or body concerned. In everything that concerns the opinions, Art. 90(3) of the Financial Regulation provides that if these opinions are not related to legislative proposals or legislation drafts for which the ECA has been consulted, the Court can publish them in the Official Journal after consulting the institutions that requested the opinion or the institution concerned by the ECA's analysis, the replies of which must be published along with the opinion. The special reports are giving to the ECA the opportunity to express itself, comparable to that provided by the annual report, but with a great degree of flexibility in time and space.[43] They generally consist of the treatment in depth, outside the framework of a timetable of the Annual Report, of a particular group of related activities and being completely independent of the Annual Report's calendar year, they may, when appropriate, be completed and issued relatively rapidly and thus with greater immediacy draw the attention of the budgetary authorities and the EC financial managers to particular weaknesses which come to light in the course of these major audit inquiries.[44] In any event the flexibility of format and the homogeneity of subject matter mean that the special reports are, despite the sometimes complex nature of their contents, more easily handled by the authorities to whom they are addressed that the Annual Report, which of necessity contains a somewhat dense assemblage of very varied material.[45] According to another opinion though the special reports have the major drawback that Parliament

[43] Ibid, p. 276.

(which is mainly the recipient of the special reports) often has neither the means nor the time to assess the points made in them.[46] This latter opinion is not persuasive since the ECA's special reports are examined by ad hoc parliamentary committees, whose own reports generally lead to a resolution by the Parliament, listing the problems for which it expects a solution to be found and the Commission must then take follow-up action.[47] As it is obvious from the context of the dispositions of the Treaties and the Financial Regulation, the special reports can be issued at the ECA's own discretion or upon request from another institution. So far, mainly the Parliament has made use of this facility[48], starting practically from the establishment of the ECA and in 1979 the President of the Parliament requested from the Court a report concerning the representation expenses of the members of the Commission.[49] This report was issued later in 1979 and even though it was not published in the Official Journal, had such an impact that led to the changing in the methods by which such expenses are controlled.[50] The Commission itself has recognized the importance of these reports by noticing their usefulness in the discharge procedure and by acknowledging the recommendation of the European Council at Essen to the European institutions about taking action to make use of these reports.[51]

In everything that concerns the opinions issued by the ECA, they must be included in the so called "Consultative Competence"[52] of the Court. There are two kinds of opinions that the ECA may deliver. The first one has been already mentioned above and is regulated by Art. 188c(4) [248(4)]. These opinions are not obligatory in a sense

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[44] T. M. James, op. cit., p. 479.
[45] Ibid, p. 479.
[46] D. Strasser, The Finances...., op. cit., p. 276.
[47] National Audit Office, op. cit., p. 227.
[48] Sir N. Price, op. cit., p. 242 & T. M. James, op. cit., p. 480.
[49] G. Isaac, Les Finances...., op. cit., p. 352 & Sir N. Price, op. cit., p. 242.
[50] G. Isaac, Les Finances...., op. cit., p. 352 & Sir N. Price, op. cit., p. 242.
[51] European Commission, Report on the function of the Treaty for the European Union, SEC (95) 731 final, 10.5.1995, p. 27, point 65.
[52] P. Lelong, op. cit., p. 108 & T. M. James, op. cit., p. 480.

that the institutions are not obliged to ask for them and they certainly do not have to follow them. But the practice followed so far, fortified also by a written unofficial agreement between the ECA and the Commission, is for the institutions to consult systematically the ECA when taking action that has a budgetary or financial aspect or effect.[53] The second kind of opinion is described in Art. 209 [279] of the EC Treaty according to which

> *"The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and obtaining the opinion of the Court of Auditors shall:*
> *a) make financial regulations specifying in particular the procedure to be adopted for establishing and implementing the budget and for presenting and auditing accounts;*
> *b) determine the methods and procedures whereby the budget revenue provided under the arrangements relating to the Communities' own resources shall be made available to the Commission, and determine the measures to be applied, if need be, to meet cash requirements;*
> *c) lay down rules concerning the responsibility of financial controllers, authorizing officers and accounting officers and concerning appropriate arrangements for inspection."*

This disposition provides that the ECA must obligatorily be requested to deliver an opinion on the issues mentioned in it.[54] This obligation covers only the request of the opinion and does not extent to the Council's activity according to the opinion. So the Council may act without taking into consideration the opinion issued by the ECA, which is not binding.[55] But given the nature of the issues mentioned in Art. 209 [279] of the EC Treaty, the ECA's opinion is a very useful guide. The ECA is able, at any time, because of its duties to evaluate the budget procedure (adoption and implementation), to know the effectiveness of the "Own Resources" systems about the Communities revenue and to understand (better than anyone else) the importance of the responsibility of financial controllers and authorizing officers. Indeed this was very soon realized by the Council and immediately after the ECA's establishment, it requested an opinion on a proposal for

[53] P. Lelong, op. cit. p. 108.
[54] Ibid, p. 108.
[55] D. O' Keeffe, op. cit., p. 184.

the modification of the Financial Regulation.[56] The Court knowing that it had first to settle into his job before doing anything else, reserved its right to comment later on this proposal and delivered his opinion in 1981, having an experience of three years of auditing the Communities' finances.[57] So, in general the ECA's opinions have only "advisory" force, but because of their technical nature and the fact that some of them are often published in the Official Journal, they are given some further weight.[58]

Besides its reports and opinions the ECA has also created what has been called the "Presidential Letters" method.[59] These notes are sent by the ECA's President to the person in charge of a national audit institution (President, Director, etc) and their purpose is to inform their recipient about the ECA's findings during a particular audit.[60] Based on the replies of the national audit institution the ECA will decide whether it is going to keep the matter on a bilateral level or to issue a special report on it or even to include it in its Annual Report.[61]

As shown above, the procedure concerning all the reports of the ECA (Annual Report, Statement of Assurance, special reports, opinions, Presidential Letters) includes taking into account the auditee's replies. As soon as the initial findings are known, the institutions that have been audited are given the opportunity to justify their management and formulate such counter-arguments as they feel to be necessary.[62] The proceedings concerning the exchange of opinions between the ECA and the Commission about the Annual Report have been described above. This is called a "Contradictory Procedure" ("Procedure Contradictoire") -even though some consider the term "Adversarial

[56] Ch. Kok, op. cit. p. 348.
[57] Ibid., p. 348 and p. 356.
[58] T. M. James, op. cit., p. 481.
[59] N. Themelis, op.cit., p. 122.
[60] Ibid, p. 122.
[61] Ibid, p. 122.
[62] European Court of Auditors, op. cit., p. 14.

Procedure" as more accurate[63]- during which the right of the audited bodies to be granted a hearing by their auditor is completely guaranteed.[64] The reason for the existence of this right is to make the document in question (report, opinion, etc) more clear, more objective and more effective[65] in its mission which is to present the situation in the Communities' financial management and also to focus on any anomalies of this management. The aim of the reports is to make the executive power (in the case of the Communities the Commission) prudent in its management but in order to succeed, the report itself must be prudent, and that is assured by the right of the auditee to be granted a hearing.[66] But within the particularities of the Communities' system, this right also has a completely different aspect,. Through the exercise of the auditee's right to be granted a hearing, the ECA informs the audited institutions about its points of view on several issues of financial management. This "dialogue" is the best way for the Court to obtain the cooperation of the audited bodies for its observations and to develop a more collaborative relationship with them.[67]

III. Audit of the other pillars of the European Union

The Treaties of the Communities, as amended so far, are not the only texts including provisions for the ECA. The Treaty for the European Union has some specific provisions that even though they do not mention the ECA, they are very clearly imposing on it some new tasks. According to Art. J.11(2) [28(2)]

> *"Administrative expenditure which the provisions relating to the areas referred to in this Title entail for the institutions shall be charged to the budget of the European Communities".*

[63] I. Harden, F. White, K. Donnelly, op. cit., p. 617.
[64] G. Vitalis, op. cit., p. 130.
[65] Ibid, p. 126.
[66] Ibid, p. 126.
[67] P. Lelong, op. cit., p. 113.

This article refers to expenses concerning the Common Foreign and Security Policy. Parallel provisions are to be found in Art. K.2(2) [41(2)] concerning the administrative expenses of the Cooperation in the field of Justice and Home Affairs. In addition to this, the Treaty of Amsterdam amended not only the numbering but the context of these articles which is now (for both of them):

> *"(2)Administrative expenditure which the provisions relating to the areas referred to in this Title entail for the institutions shall be charged to the budget of the European Communities.*
> *(3)Operational expenditure to which the implementation of those provisions gives rise shall also be charged to the budget of the European Communities, except for such expenditure arising from operations having military or defence implications and cases where the Council acting unanimously decides otherwise. In cases where expenditure is not charged to the budget of the European Communities it shall be charged to the Member States in accordance with the gross national product scale, unless the Council acting unanimously decides otherwise. As for expenditure arising from operations having military or defence implications, Member States whose representatives in the Council have made a formal declaration under Article 23(1), second subparagraph, shall not be obliged to contribute to the financing thereof.*
> *(4)The budgetary procedure laid down in the Treaty establishing the European Community shall apply to the expenditure charged to the budget of the European Communities."*

According to all these provisions the expenditure (administrative and operational-unless the Council decides otherwise) for the Common Foreign and Security Policy and for the Cooperation in the Field of Justice and Home affairs will be included in the general budget of the Communities.[68] This means that the ECA must audit these expenses. To uphold this opinion it is enough to mention that according to the above mentioned dispositions the procedure for the EC budget will apply to all expenditure charged to the Communities' budget. This means that since the external control made by the ECA is included in that budgetary procedure, the ECA must audit all expenditure made by the Communities concerning the pillars of the European Union.

[68]This amendment has been proposed in order to promote the cohesion between the Union's foreign policy and the complete framework of the Union's foreign activities and external relations while a definition of the administrative and operational expenditure of the foreign policy has been requested but so far has not been adopted. See P. K. Ioakimidis, The Revision of the Treaty of Maastricht, Themelio Publications, 1995, p. 60.

B. Methods and Types of Audit

I. General Aspects

Before analysing the ECA's system of audit, in order to comprehend and evaluate it properly, it is useful to present very briefly some principles concerning audit and especially public audit, which is mainly the kind of audit the ECA performs.

In every form of organisation, whether it is a state or an international organisation, or something in between, like the European Communities, there are mainly four stages of financial activity: a) Planning and Programming, b) Budgeting, c) Implementation of the Budget, and d) Audit and Evaluation which are going to form the basis for a new Planning and Programming procedure etc.[69] This circular system is called the Circle of (Financial) Management.[70] It is clear that the existence of a successful Audit is essential for the Circle to work. Such an Audit must meet the following conditions: a) it must include an examination of whether the financial activities are rational or not, whether the financial reports and sheets are presented properly or not, whether the procedures estimated during Planning as necessary and the action taken are in accordance with each other or not , b) it must conclude whether the resources of the Organisation are used by it in an economic and effective way, c) it must establish the effectiveness of the action taken.[71] These conditions can be described in one phrase e.g. "controlling the regularity of financial management". The regularity's control has a double context: it means the examination of both the legality of financial management (whether the revenue received or the payments made are based on a legislative text's disposition and included in the budget) and if the supporting documents (invoices etc.) of the financial actions are complete and legitimately drawn up.[72]

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[69] A. Maggina, op. cit., p. 80.
[70] Ibid, p. 80.
[71] Ibid, p. 131-132.
[72] K. X. Sarantopoulos, General Principles of Public Audit, in The Audit of Public Finance in Greece and Abroad (Studies), Athens 1975, p. 11-34 (22).

In order to achieve these goals various types of audit have been created using different criteria. There is first of all the institutional criterion, meaning which institution performs the audit. Accordingly there are a) the administrative audit (performed by administrative institutions), b) the judicial audit performed by judicial institutions and mainly courts) and c) the parliamentary audit (performed by Parliaments or their committees).[73] Another criterion involves the time of audit's performance, meaning when the audit is made. So, there are a) the ex ante audit which means that the audit is being performed before the completion of the financial action (whether this is a receipt of revenue or a payment of expenditure), and b) the ex post audit which means that the audit is performed after a specific time period aiming to examine all the financial activity that took place during this period.[74] A similar criterion focuses on the audit's duration. Based on that, there can be distinguished a) the regular or constant audit which means that the audit is being performed constantly during the financial activity and b) the extraordinary or periodical audit which means that the audit is being performed on a specific occasion covering a particular issue.[75] Another division of audits is between internal and external: internal is the audit performed by people or bodies within the audited organisation while external is the audit performed by people or bodies outside the audited organisation's hierarchy.[76] The audit's context has been used as a criterion to create another distinction. So, there are a) the general audit that contains a complete and without any limits examination of the total financial management, b) the special audit that focuses on a specific aspect or problem of management, being performed especially for that issue and c) the partial audit that also deals only with a sector of financial

[73] Ibid, p. 16-17.
[74] Ibid, p. 17-18.
[75] Ibid, p. 18.
[76] Ibid, p. 18.

management but is not performed to examine especially an issue.[77] Another criterion has been the audit's extent. According to this there are a) the complete audit that covers all the financial activities throughout their realisation and b) the indicative audit that covers only a number of selected financial actions.[78] It will be attempted to examine the ECA's audit in the light of these distictions.

II. Types of Audit used by the Court

According to Art. 188c(2) [248(2)], first sub-paragraph of the EC Treaty

"The Court of Auditors shall examine whether all revenue has been received and all expenditure incurred in a lawful and regular manner and whether the financial management has been sound."

So the purpose of the examination of the accounts has several objectives. In everything that concerns the revenue, to check that the amounts due to the Union (since the ECA, as demonstrated above, audits all the three pillars of the European Union and not only the Communities) have been duly established, recorded and entered in the accounts. Respectively, with regard to the expenditure, to confirm that the amounts owed by the Union have been recovered or paid. A third objective is to verify that the operations carried out have been backed up with supporting documents and that the available information is sufficient to enable the management and control authorities to carry out their respective tasks to the full.[79]

There are some key words in these dispositions that must be analysed: legality, regularity, sound financial management. The Court's examination as to legality and regularity is based on checking whether individual acts of assessment and payment of revenue and, in parallel with these, individual commitments and payment operations,

[77] Ibid, p. 18 where it also acknowledged that the distinction between special and partial audit is very difficult.
[78] Ibid, p. 18-19.
[79] European Court of Auditors, op. cit., p. 18, National Audit Office, op. cit., p. 224, N. Themelis, op. cit., p. 122 & D. Strasser, The Finances...., op. cit., p. 279.

have been carried out in compliance with the relevant legal provisions (sectoral regulations, conventions, mandates, agreements and contracts).[80] The legality audit goes a little further by including a review of the management as a whole, focusing mainly on its compatibility with the Treaties and the secondary legislation (budget, Financial Regulation, internal management rules).[81] The ECA's audit also examines whether the accounting systems of the Communities are adequate and capable of recording all transactions correctly.[82] The Court while performing its audit a) will respect the budgetary rules[83], b) will report any cases of fraud detected and c) will respect and follow the observations concerning the auditing standards and practices.[84]

As for the question of establishing whether the financial management has been sound or not (otherwise called "value for money" audit), there are three inter-related aspects of management which are practically examined, called the three "Es": Economy, Efficiency and Effectiveness.[85] The "Economy" relates planned input of resources to the actual input meaning the examination of whether the least expensive means of achieving a given target have been used or not (examination of alternatives). The "Efficiency" is reflected by the relationship between actual input (resources) and actual output (results achieved) meaning the examination of whether the means adopted were employed in the most appropriate manner (examination of performance). The "Effectiveness" which is measured by the comparison of actual output with planned output meaning the examination of whether the purpose has been achieved or not (success rate).

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[80] European Court of Auditors, op. cit., p. 18-19.
[81] Ibid, p. 19.
[82] National Audit Office, op. cit., p. 224.
[83] Unity-all financial activity of the Union will be included in one single document known as the budget, Universality-budgetary revenue may not be allocated to particular items of expenditure and no adjustments between revenue and expenditure may take place, Annuality-covering a single and complete financial year by the budget, Specification-the appropriations made available are not aggregated but allocated to the various budgetary headings and subheadings, Equilibrium between expenditure and revenue-according to Art. 199 [268] of the EC Treaty the revenue and expenditure shown in the budget shall be in balance. For a detailed analysis of the budgetary rules see D. Strasser, The Finances...., op. cit., p. 41-72 & G. D. Drisis, op. cit., p. 119-121 and 148-151.
[84] G. Orsoni, op. cit., p. 81-83.

It must be pointed out though that this kind of audit should not include the evaluation of the purpose selected which is a question of political choice.[86] The ECA must not question policy decisions but it will investigate the financial and other consequences of such decisions and their implementation.[87] In other words, the Court is not empowered to decide whether the Communities should introduce a particular kind of policy but only to report as to whether that chosen line of policy is being conducted in a cost effective way.[88] It should refrain from evaluating policy goals and it distinguishes between goal achievement and effectiveness, as not every goal achievement can be the result of the implemented policy.[89] Effectiveness auditing is defined as "auditing that focuses on the extent of goal achievement, the effects and/or effectiveness of the policy as well as the efficiency of its implementation".[90] Of course, in order for the ECA to be able to audit and conclude that the financial management has been sound, it is necessary for the political authorities to set clearly the objectives of their selected policy[91]. This setting is done as follows: all the appropriations in the budget are accompanied by a commentary in which there is an analysis of the legal basis of the respective expenditure.[92] This commentary very often contains just a statement of political aims or makes reference to an act of political context, like a resolution.[93] So the goals, even though they are mentioned in a legislative text like the budget, are expressed in rather vague terms. The result of this situation is that the audit of economy and efficiency cannot draw the necessary attention to misuse of resources, while effectiveness in

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[85] T. M. James, op. cit., p. 475 & D. Strasser, The Finances...., op. cit., p. 279.
[86] G. Orsoni, op. cit., p. 83.
[87] D. O' Keeffe, op. cit., p. 188.
[88] D. Swann, The Economics of the Common Market, Penguin Books Publications, 1995, p. 65.
[89] F. L. Leeuw, Effectiveness auditing in the Netherlands: History, Charter and case studies, EUROSAI, No 1, 1993-1994, pp. 16-20 (17).
[90] Ibid, p. 17.
[91] P. Lelong, op. cit., p. 105.
[92] A. Dashwood, The limits of European Community powers, ELRev,Vol. 21, 1996, p.113-128 (126).
[93] Ibid, p. 126.

achieving policy aims cannot be judged.[94] The less the auditee is defining precisely the objectives, the more difficult it is for the auditor to distinguish between questioning the merits of policy objectives (which falls beyond the limits of audit) and assessing whether value for money has been achieved in the pursuit of those objectives.[95]

There are two reasons for this vagueness in defining policy objectives. One is that those with political responsibility for policy matters do not accept any criticism for their actions,[96] even if this criticism is made by an institution established exactly for that purpose. The other is more complex since it has to do with the so called "abuse of budgetary powers".[97] Some times, the vague terms used in order to describe a policy of the Communities aim to include in the budget the financing of activities that are doubtfully within the Communities' own competence.[98] There are procedural, political and legal causes for this.[99] The procedural cause has to do with the distinction between compulsory and non-compulsory expenditure.[100] Since the Council, an institution that has to be careful about the limits of Communities' competence, has the final say for only the compulsory expenditure (the respective competence for the non compulsory belongs to the Parliament), it cannot actually control the choice of political objectives for which non compulsory expenditure is authorised.[101] The political cause is that within the Council, several Member States find it difficult to oppose certain political choices that perhaps are beyond the Communities' or the Union's competence, but have a laudable context.[102] The legal cause has to do with the doctrine of "actions ponctuelles", according to which

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[94] T. M. James, op. cit., p. 476.
[95] I. Harden, F. White, K. Donnelly, op. cit., p. 615.
[96] Ibid, p. 615.
[97] For this abuse see A. Dashwood, op. cit., p. 126-128.
[98] Ibid, p. 126.
[99] Ibid, p. 126.
[100] See Art. 203[272] of the EC Treaty. The relative definitions are included in the Joint Declaration by the Parliament, the Council and the Commission, on 30 June 1982. For a detailed analysis of this declaration see P. Dankert, The Joint Declaration by the Community Institutions of 30 June 1982 on the Community Budgetary Procedure, CMLRev, Vol. 20, 1983, p. 701-712.
[101] A. Dashwood, op. cit., p. 126-127.
[102] Ibid, p. 127.

expenditure on these kind of actions does not require legislative authorisation because "it falls within the scope of the inherent powers which are incidental to the Commission's executive role".[103] All these create an environment that does not tolerate preciseness in the political goals' setting, giving the ECA a very hard time when it performs its audits.

A "value for money" audit is based on an assessment, made by the ECA, of the adequacy of internal systems and on taking into consideration a wide range of internal and external data to inform its views on the organisation's administration.[104] More specifically, the Court investigates thoroughly and evaluates the internal mechanisms and systems that govern the revenue and expenditure in question and must take also into account their nature and individual characteristics.[105] This implies an analysis of various types of data and information according to the sector under investigation, data that are both internal and external to the administration or organisation in question, macro-economic data, comparative studies of other management systems, and more particularly an examination of a significant number of operations and gradually the auditor will arrive at a judgement, as objective as possible, that will enable him to form and express an opinion as to whether the system implemented is likely to lead to the results that it was meant to achieve.[106]

III. System of Audit

The ECA always wanted to find a way of using its limited auditing personnel in controlling very important and complex capital flows from the Communities in large

[103] Ibid, p. 127.
[104] National Audit Office, op. cit., p. 226.
[105] European Court of Auditors, op. cit., p. 19.
[106] Ibid, p. 19-20.

areas, so it decided to adopt a method called "systems-based approach of audit".[107] This system, as described by the Court itself in its Annual Report for 1980,[108]

> "...means that the auditor seeks to rely, as far as possible, on the way in which the information he is to audit is produced. It is based on the idea that the internal administration, by its organisation and mode of operation, should be self controlling; this constitutes the concept of internal control. In applying this approach the Court examines all the elements of the institution's internal management which makes up the processes of authorising, recording and verifying financial transactions e.g. the organisation plan and the allocation of responsibilities for actions and decisions having financial and accounting implications. If the systems and procedures appear to be sound, the Court carries out tests of cases and transactions and such analytical checks as it deems necessary to confirm that the systems are operating as described and producing satisfactory results. If systems' weaknesses are identified, cases and transactions are examined to establish the practical consequences of weaknesses.... It is in the interests of the Communities in general that any deficiencies in management procedures should be identified and remedied."

In July 1979, the ECA sent an audit notice to its staff describing the main elements of the systems based audit (which are still valid):

> "a) to ascertain and document the whole system of control within the organisation,
> b) to check that the prescribed system is actually followed,
> c) to evaluate the system and identify weak areas,
> d) to carry out compliance tests over the whole year (these tests are to provide each year a reasonable degree of assurance that the prescribed accounting system and controls actually exist and are being complied with, including the questions: i) were the necessary procedures performed? ii) were they performed by the appropriate person, iii) how well they were performed),
> e) to prepare audit plans and programmes of the substantive tests indicated to be needed (these tests are to obtain evidence as to the validity and the propriety of the treatment of accounting transactions or, conversely, of errors or irregularities therein, unintentional or intentional, which have a material monetary effect on the accounts being audited,
> f) to carry out these programmes,
> g) to carry out such other tests (e.g. analytical, comparative) as considered necessary,
> h) to record and report the results,
> i) to determine and carry out substantive tests on the final accounts."[109]

The key to this method is that the ECA at first examines, analyses and documents the system of internal control within the organisation under audit and then tests the

[107] N. Themelis, op. cit., p. 122.
[108] OJ 1981, C 344/8-9.
[109] T. M. James, op. cit., p. 477.

compliance of the system's actual function in practice with the theoretical model made by the ECA after the first examination.[110] If the results of this test show that the system is valid, then the ECA's auditor proceeds with the examination of essential figures of financial transactions using though a limited number of samples and carries out substantive and comparative tests.[111]

This method has been adopted not only because it could produce important substantive results but also because it has been easy to apply since the organisations under the ECA's audit are obliged, according to Art. 83(3) of the Financial Regulation, to *"transmit to the Court of Auditors any rules of procedure they adopt in respect of financial matters"* so the ECA has always had a complete and detailed picture of their internal financial system.[112] This is very helpful for the audit's effective performance. Thus the systems based approach of audit has two advantages: firstly an economy of means (by avoiding the double controlling -externally and internally- of the same issues) and secondly the presentation of the defaults of the system used by examining globally the system's crucial points and not after an individual examination of each of the system's final results, creating this way a "cartography" of the sectors that are going to - and should- be controlled.[113]

An important exception from this method has been the audit work performed in order for the ECA to adopt the Statement of Assurance, an audit work that focuses primarily in direct substantive testing.[114] The method used in this case is known as "monetary unit sampling" and involves taking individual units of account as the population and then taking a sample of 600 so-called "hits", ensuring at the same time that the samples selected are broadly representative of the total population of which they

[110] Ch. Kok, op. cit. p. 354.
[111] European Court Of Auditors, op. cit., p. 21.
[112] P. Lelong, op. cit., p. 106.
[113] Ibid, p. 107.
[114] European Court of Auditors, op. cit., p. 21.

are drawn.[115] The transactions of which the "hit" units form part are audited down to the level of the final beneficiary. A judgement is made about the significance of any errors detected and the result from the sample is then extrapolated to the whole budget.[116] The ECA's aim is to be able to say with 95% certainty that error in the execution of the total budget is no more than 1%.[117] This methodology, as the ECA has admitted, is largely experimental. Ways of developing it have been examined by specialists which suggested that the ECA must increase the amount of audit work undertaken in areas considered to be of greater risk[118], which means an increase of sampling and a closer monitoring of transactions in these areas. This diversification of the audit procedure is a result of the above mentioned Court's position that it cannot comment on materials that it has not examined. Before 1993 the ECA did not think that it should check the accuracy of the EC accounts as a whole, so it had to come up with a new audit method in order to be able to provide the Statement of Assurance.

According to the other subparagraphs of Art. 188c(2) [248(2)]

> *"The audit of revenue shall be carried out on the basis both of the amounts established as due and the amounts actually paid to the Community.*
> *The audit of expenditure shall be carried out on the basis both of commitments undertaken and payments made.*
> *These audits may be carried out before the closure of accounts for the financial year in question."*

In these dispositions it is clear that the ECA is performing both ex ante and ex post audits since it may audit a financial transaction either before a payment is made to or by the Communities or after, not only locating where the Communities have already wrongly collected or given money but also preventing them from wrongly collecting or paying money. The ECA's competence to perform ex ante audits is very important since this kind of audit precludes any misuse of state's money (in this case the Communities'

[115] I. Harden, F. White, K. Donnelly, op. cit., p. 612, National Audit Office, Report on the Annual Report of the European Court of Auditors & the Statement of Assurance for 1995,London 1997, p. 36.
[116] I. Harden, F. White, K. Donnelly,op. cit.,p. 613 & National Audit Office, Report on..,op. cit., p.36.
[117] I. Harden, F. White, K. Donnelly, op. cit., p. 613.

money) and consequently any damage to the State[119] (in this case the Communities). Also the provision concerning the possibility of the audit being performed before the closure of the financial year is based on the previous experience of the Audit Board's function since the audits performed by this Board were interpreted (mainly by the Commission) to be conducted only after the closure of the financial year.[120] This created a gap that undermined the whole audit system of the Communities. But under the current provisions the audits take place during the financial year and may begin as soon as the event giving rise to the revenue or the expenditure has occurred. This results in the carrying out of the management and the control with a greater degree of simultaneity than would not otherwise be possible.[121]

Two very good examples of the ECA's competence to control the soundness of financial management are the cases involving the European Central Bank (ECB) and the European Monetary Institute (EMI). According to Art. 27 of the Protocol concerning the European System of Central Banks and the European Central Bank Statute, which was annexed to the EC Treaty by the EU Treaty

> *"(1)The account of the European Central Bank and national central banks shall be audited by independent external auditors recommended by the Governing Council and approved by the Council. The auditors shall have full power to examine all books and accounts of the European Central Bank and national central banks and obtain full information about their transactions.*
> *(2)The provisions of Art. 188c of this Treaty shall only apply to an examination of the operational efficiency of the management of the European Central Bank."*

Exactly the same is to be found in the wording of Art. 17(4) of the Protocol concerning the European Monetary Institute Statute, which was also annexed to the EC Treaty by the EU Treaty. These dispositions are very clear stating that the ECA will examine the operational efficiency of the management of ECB and EMI. But as explained above the audit concerning the sound financial management includes three

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[118] National Audit Office, Report on.., op. cit., p. 37.
[119] K. X. Sarantopoulos, op. cit., p. 17.
[120] G. Isaac, op. cit., p. 797.

objectives, in order to be complete: the economy, the efficiency and the effectiveness. So the ECA must not limit itself to examining only the efficiency but will also check whether these two organizations have used the most economic means necessary to succeed in their tasks (economy) and whether the objectives, that they themselves have set, have been obtained and to what extend (effectiveness). It must be said also that according to the above mentioned provisions the legality and regularity of the accounts of the ECB and the EMI are subjected to audit by independent external auditors. The fact that the ECA is not mentioned, led to the conclusion that it should not perform this audit and thus the ECA does not examine the legality and regularity of the accounts of the ECB and the EMI. But the dispositions only mention what are the general characteristics of the auditors ("independent" and "external"). Since the ECA has both these qualifications, there is no reason why it should not audit completely the ECB and the EMI. Not mentioning the ECA does not mean that it is automatically excluded. And furthermore, the "systems based" audit of the ECA can cover in a very satisfactory extend the transaction performed by the ECB and the EMI, on administrative and operational level. It has been suggested though that the ECA's audit should be limited to examining only the ECB's and the EMI's operational efficiency as stated in the above mentioned dispositions.[122] Of course, such a limiting point of view is overlooking the above mentioned points regarding the audit for sound financial management and the qualities of the ECA as an independent and external audit body.

Generally speaking, given the size and complexity of the Communities' structure, the audit system adopted by the Court is considered to be inevitable and sensible.[123]

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[121] European Court of Auditors, op. cit., p. 22-23.

[122] R. Dunnet, Legal and Institutional Issues affecting Economic and Monetary Union, in D. O' Keeffe and P. M. Towmey (ed.) Legal Issues of the Maastricht Treaty, Chancery Law Publishing Ltd, 1994, pp. 135-147 (p.140, note 38).

[123] House of Commons, Committee of Public Accounts, The Court of Auditors of the European Communities, Session 1981-1982, 5th Report, HC paper 92, para. 13.

C. The role of the European Court of Auditors in the battle against fraud and corruption in the European Communities

> "The huge sums which are being lost due to fraud and irregularity against the Community are losses borne by all the taxpayers and traders of Europe. This strikes at the roots of democratic societies, based as they are on the rule of law and its enforcement, and it is a public scandal".[124]

This conclusion, reached by the House of Lords in 1989, shows the significance of the issue of fraud in the European Communities. This significance is considered to have four dimensions:[125] The first one involves the so called "direct effects" of fraud, meaning the informal misallocation of resources resulting in a distribution of money which is not based on the criteria of the Communities' rules and policies.[126] The second concerns the "indirect effects" of fraud, meaning the damage that fraud is causing to the Communities' image with regard to European public opinion, especially about the EC capacity to reach further goals.[127] The third dimension of fraud is that this phenomenon is a very worrying "symptom" in the course towards European Union and the collaboration of the Member States with the Communities is required in order to eliminate any fraudulent activities.[128] The forth dimension is that Community fraud is a "stimulus" for an organisational restructuring of the Communities, based on the European institutions' conclusions from their attempt to limit fraud.[129] If the resources absorbed by the tackling of fraud are added to all these, then a pretty good picture of the fraud within the Communities is obtained.

According to the Commission's findings in the area of its own resources fraud represents 787 mil. ECU (5,8% of the revenue collected in 1996 while the respective

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[124] House of Lords, Select Committee on the European Communities, Fraud against the European Communities, Session 1988-1989, 5th Report, HL paper 27, para. 205.
[125] M. Mendrinou, European Community Fraud and the politics of institutional development, EJPR, Vol. 26, 1994, p. 81-101 (87).
[126] Ibid, p. 88-89.
[127] Ibid, p. 90.
[128] Ibid, p. 90-93.

percentage for 1995 was 3,6%).[130] Also, in the area of expenditure the level of fraud stands at 498 mil. ECU (0,7% of the total expenditure while in 1995 it was 0,6%).[131] The overall figure for fraud totals 1,3 bil. ECU while in 1995 it was 1,1 bil. ECU.[132] In a sector by sector examination, in 1996, there have been reported throughout the Community 297 cases of fraud against the Structural Funds concerning an amount of almost 64 mil. ECU, while in the sector of the EAGGF-Guarantee Section 1.944 cases of fraud have been reported, concerning an amount of almost 204 mil. ECU.[133]

Frauds in the European Communities are related both to revenue (money collected by the Communities) and expenditure (money paid by the Communities).[134] The ECA, because of the nature of its task, is perhaps the only institution that faces such a very large number of cases of fraudulent behaviour. In its very first Annual Report for the year 1977, the Court tried to focus on the issue of fraud by defining it:

> "We should be very clear what it is meant by fraud. It has been defined as criminal deception, the use of false representations to gain an unjust advantage. In the Community context it is the deliberate misappropriation of money or goods, inevitably involving breaking the law or the relevant rules and instructions of the organisation concerned. It is necessary to distinguish fraud in this sense from actions designed to exploit loopholes in existing legislation. These, although they may result in material benefits which were not intended by the by the legislators, cannot be considered to constitute fraud. Indeed they may be carried out openly, whereas it is the nature of fraud to be secret. In any such case where the existing law contains loopholes or results in exploitation which is thought to be undesirable, it may be necessary to revise the law to ensure that its original purpose is achieved. But actions which remain within the law cannot be considered to be fraudulent."[135]

This definition clearly demonstrates that the ECA uses as a measure of fraud not the effect of the fraudulent activity on the Communities' resources but whether a legal

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[129] Ibid, p. 93-96.
[130] European Commission, Protection of Community Financial Interests-Fight against fraud, Annual Report 1996, (www.europa.eu.int/comm/sg/uclaf/ar1996.htm).
[131] Ibid.
[132] Ibid.
[133] "Commission facing Euro-frauds", E.E., issue 3, 1997, p. 31.
[134] A. Sherlock, Chr. Harding, Controlling Fraud within the European Community, ELRev., Vol. 16, 1991, p. 20-36 (22).
[135] Annual Report of the Court of Auditors for the financial year 1977, OJ 1978, C-313/8.

rule has been violated or not. Following this approach the ECA does not use very often the term fraud but it replaces it with the term "irregularities". This is in accordance with its competence to control the regularity and the legality of the Communities accounts, but when it comes to the audit of the soundness of the financial management, this measure is not enough. The examination of whether economy, efficiency and effectiveness have succeeded demands for a more substantive approach and not just examining if a legal rule has been violated. The "loopholes", as the ECA calls the cases where law is not providing a complete coverage, are indeed the points where the soundness of the financial management is tested. In these cases the ECA is required to examine essentially the means used for the implementation of the Communities' policies, if they were suitable and efficient and if they were effective in achieving the goals set. These points of view seem to have been included in the Court's elaboration on the issue of fraud, because in its Opinion adapted in 1979, the ECA gave a different definition of fraud saying that the irregularities that the Member States have to report to the Commission should

> "be confined to those which, in the opinion of the Member State concerned, involve any act or practice or omission designed to result in a loss of own resources or any act or practice or omission whereby the establishment of resources is unduly delayed."[136]

Judging from this wording, it seems that the ECA is focusing not only on the violation of law but also on the substantive outcome of fraud in order to define it, even if in this particular case only the sector of revenue is involved.

More recently, in an attempt to establish a more effective mechanism to combat fraud, the Council has taken the following action: At first, it has drawn up the

[136] Opinion of the Court of Auditors on the proposal for a Council Regulation on the measures to be taken in the event of irregularities affecting the own resources referred to in the Decision of 21 April 1970 and the organization of an information system for the Commission in this field, OJ 1979, C-187/10.

"Convention on the Protection of European Communities' financial interests" (hereafter referred to as PFI Convention).[137] According to Art. 1 of the PFI Convention

> *"Fraud affecting the European Communities financial interests shall consist of:*
> a) *in respect of expenditure, any international act or omission relating to:*
> *-the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities or budgets managed by, or not behalf of the European Communities*
> *-non disclosure of information in violation of a specific obligation, with the same effect*
> *-the misapplication of such funds for purposes other than those for which they were originally granted;*
> b) *in respect of revenue, any international act or omission relating to:*
> *--the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the general budget of the European Communities or budgets managed by, or not behalf of the European Communities*
> *-non disclosure of information in violation of a specific obligation, with the same effect*
> *-misapplication of a legally obtained benefit, with the same effect".*

Second, it has adopted the Regulation 2988/95[138] on the protection of the European Communities' financial interests, according to Art. 1 (2) of which

> *"Irregularity shall mean any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure."*

These definitions, although they are not exactly the same as those given by the ECA, have a substantive similarity to them. So, it is obvious that the ECA, during its audits, is targeting to the correct objects in its attempt to prevent fraud.

But all these do not give a complete reply to the very important question, posed along time ago: "What should the ECA's role be?"[139] In January 1989, during a public hearing organised by the Commission, the President of the ECA said:

> "The Court is not -and I cannot emphasise this strongly enough- an antifraud squad,.... it is not a police force,.... We do, on the other hand, consider that its is

[137] Council Act of 26 July 1995, OJ 1995, C-316/48-53.
[138] OJ 1995, L-312/1-4.
[139] Ch. Kok, op. cit. p. 363.

> perfectly within our powers to point out weaknesses of management or organisation which might create a danger of fraud or irregularity. In other words, we are interested more in deterrence and the prevention of fraud that in detecting it."[140]

This statement shows clearly the orientation of the ECA's efforts. The ECA has not been created just to trace individual fraud and irregularities.[141] Its practice so far has been to address the fundamental issues and, when it spots a weakness in the system of internal control that might suggest or result in fraudulent activity, to notify the Communities and the authorities of the Member States.[142] This has been included in the wording of the EC Treaty after the amendment of Art. 188c(2) [248(2)], first sub-paragraph, concerning the ECA's method of audit, by the Treaty of Amsterdam which added one phrase at the end: *"In doing so, it shall report in particular on any cases of irregularity"*.

This is a clear indication of what the Communities expect from the ECA. The Court will be able to draw up reports concerning irregularities detected in the financial management of the Communities. In these reports the Court will include irregularities and frauds detected not only in the Communities' institutions but also in the Member States. These reports can be either incorporated in the Annual Report or can be separate. It would be an interesting development, if for these reports a small variation of the proposal of the House of Lords[143] had been adopted, meaning the Council to be obliged to state to the Parliament what action has been taken concerning the conclusions of the reports about frauds.

The protection of the Communities' financial interests is not limited to the prevention of fraud. Very often, cases of fraud have revealed cases of corruption of

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[140] D. Strasser, The Finances....., op. cit. p. 297.
[141] Ch. Kok, op. cit., p. 363.
[142] Ibid, p. 363-364.
[143] House of Lords, Select Committee on the European Communities, Fraud against the European Communities...., op. cit., para. 203 where it is suggested that when the Council reports to the Parliament on the ECA's Annual Report it must also state what action will be taken and if none, then why not.

officials in the European Communities.[144] Even though corruption is a issue of mainly criminal substance (in everything that concerns its legal aspect), escaping thus the ECA's jurisdiction, the connection between fraud and corruption is so evident, that gives the ECA an indirect role in the Communities' dealing with corruption.

During 1995, two instruments against corruption have been proposed: a) a Protocol to the PFI Convention and b) a Convention against corruption by officials of the European Communities or officials of Member States of the European Union.[145] The definition of corruption given by both these texts is almost identical, since both define

> *"passive corruption as the deliberate action of an official who requests, accepts or receives, directly or through a third party, for himself or for a third party, offers, promises or advantages of any kind whatsoever to act or to refrain from acting in accordance with his functions or in the exercise thereof in breach of his officials duties in a way which damages or is likely to damage the European Communities financial interests"*

and

> *"active corruption as the deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way which damages or is likely to damage the European Communities' financial interests".*[146]

As it is obvious, corruption (active or passive) by definition is a situation hazardous to the financial interests of the Communities. An institution like the ECA, established to protect these interests, cannot be indifferent to such phenomena. The ECA's reaction is going to be similar to that one against fraud. The Court will examine if in the system of the audited organisation there are situations that can be considered symptoms of corruption and in such case will inform the other European institutions and the Member States. Again here the ECA is not going to search for specific cases of

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[144] Case 46/72, *De Greef v. Commission,* [1973] ECR, p. 543, Case 326/91, *De Compte v. European Parliament,* [1994], ECR I, p. 2091.
[145] S. White, Proposed Measures against corruption of officials in the European Union, ELRev., Vol. 21, 1996, p. 465-476 (466).
[146] Ibid, p. 467 and 470.

corruption. The systems based audit will allow it to spot situations in the system that can be interpreted as corruption, not whether a specific official has been bribed or not and, if yes, by whom. This latter task is purely out of the ECA's jurisdiction and lies within the jurisdiction of national authorities.[147]

Sadly the EC is not even mentioned once in the PFI Convention or Regulation 2988/95 or the texts concerning corruption. Thankfully, this kind of excluding behaviour is not reflected by the wording of the Treaties' dispositions concerning the fight against fraud. According to Art. 209a [280] of the EC Treaty, as modified by the Treaty of Amsterdam

> *"(4) The Council, ..., after consulting the Court of Auditors, shall adopt the necessary measures in the fields of the prevention of and fight against fraud affecting the financial interests of the Community with a view to affording effective and equivalent protection in the Member States. These measures shall not concern the application of national criminal law or the national administration of justice."*

This new advisory competence of the ECA, will enable it to have a more global view of the problem of fraud (and consequently of corruption up to a point). Of course it must be said that also in the past, the ECA had adopted reports concerning issues of irregularities either as independent documents like the Special Report on the system for the payment of refunds on agricultural exports (Audit of the export of agricultural products),[148] and Report No 2/1990 on the management and control of export refunds,[149] or incorporated in its Annual Reports like in those for the financial years 1979, 1983, 1984,1986, 1989, 1993, etc.[150] This reporting activity probably is going to focus more on the problem of

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[147] Ibid, p. 468 and particularly for the officials of the Communities p. 471-474.
[148] OJ 1985, C-215/1.
[149] OJ 1990, C-133/1.
[150] See OJ 1980, C-342/67-69, OJ 1984, C-348/26-27 & 43-44, OJ 1985, C-326/43, OJ 1987, C-336/62, OJ 1990, C-313/44-45, OJ 1994, C-327/109-110, respectively.

fraud and corruption in the Communities, considering the new duties that the Treaties are imposing on the ECA, after the Amsterdam amendments.

Chapter Three

Relations of the European Court of Auditors with the other European Institutions and Organisations

Judging from the provisions of the Treaties concerning the European Communities and the European Union, there are two levels of relations between the ECA and the other European Institutions. The first is the level of joint audit. In this case the ECA is practically "joining forces" with other European institutions in order to audit another organisation, inside or outside the institutional framework of the European Union. The second is the auditor-auditee level. In this case the ECA is auditing the accounts of the European institutions, according to the respective provisions of the Treaties. The institution that is mainly "joining forces" on the level of joint audit with the ECA is the European Parliament. And the Commission is the main auditee.

It is true that some times it is difficult to distinguish between the two levels of audit. This situation is caused by the audit method used by the ECA. The "systems based" approach, as mentioned above, is focusing on the internal control framework of the organisation under audit. So, sometimes even though there is an audit based on the second level (auditor-auditee), it is easy to create the impression that there is a joint audit procedure. This confusion is being avoided if the object of audit is located, isolated and focused on. When the procedure has as an object to detect mainly malfunctions within the system of internal control, then there is a auditor-auditee level of audit. When the procedure has as main object to find substantial irregularities in the accounts of the audited organisation, then there is a joint audit level of audit.

The Member States in a Declaration of the Intergovernmental Conference which led to the Treaty on European Union asked for the other institutions to examine along with the ECA all the means necessary for the reinforcement of its work's effectiveness.

A. Cooperation with the European Parliament

The final subparagraph of Art. 188c(4) [248(4)] provides that

"The Court shall assist the European Parliament and the Council in exercising their powers of control over the implementation of the budget".

The key-word in this disposition is "assists". The Audit Board (predecessor of the ECA), as mentioned above, had the exclusive mission to prepare the Annual Report in order to present it to Parliament to be used it in the discharge procedure. Parliament's persistent desire had always been to have the external audit institution placed at its service, as an auxiliary body.[1] The final subparagraph of Art. 188c(4) [248(4)], being so "laconic", imposes to the ECA a mission of assistance very general and similar to the assistance provided by the national audit institutions (judicial or not) of the Member States to the Parliaments of their respective countries.[2] This has caused tensions between the ECA and the Parliament, especially the Parliament's Budgetary Control Committee (BCC).[3] The BCC has considered the ECA to be no more than a technical adjunct to its own work rather than an independent audit institution.[4] There have been three main points of conflict. The fact that the ECA is providing the Commission with information not available to the BCC is one of them.[5] Another point has been the BCC's will to direct the ECA to conduct audits in a specific area.[6] And the ECA's efforts to create its own public profile and to gain public support in its criticisms concerning the European Union's financial management, did not please the BCC.[7]

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[1] G. Isaac, Renovation des institutions...., op. cit., p. 800.
[2] Ibid, p. 800.
[3] This Committee, was established as such in 1979. Before, it used to be a sub-committee and under this scheme had promoted the idea of the ECA's establishment. It has 28 members and its competences include the Financial Regulation, the discharge given by the Parliament to the Commission, the evaluation of the financing activities of the European Union, the studying of the ECA's reports and the combat against fraud. For more details, see Office of the European Parliament in Greece, European Parliament-The parliamentary institution of the European Union, Athens, 1997, p. 41.
[4] I. Harden, F. White, K. Donnelly, op. cit., p. 625.
[5] Ibid, p. 625.
[6] Ibid, p. 625.
[7] Ibid, p. 625.

The context of the assistance provided by the ECA is defined by Art. 206(1) [276(1)] of the EC Treaty. According to this

> *"The European Parliament, acting on a recommendation from the Council which shall act by a qualified majority, shall give a discharge to the Commission in respect of the implementation of the budget. To this end, the Council and the European Parliament in turn shall examine the accounts and the financial statement referred to in Article 205e[275], the annual report by the Court of Auditors together with the replies of the institutions under audit to the observations of the Court of Auditors, and any relevant special reports by the Court of Auditors."*

The Treaty of Amsterdam amended this disposition by adding to the documents that the Council and the Parliament must examine before discharging the Commission the Statement of Assurance of the ECA. This amendment had been proposed by the then Dutch Presidency of the Council in order to formalise in the Treaty a practice which existed already.

It is believed that the only "meaningful" way to assess the ECA's position in the institutional system of the European Communities is within the context of the discharge procedure.[8] The Annual Report is considered to be the "link" between the ECA and the Parliament.[9] The President of the ECA formally presents the Annual Report to the Parliament's Budgetary Control Committee by highlighting the main points and conclusions and by answering questions.[10] But in addition to the Annual Report the ECA submits to the "Budgetary Authority" (Council and Parliament) the Statement of Assurance and any relative special reports that it has adopted. This latter case of the "relative special reports" has raised some issues. These reports are treated equally to the Annual Report. So, a first problem will be how is it going to be decided that a special report is relevant to the discharge procedure?[11] And secondly, given the difference of procedures between the Annual Report and the special reports, is it going to be

[8] Ch. Kok, op.cit., p. 349.
[9] Sir N. Price, op. cit., p. 241 & National Audit Office, State Audit...., op. cit., p. 223.
[10] National Audit Office, State Audit...., op. cit., p. 223.
[11] D. Strasser, Les dispositions....,op. cit., p. 201.

necessary to organise besides the procedure of the annual discharge an ad hoc discharge procedure referring to the issue mentioned in the special reports?[12] The solution to these problems cannot be separate since they are two aspects (substantial and procedural) of the same issue: what is the use of the special reports in the discharge procedure? The context of the special reports themselves may provide the reply to the substantial aspect of the problem. A special report is by definition presenting more detailed information on a specific issue which arose during audit, thus allowing the Budgetary Authority to examine it more carefully with regard to the discharge. In everything that concerns the procedural aspect, there is no reason to have a parallel ad hoc discharge procedure. According to the relative dispositions of the Financial Regulation (Art. 78-89) the Commission has to send all the necessary information for the accounts of the year N to the Parliament, the Council and the ECA till May of the year N+1. The ECA must adopt its Annual Report by November of the year N+1. The Budgetary Authority gives the discharge to the Commission by 30 April of the year N+2. So there is a time limit of about one year and four months. Within this limit the ECA may adopt special reports concerning specific issues of the financial management of the year N. The flexibility in the procedure of adopting special reports gives this advantage to the ECA.

The special reports are very carefully and systematically examined by the Parliament.[13] When the Parliament is adopting its resolution to give the discharge to the Commission it includes in its observations specific references to the ECA's special reports.[14] So despite the above mentioned problems in the collaboration between the ECA and the Parliament, a sort of alliance between these two institutions is detected.[15] Given the political significance of the discharge procedure which can be used as a political sanction (it is very embarrassing for the Commission if the Parliament denies to

[12] Ibid, p. 201
[13] P. Lelong, op. cit., p. 117.
[14] Ibid, p. 117.

give it a discharge[16]), this alliance of the ECA with the Parliament is a very decisive element in the institutional system of the European Union.[17]

The ECA's contacts with the Parliament are very frequent at a number of levels, like the presidential (the Presidents of the two institutions), the members' level (members and staff of the ECA meet with members and officials of the BCC to analyse individual chapters of the Annual Report) and the informal level (ECA members with other members of the Parliament).[18]

B. Cooperation with the Commission

It has been pointed out that the Commission is the major spender of the European institutions since it is the competent institution for implementing the policies of the European Union. It is logical then for this institution to be the main auditee. The ECA though, using the "systems based" audit, has tried not to treat the Commission just as an auditee but also to collaborate with it on a joint audit level, especially in the fight against fraud and corruption within the European Union. This kind of relationship has made possible to organise joint audit tasks, to exchange information and to try to reconcile points of view between these two institutions.[19]

As the main auditee, the Commission must respect the dispositions of the Treaties concerning the procedure of audit namely Art. 188c(3) [248(3)] of the EC Treaty and the respective dispositions of the ECSC Treaty and the Euratom Treaty:

> *"The audit shall be based on records and, if necessary, performed on the spot in the other institutions of the Community...*
> *The other institutions of the Community ...., shall forward to the Court of Auditors, at its request, any document or information necessary to carry out its task."*

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[15] G. Orsoni, op. cit., p. 87.
[16] The Parliament has denied to give a discharge to the Commission in 1984 for the implementation of the 1982 budget. For more details on that see Ch. Kok, op. cit., p. 350-351.
[17] G. Orsoni, op. cit., p. 86-87.
[18] National Audit Office, State Audit..., op. cit., p. 224.
[19] D. Strasser, The Finaces....., op. cit., p. 280.

These dispositions have been specified by Art. 85 and 87 of the Financial Regulation according to which

> *"....the Court of Auditors shall be entitled to consult, in the manner provided for Art. 87, all documents and information relating to the financial management of the departments or bodies subject to its inspection; it has the power to make enquiries of any official responsible for a revenue or expenditure operation, and to use any of the auditing procedures appropriate to those departments or bodies.*
> *The Court of Auditors....may be present at its request, during the operations carried out by the Commission in implementation of Art. 8 and 9 of Regulation (EEC) No 729/70 and Art. 17 and 18 of Regulation (EEC, Euratom) No 1552/89....."* (Art. 85)
> *"The Commission .... shall afford the Court of Auditors all the facilities and give it all the information which the Court may consider necessary for the performance of its task, and shall in particular provide all the information obtained as a result of the checks which they have carried out, as required by the rules laid down by the Community....they shall place at the disposal of the Court of Auditors all documents concerning the conclusion and implementation of contracts and all accounts of cash or materials, all accounting records or supporting documents, and also administrative documents..., all documents relating to revenue and expenditure, all inventories, ... and all documents and data created or sorted on a magnetic medium....."* (Art. 87)

The Financial Regulation's provisions are defining what "on-the-spot audit" and "audit based on records" means. From these dispositions it is clear that the ECA has access to all documents concerning any kind of account run by the Commission. The Court is using all the information provided in order to evaluate the Commission's internal control system. The "Contradictory Procedure" followed during the drawing of a Court's report has been already described. The evaluations of the Court usually are not positive for the Commission's control system. In 1994, after the publication of a very criticising Annual Report concerning the financial year 1993, the Secretary-General of the Commission was obliged to analyse that the Commission and the ECA are really on the same side[20], acting in order to serve the Communities' interests.

This kind of conflict has existed always since the ECA's establishment. The Commission, despite some declarations of political nature, has always considered the

ECA as a Parliament's instrument against the executive authority of the Communities.[21] So, the Commission often is not willing to provide the ECA with all documents or information, when requested to do so by the Court or even the discharge authority (like in 1989).[22] In an attempt to explain the Commission's behaviour it has been suggested that since the Commission is the "guardian of the Treaties" enjoying the respective prestige, it has not been accustomed to such thorough investigation of its management and accounts.[23] A solution proposed is for the ECA to be less tactless in its observations and to realise the vastness of the Commission's task while on the other hand the Commission should consider the ECA's remarks not as pointless criticism but as a foundation for reform.[24] It has been pointed out though that because of the Communities' financial system it is difficult for a good relationship between the ECA and the Commission to be established.[25] Since the ECA had been imposed in 1977 as a framework of external accountability without any corresponding changes to the internal financial management and control of the Commission, the tension between the two institutions was inevitable.[26] The Commission exercises little managerial control over the Community resources' use by the final recipients in the Member States, thus being unable to establish a robust managerial system that the ECA could monitor through its "systems based" audit.[27] And the whole procedure concerning the Statement of Assurance may cause even bigger problems since the sampling method used in order to draw up this document is going to give room for disagreement between the ECA and the Commission concerning the real meaning of the results of the audit.[28]

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[20] I. Harden, F. White, K. Donnelly, op. cit., p. 619.
[21] G. Orsoni, op. cit., p. 88.
[22] Ibid, p. 88-89.
[23] Sir N. Price, op. cit., p. 243.
[24] Ibid, p. 243.
[25] I. Harden, F. White, K. Donnelly, op. cit., p. 619.
[26] House of Lords, Select Committee on the European Communities, Financial Control and Fraud in the Community..., op. cit., para. 32.
[27] I. Harden, F. White, K. Donnelly, op. cit., p. 619.
[28] Ibid, p. 620.

The ECA has repeatedly pointed out the "holes" in the Commission's management and control system.

So, it has been noted that the Commission's monitoring of the introduction of the Directive 77/435/EEC[29] on Scrutiny by the Member States of transactions forming part of the system of financing by the EAGGF (Guarantee Section) has been "intermittent" and consequently of "weakened quality".[30] The Commission's departments did not examine the conditions under which the accounting checks were really carried out or how the Directive fitted into the overall system of control of the Member States.[31] All these had as a result the lack of adopting the optimal control techniques on behalf of the Commissions departments (coordination between controlling departments, utilisation of programmes and audit checklists in order to standardise audit approaches, cross checking of data, etc.).[32] The Directive 77/435/EEC was once again a point of conflict between the ECA and the Commission in 1987. The Court has deemed as "less than satisfactory" the Commission's monitoring of the Directive's application because the Commission a) did not have complete records of the implementation of the Directive by the Member States, b) had not exchange views with the Member States on the implementation of the Directive since 1983, c) did not always supplied the Member States with information requested regarding the Directive, d) did not analyse the Member States' information regarding the uniform and effective implementation of the Directive etc.[33]

Also the ECA has pointed out that the Commission had not given the necessary priority in exercising its supervisory responsibilities with regard to the prevention of

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[29] OJ 1977, L-172/17.
[30] Special Report of the Court of Auditors on the implementation of Directive 77/435/EEC of 27.6.1977 on Scrutiny by the Member States of transactions forming part of the system of financing by the EAGGF (Guarantee Section), OJ 1984, C-336/8.
[31] Ibid, p. 8.
[32] Ibid, p. 9
[33] Annual Report of the Court of Auditors for the Financial Year 1987, OJ 1988, C-316/77-78.

fraud since it had not improved the organisation of its information and had not subjected control systems in the Member States to serious scrutiny with regard to their efficiency.[34] Remarks of a similar context were made again when the ECA noted that the Commission in 1986 a) had not established a system which will allow it to assess the degree of efficiency of national controls, b) had not centralised completely the information sent to it through its computerised system and c) had participated only in a very small part of the on-the-spot checks.[35] But it has been acknowledged by the ECA that the Commission had made considerable progress in reducing the delays in clearing the Member States' annual accounts of EAGGF-Guarantee expenditure.[36] Some defects though have not been eliminated yet, and the Commission is still not able to state whether the Member States' EAGGF-Guarantee accounts are correct or not.[37]

All this did not prevent the Commission from accepting as positive the fact that the ECA has been reinforced with regard to its competences and its status as an institution of the Communities after the Maastricht Treaty.[38] And, mainly after 1993, these two institutions have acted together in the battle against fraud in the European Communities. This collaboration is based on the audits performed by both institutions, even though there no joint audit procedure taking place. The ECA is auditing the Commission's internal control system against fraud while the Commission is controlling the use of Community resources by the various organisations and bodies. It is though possible for the ECA to audit the accounts of such an organisation or body at the same time with the Commission.

The Commission in 1988 set up the Coordinating Unit for the Fight Against Fraud (CUFAF, or as it is better known by its French acronym UCLAF) that has been

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[34] Annual Report of the Court of Auditors for the Financial Year 1983, OJ 1984, C-348/43-44.
[35] Annual Report of the Court of Auditors for the Financial Year 1986, OJ 1987, C-336/66.
[36] Annual Report of the Court of Auditors for the Financial Year 1987, OJ 1988, C-316/78.
[37] Ibid, p. 78-79.
[38] European Commission, Report on the function ...., op. cit., p. 28, point 69.

attached to the Secreteriat-General of the Commission.[39] This Unit has focused on three aims: prevention of fraud, cooperation with other institutions and Member States, and suppression of fraud.[40] Its operational role is to investigate complex and very serious cases of fraud, especially of international scale, in collaboration with the appropriate national authorities.[41] Comparing these aims with the above mentioned goals of the ECA in its anti-fraudulent campaign, it is obvious that the two institutions are determined to prevent fraud, and the best possible way to succeed is to cooperate. A very promising field for such a cooperation is the on the spot checks. Council Regulation 96/2185/EC[42] concerning on the spot checks and inspections carried out by the Commission, has some very interesting dispositions which could lead to such a cooperation. Especially Art. 8(3) of this Regulation which provides that the reports prepared by the UCLAF agents constitute admissible evidence in judicial proceedings. Such a provision must be made also for the reports of the ECA, regardless of whether they are published in the Official Journal or not. On the spot checks, on behalf of the ECA, are being performed in an increasing rate and the information provided by them could be invaluable in a judicial procedure against fraud or corruption. UCLAF has already launched a series of specific investigations on the basis of information supplied by the ECA.[43]

Another anti-fraud body was introduced by Council Regulation 89/2048/EEC[44], called Specialised Commission Control Body and its task is to combat fraud in the wine sector. But the staffing of this body never reached a level which would enable it to perform its duties efficiently and effectively.[45] The Court has noted that only one audit

[39] D. Strasser, The Finances...., op. cit., p. 251.
[40] Ibid, p. 251.
[41] European Commission, The Budget of the European Union: How is your money spent, Europe on the move Series, Office for Official Publications of the European Communities, 1996, p. 10-11.
[42] OJ 1996, L-292/2.
[43] European Commission, Protection of Community Financial Interests-Fight against fraud, Annual Report 1996, (www.europa.eu.int/comm/sg/uclaf/ar1996.htm).
[44] OJ 1989, L-202/32.
[45] Annual Report of the Court of Auditors for the financial year 1996, OJ 1997, C-348/89.

was carried out by this body during 1996 and at the end of 1996 there is only one controller to this body and he is integrated in the Commission's clearance department.[46] Because of this de facto abolition of this body, a question was posed, whether the Commission considered that the tasks this body was designed for are unnecessary.[47] The Commission replied that this situation exists because there is a regrouping of the control functions within Directorate General VI, where this body belongs, and because it is difficult to find staff qualified for such a position.[48]

The problem of fraud in the European Communities has a significant structural dimension since there is a complex system of collecting and paying money through agencies without a natural interest in the efficient and fair operation of that system.[49] So, it is in the Communities' interest for the two institutions charged with internal control (Commission) and external audit (ECA) to be able to work together against fraud. The Commission, being the financial manager of the Communities, may be able to identify fraudulent behaviour, since there are also the necessary legislative and empirical definitions. The ECA, on the other hand, has all the necessary expertise to audit the accounts and through its "systems based" audit, it is able to see which are the weak points of the European financial management's system. The exchange of information, the performance of joint audits (even on-the-spot audits), the cooperation in general between the Commission and the ECA may be very fruitful in the fight against fraud. The combination of these institutions' abilities is one of the most important weapons that the European Union has in order to fight fraud and corruption.

[46] Ibid, p. 89-90.
[47] Ibid, p. 90.
[48] Ibid, p. 98.
[49] A. Sherlock, Chr. Harding, op. cit., p. 25.

C. Cooperation with the Council

According to Art. 206(1) [276(1)] of the EC Treaty the Parliament will give the discharge to the Commission acting on a recommendation by the Council. So, it is during the discharge procedure that there is the main interface between the ECA and the Council.[50] The Council's recommendation is prepared by a subordinate committee of budgetary experts, within the framework of the Committee of Permanent Representatives (COREPER).[51] The context of this recommendation is an attempt (but not a successful one) to compromise politically the Member States' point of view on the issues raised in the discharge procedure by the ECA's reports.[52] These reports have not, so far, been examined carefully by the committees preparing the Council's recommendation.[53] The reason for this has been that the members of these committees have been very busy and did not welcome the addition to their tasks of the examination of a document with the size and the complexity of the ECA's Annual Report.[54] The ECA has let the Council know its disappointment about this situation and the Council has promised to improve it.[55] So, it has been recently decided that any future report from the ECA will be carefully studied by a relevant committee of the Council or a working party from the COREPER.[56] In any case though, the Council is not obliged to take action according to the ECA's reports and it does not have to justify its choises.[57]

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[50] I. Harden, F. White, K. Donnelly, op. cit., p. 625.
[51] Ibid, p. 625, Ch. Kok, op. cit., p. 352, D. O' Keeffe, op. cit., p. 183.
[52] Ch. Kok, op. cit., p. 352.
[53] I. Harden, F. White, K. Donnelly, op. cit., p. 625.
[54] Sir N. Price, op. cit., p. 242.
[55] Ibid, p. 242.
[56] I. Harden, F. White, K. Donnelly, op. cit., p. 625.
[57] D. O' Keeffe, op. cit. p. 183.

D. Cooperation with the European Investment Bank.

The cooperation between the ECA and the European Investment Bank (EIB) has not been the best possible so far. A description of the problem had been made by the ECA in its Annual Report for the Financial Year 1987:[58]

> "The Court has never attempted in any way to audit operations carried out by the European Investment Bank from its own resources. The Court has nevertheless been obliged to observe that greater and greater obstacles have been put in the way of the exercise of its audit prerogatives, as defined in the Treaties, over the Community resources used under the Commission's responsibility to finance operations in which the EIB is, in one way or the other, involved (EIB management of funds as the Commission's agent, interest subsidies, co-financing, etc.)
> The most substantial, in terms of volume, of the resources that are managed by the EIB are borrowed on the financial markets by the Commission and redistributed by it, with the help of the EIB. In its annual Report on the financial year 1986 the Court noted that when it "came to carry out its audit of the NCI loan transactions for the financial year 1985 it turned out that the information and documents requested from the Commission and supplied by it were not adequate for the Court to be able to express an opinion as to the extent to which the objectives set out by the Council of Ministers in its Decisions had been achieved". These repeated observations have led the Court to be especially vigilant as regards the way in which the Commission fulfils its obligations as manager of the funds in question and, consequently, the procedure by which it exercises its own powers of control....
> The fact however is that the Court was obliged to observe during audit visits in October and November 1987 that the EIB had approached beneficiaries of NCI loans managed by the Bank on behalf of the Community in order to prevent the Court from exercising its audit prerogatives on the spot. The argument put forward was that, as the funds in question were being managed by the EIB as the Commission's agent, the beneficiaries could not permit an audit visit from the Court without having received prior "audit authority" from the Bank..."

This conflict forced the Commission to try and conciliate the opposing points of view and the result of this effort has been the reaching of an agreement in June 1989 between the ECA, the EIB and the Commission.[59] The agreement is covering all transactions before and after its signing and it is renewed every three years.[60] According to its wording there are two types of audit that the ECA may perform with regard to the EIB financial management.

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[58] OJ 1988, C-316/19.
[59] D. Strasser, The Finances....., op. cit., p. 130-131.
[60] The agreement is not published in the Official Journal of the European Communities.

First, there is the audit based on documents and records ("Documentary Audit"). During this audit the EIB and the Commission have to place at the ECA's disposal all information necessary for a complete audit, always based on the ECA's audit approach (mainly the "systems based" audit). The procedure for this exchange of information is drawn up as follows: a) the Commission's departments place at the ECA's disposal all the information listed in the Annex of the agreement, b) the ECA's departments inform the 19th (XIX) Directorate General of the Commission about the information they need and they send a copy of this request to the EIB's departments concerned, c) the EIB place the information required at the disposal of the XIX DG of the Commission and sends a copy at the ECA.

The second type of audit is the on-the-spot audit. According to the agreement the ECA informs the Commission about the transactions that it considers necessary to be audited on-the-spot. Also it proposes a certain time-schedule for the performance of these audits. The Commission lets the EIB know about the information received from the ECA. The EIB asks its Verification Committee to take the necessary action in order to perform these audit in common with the ECA. Accordingly the audits' programme is decided jointly by the Verification Committee and the ECA. The logistics of the audit missions fall within the Verification Committee's responsibility. The Commission, the EIB and the ECA exchange information with each other concerning their respective approach to audit, in order to be prepared. It is noteworthy that the Commission participates in the preparation and performance of the audits especially when it is invited by the ECA to do so. The ECA representatives during the audit mission may examine all documents necessary and pose any question that they think is useful. Of course the ECA representatives have to respect the obligation of professional secrecy (Art. 214 [287] of the EC Treaty) and the banking secrecy. After every visit the ECA and EIB delegations draw up their reports which, of course, they send to each other. As in the case of the

Annual Report, the ECA sends to the EIB and the Commission its observations and they send to it their replies, before the official publication of any audit results. The information obtained during the on-the-spot audits is treated as discretely as possible. In case of co-financed projects, the ECA makes no use of any information relative to the part of the project not financed by the European budget.

In case of any difficulties there is a conciliating procedure during which the Presidents of the ECA, the EIB and the Commission meet and attempt to resolve the problems arisen, especially during the implementation of the agreement.

The attention paid to the relations between the ECA and the EIB is demonstrated also by the amendments made by the Treaty of Amsterdam to Art. 188c(3) [248(3)] of the EC Treaty. An extra subparagraph has been added providing that

> *"In respect of the European Investment Bank's activity in managing Community expenditure and revenue, the Court's rights of access to information held by the Bank shall be governed by an agreement between the Court, the Bank and the Commission. In the absence of an agreement, the Court shall nevertheless have access to information necessary for the audit of Community expenditure and revenue managed by the Bank."*

So, the agreement is now mentioned by the Treaties, thus having a very upgraded status. But what must be noted is the fact that even without such an agreement, the ECA, according to the new provisions, has the right to access information concerning the EIB's financial management of Community resources. From now on then the EIB is obliged to place at the ECA's disposal every document or record concerning projects financed (or co-financed) by the European Communities.

Chapter Four

Collaboration between the European Court of Auditors and other Audit Institutions

A. Collaboration between the European Court of Auditors and the National Audit Institutions of the Member States of the European Union

The legal framework regarding the relations between the ECA and the National Audit Institutions of the Member States is Art. 188c(3)[248(3)] providing that

> *"The audit shall be based on records and, if necessary, performed on the spot... in the Member States. In the Member states the audit shall be carried out in liaison with the national audit bodies or, if these do not have the necessary powers, with the competent national departments. These bodies or departments shall inform the Court of Auditors whether they intend to take part in the audit.*
> *.... the national audit bodies or, if they do not have the necessary powers, the competent national departments, shall forward to the Court of Auditors, at its request, any document or information necessary to carry out its task."*

These dispositions may be considered as a specification of Art. 5 [10] of the EC Treaty which provides for the obligation of the Member States to contribute actively to the function of the Community:

> *"Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks.*
> *They shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty."*

By comparing these Articles, it is obvious that even if the provisions of Art. 188c(3) [248(3)] did not exist, Article 5 [10] could form a legal basis in order to establish some kind of cooperation between the ECA (as a Community institution) and the National Audit Institutions of the Member States.[1] This does not mean that Art. 188c(3) is unnecessary. On the contrary, its usefulness has been proven so far several times.

The ECA, since its establishment, took advantage of these provisions and tried to develop as much as possible its relations with the national audit authorities of the Member States. The key-word in this effort is "liaison". This liaison is realised as

follows: Each member of the ECA, within the sector allocated to him/her, notifies the respective national audit institution of the date and nature of the audits planned, at least two months in advance, using a so called "letter of notification".[2] The audit areas covered by this liaison do not include only cases of direct Member State responsibility for the implementation of the Community budget and the production of accounts for Community funds (EAGGF-Guarantee Section, Own Resources system).[3] Cases of national administration handling aid applications and payment requests for the ultimate beneficiaries (especially from the Structural Funds) are also examined.[4] The frequency of these contacts depends on the ECA's annual programme of work and the organisation of audits in each sector.[5]

This liaison takes place at a number of levels. First of all, there is a very important forum of communication between the national audit institutions of the Member States and the ECA, which is the Contact Committee of Heads of Supreme Audit Institutions.[6] Each year, the presidents of the national audit institutions and the ECA president meet alternately in Luxembourg (even-number years) and in a Member State.[7] They discuss mainly technical issues and matters of coordination. Indicative of the range of these discussions is the agenda of the Committee's meeting on 29-30 October 1997 which included issues like the auditing of VAT in internal Community Transactions, the formation of general auditing standards, the cooperation between the ECA and the national audit institutions inside and outside the European Union, the role and auditing methods of the supreme audit institutions concerning procurement contracts and the Amsterdam Treaty.

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[1] For a detailed analysis of Art. 5 [10] of the EC Treaty see J. Temple Lang, The Duties of National Authorities under Community Constitutional Law, Durham European Law Institute, 1997.
[2] D. Strasser, The Finances....., op. cit., p. 281.
[3] T. M. James, op. cit., p. 481.
[4] Ibid, p. 481.
[5] D. Strasser, The Finances....., op. cit., p. 281.
[6] T. M. James, op. cit., p. 482.

Another way of contact is via liaison officers. The ECA and the national audit institutions have each appointed a liaison officer, i.e. an officer responsible for day-today contacts, the ironing out of any difficulties regarding ECA audits in the Member States, the exchange of information and reports of mutual interest, the arrangements for upcoming audits etc.[8] These liaison officers meet twice each year in Luxembourg and they discuss issues for which they are responsible. During these meetings they also prepare the issues that are going to be included in the agenda of the annual meeting of the Contact Committee of Heads of Supreme Audit Institutions.

The objective of these contacts is to establish a functional link between the ECA and the national audit institutions.[9] The collaboration requirements set by the dispositions of the EC Treaty demand for such a link. The most common and important case in need of a form of cooperation between the ECA and the national audit institutions is the case of on the spot audits in the Member States. As it has been noted before, the ECA's objectives in every audit is to conclude whether the transactions under audit have been legal and correct (regular) and whether the financial management has been sound. This latter objective, being a more recent concept, has not been so far something with which all national audit institutions were familiar. Thus techniques and auditing standards used in order to establish the soundness of financial management may be unknown to the national audit institution and difficult to understand. All these problems may be solved if the national audit institution is well informed on these issues by the ECA and cooperates with it, during the audit.[10] The national audit institutions through these contacts familiarise themselves with the context of national expenses that are financed by the Communities' budget, being thus also Communities' expenses.[11] So, it is easier for these

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[7] Ibid, p. 482, & D. Strasser, The Finances....., op. cit., p. 281.
[8] T. M. James, op. cit. p. 482-483 & D. Strasser, The Finances...., op. cit. p. 281.
[9] European Court of Auditors, op. cit., p. 24.
[10] Sir N. Price, op. cit., p. 243-244.
[11] P. Lelong, op. cit., p. 111.

national audit institutions to perform their auditing duties going beyond the simple legality and regularity audit, to appreciate the effectiveness and the efficiency of the Union's financial policies and management.[12] Also, it must not be ignored that in the Member States there is a variety of audit systems, sometimes completely different from each other. It is thus difficult for the ECA auditing staff to keep track of all these systems in order to perform their audit tasks, without any assistance from the national audit authorities. So, through the liaison the ECA is being constantly informed on the audit systems of the Member States in order to have a complete picture of the audit situation in the Union's members.

On the spot audits create also another side effect. The auditors' reports after the audits may contain comments, remarks or conclusions which of course cannot be officially announced until they are approved by the ECA. And when the audit has revealed something of immediate urgent concern for the work of the national administration, then there is a problem. It has been mentioned before that within the framework of the "Contradictory Procedure", every auditee has the right to be informed about the remarks of the ECA. But the ECA has been appointed as the external auditor of the Communities and the European Union, not the Member States.[13] The ECA therefore is obliged to direct its draft-reports to the Commission, and if in the report there are points that require remedial action, it is the Commission that has to put things right in collaboration with the Member States.[14] But the national audit institutions have requested to be informed in any such occasion that defaults in the national administration's management of Community resources are detected.[15] The ECA, being aware of the fact that the auditee, on the European Union's behalf, is the Commission, has agreed to give notice to the national audit institutions of any matter of national

[12] Ibid, p. 111.
[13] Sir N. Price, op. cit., p. 245.
[14] Ibid, p. 245.

interest, before the publication of the respective report but after the Commission has been informed of the final text.[16] Especially for the ECA's Annual Report, the members of the ECA inform the national audit institutions about the contents of the report and if a national audit institution wishes to comment thereon, the ECA may take these comments under consideration.[17]

Nevertheless on the spot controlling activities are very important in order to examine the quality of the European resources' management by the national authorities. This is verified by the fact that in Art. 10 of Council Regulation 95/2988/EC there is a provision regarding adoption of further legislative measures for on the spot inspection and checks. Accordingly, Council Regulation 96/2185/EC[18] concerning the details of such on the spots checks was adopted. This Regulation, however, provides only for the on the spot controls performed by the Commission. These provisions do not include on the spot audits performed by the ECA since these latter ones are covered directly by Art. 188c(3) [248(3)]. It should be noted that since both the Commission and the ECA are performing on the spot controls, it necessary to establish a coordinated working relationship. Thus double checks regarding the same issue will be avoided and the controlling activities will cover a larger number of transactions.

Included in the provisions of Art. 188c(3) [248(3)] is the possibility for the national audit institutions to take part in audits performed by the ECA in the Member States. This is a more advanced form of cooperation between the ECA and the national audit institutions. Such a form of cooperation had been discussed during a meeting called "The Europe of 1992", organised by the ECA in Luxembourg in 1990.[19] The name of

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[15] T. M. James, op. cit., p. 484.
[16] Ibid, p. 484.
[17] Ibid, p. 484.
[18] OJ 1996, L-292/2.
[19] D. Strasser, The Finances....., op. cit., p. 281.

this new cooperation level was called "Joint Audit" and according to the definition formulated in the meeting it

> "is an audit carried out jointly by a national audit institution and the European Court of Auditors on Community revenue and expenditure on the basis of a common plan and approach by a joint team with a view to reaching joint conclusions which may lead to a joint or separate report."[20]

Judging from the definition, the joint audit demands for an audit team formed by auditors from the ECA and a national audit institution. This team must have a common plan and approach not only to the object but also to the method of audit, conditions achievable if there is a collaboration between the ECA and the national audit institutions as described above. The audit must have joint conclusions but the necessary reports may be separated. The distinction between the conclusions and the reports in which these conclusions will be presented is creating some doubts about their homogeneity. It is always possible that in one report the conclusions may be presented in a different way than in the other report, creating thus different impressions and confusion concerning the audited transactions. In order to avoid such a situation, the only solution is to abolish this distinction and the conclusions should be presented in one report, common for everyone involved in the audit.

Within the framework of the cooperation of the ECA with the national audit institutions one of the most important issues is the adoption of auditing standards. The Contact Committee of the Heads of the Supreme Audit Institutions, during its meeting in Madrid on 24-25 September 1991 decided to form a working group that would elaborate proposals on auditing standards. So far this group has prepared nine proposals which have been called "Guidelines of Audit in the European Community". They include programming of audit, evidence and method of audit, evaluation of internal control and sampling audit of accordance, documentation of audit, reassurance of audit quality,

[20] Ibid, p. 281-282.

importance and risk of audit, audit sampling, audit reporting, audit of irregularities based on fraud. Of course all these standards do not have a regulative nature, so far, but their usefulness for every national audit institution is obvious, taking into account the continuously developing collaboration of the ECA with the national audit institutions.[21]

The cooperation between the ECA and the national audit institutions has been a very important issue since the decentralisation of Community management towards the national authorities started increasing.[22] The ECA though has had a negative experience with decentralisation in the past. The transfer of management responsibilities by and/or from the Commission have resulted sometimes in a refusal of ECA's access to information necessary for its auditing tasks.[23] The ECA has presented the implications of this shared management in its Annual Report for the year 1987:

> "Most Community budgetary expenditure is managed either by entrusting management responsibilities to authorities or economic agents in the Member States (for example, agricultural guarantee spending or the collection of own resources) or is managed jointly with the Member States (e.g. in the case of the structural policies). The consequences of sharing management responsibilities in this way are felt when the time comes to audit them. The checks are carried out by and in the Member States, acting in association with the Commission. Although different in nature, these management procedures have this much in common, that they presuppose, in accordance with Art. 5 of the EEC Treaty, active cooperation between the Commission and the Member State authorities concerned, particularly as regards monitoring, exchanges of information, coordination and the follow-up to any results thus obtained.
> ....the Court must emphasise that the Commission has not always been sufficiently active in the matter of coordination and supervision, in particular as regards the question of ensuring that national controls are carried out on an integrated basis from the Community point of view. Serious shortcomings in this area lead not only to a yawning gap between the intentions of the legislator and the practical application of the measures at local level, but may also have by no means negligible consequences for the Community's finances."[24]

Another aspect of this wrongly implemented decentralisation policy has been pointed out in the Court's Annual Report for the financial year 1996. The Commission can recover

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[21] Court of Audit of the Hellenic Republic, Community Auditing Standards, National Press Office, Athens, 1996.
[22] European Court of Auditors, op. cit., p. 24.
[23] Ch. Kok, op. cit., p. 362. The most characteristic example has been the case of the European Investment Bank, analyzed in the third Chapter.

wrongly used funds only by proving this wrong use, so it is necessary for all beneficiaries and intermediary organisations to have accounting and control systems which could provide with sufficient and relevant evidence regarding their management.[25] Unfortunately such a management information and accounting system has not been created, thus not permitting the Community authorities to exercise their overall supervisory function.[26]

From this presentation it is obvious that the cooperation between the ECA and the national audit activities is not a mere legal obligation but also a necessity dictated by the fact that Community and national management competences have become intimately linked.[27]

Given the vast amount of transactions that must be audited, it has been suggested that the ECA would ask the national authorities to actually carry out on-the-spot audits on its behalf and report directly to it the results.[28] But such a effort would have to overcome two very important difficulties. First, the above mentioned difference in traditions of public audit controls between the various Member States. Second, in most Member States, the national audit authorities are part of the administrations, the management qualities of which are going to be audited. So, problems of uniformity and objectivity are going to arise.[29]

Such an important and yet delicate point could not pass undetected during the negotiations of the Intergovernmental Conference which led to the Treaty of Amsterdam. According to the new dispositions

> *"The audit shall be based on records and, if necessary, performed on the spot..., on the premises of any body which manages revenue or expenditure on behalf of the Community and in the Member States, including on the premises of any*

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[24] OJ 1988, C-316/17-18.
[25] Annual Report of the Court of Auditors for the financial year 1996, OJ 1997, C-348/8.
[26] Ibid, p. 8.
[27] European Court of Auditors, op. cit., p. 24.
[28] D. O' Keeffe, op. cit., p. 191.
[29] Ibid, p. 191.

natural or legal person in receipt of payments from the budget. In the Member states the audit shall be carried out in liaison with the national audit bodies or, if these do not have the necessary powers, with the competent national departments. The Court of Auditors and the national audit bodies of the Member States shall co-operate in a spirit of trust while maintaining their independence. These bodies or departments shall inform the Court of Auditors whether they intend to take part in the audit.

.... any bodies managing revenue or expenditure on behalf of the Community, any natural or legal person in receipt of payments from the budget, and the national audit bodies or, if they do not have the necessary powers, the competent national departments, shall forward to the Court of Auditors, at its request, any document or information necessary to carry out its task."

These amendments are the result of a proposal by the Dutch Presidency. The ECA, according to Art. 188c(3) [248(3)], has the right and obligation to audit all Community funds, regardless of the manager of these funds. In order to exercise this audit more efficiently the ECA's right of access to information must be recognised unambiguously. And thus, the wording of the new dispositions allow the ECA to perform on the spot audits on the premises of every body managing revenue or expenditure on behalf of the Community and of any natural or legal person in receipt of Community funds.

There is also another new provision concerning the way that the ECA and the national audit bodies of the Member States shall cooperate. Both sides must work together in a spirit of trust while maintaining their independence. Trust in a joint audit is vital. When there is a large number of transactions that must be audited, it is easy to understand that it is impossible for each auditor of the auditing group to check all the respective accounts. Therefore there is a division within the auditing group into smaller teams and each team undertakes the audit of certain accounts. In these teams there are auditors of both the ECA and the national audit institution. Each team has confidence that the others perform their duties equally well. The European auditors trust that the national auditors will do their job correctly and vice versa. Within this auditing scheme there is no hierarchy between the ECA and the national audit institutions. The auditors are independent from each other and they cooperate on equal terms. This equilibrium is

based on the following elements: The European auditors are more accustomed and informed in everything that concerns the ECA audit methods and requirements. The national auditors are well aware of the national financial systems and auditing requirements. So, each side contributes with its knowledge and experience to the joint audit.

But there has been yet another proposal for amendment, brought forward by the British delegation. According to this proposal[30], the option of national audit authorities to refuse to cooperate with the ECA should be eliminated. This proposal was not accepted by the Intergovernmental Conference. This rejection is obviously the result of a more political than legal or even financial point of view. The elimination of this option would be considered to signify a quasi-hierarchy between the national audit institutions and the ECA, giving precedence to the latter. Given that the joint audit procedures and methods have not been standardised yet, this option has a reason to exist. But when there are standard procedures and methods of joint audits, adopted to each Member State's financial system, any denial by the national audit institutions to take part in the audit is going to be pointless. After all, the European integration procedure is advancing rapidly, at least in the financial sector, so the joint audit procedure is going to be the rule and not the exception (as it is now) in the European Union's financial management scheme.

B. Collaboration between the European Court of Auditors and National Audit Institutions outside the European Union

The ECA has not restricted its activities to only auditing the implementation of the European Union's budget. Since its establishment it has tried to develop its relations with respective audit institutions outside the Union. In order to do that, the ECA joined the two international organisations comprising audit institutions.

[30] A. Duff (Ed.), The Treaty of Amsterdam, Federal Trust, Sweet & Maxwell, 1997, p. 170.

The first one is the International Organisation of Supreme Audit Institutions (INTOSAI). This organisation comprises most of the supreme audit institutions of the United Nations or its specialised agencies.[31] INTOSAI was first established in Cuba in 1953. Now its head office is established in Vienna, at the Austrian Court of Audit. According to the regulations of INTOSAI[32] this organisation's purpose is to promote the exchange of ideas and experience between supreme audit institutions with regard to financial and administrative control. Its organs are, according to the same regulations, a congress (all the members), a Managing Committee (15 members meeting certain criteria), a Secretariat-General (in Vienna), regional working groups and standing committees. The ECA is not actually a member of INTOSAI, even though most of the national audit institutions of the Member States have already joined this organisation. ECA's role has been confined to attending INTOSAI congresses as an observer.[33]

The other international organisation is the European Organisation of Supreme Audit Institutions (EUROSAI). It was formed in Madrid in 1990, within the framework of INTOSAI.[34] Its head office is established in Madrid at the Audit office of Spain. In general it has the same purpose with INTOSAI but its interest is confined to problems connected with public finances in Europe.[35] The ECA is a full member of EUROSAI and as the external audit institution of the European Union, its role within this organisation is a vital one.

In addition to these two organisations, the ECA has developed on its own initiative relations with the Supreme Audit institutions from Central and East European Countries (CEEC). In October 1996, a meeting was held in Luxembourg between the ECA and the Supreme Audit Institutions of Central and Eastern Europe

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[31] D. Strasser, The Finances....., op. cit., p. 282.
[32] Articles of Association of INTOSAI dated 30 May 1968 & Procedure for the meetings of the Managing Committee of INTOSAI dated 10 May 1966.
[33] D. Strasser, The Finances....., op. cit., p. 283.
[34] Ibid, p. 283.

representatives.[36] Thus a new cooperation was established and according to the ECA's point of view, it can be compared with the existing cooperation between the ECA and the national audit institutions of the Member States.[37] The aim of this cooperation is the strengthening of the audit capacity of these countries, which is a very important element for their preparation for future EU membership.[38] The forms of cooperation are going to be the same as the ones used between the ECA and the national audit institutions of the Member States: joint audits, parallel audits, exchange of information etc.

It must be pointed out that all these contacts of the ECA with supreme audit institutions from inside and outside the European Union are very useful. The political changes in Central and Eastern Europe, the information technology revolution, the increasing demand for more accountability for public funds and for more information about public spending are issues that all audit institutions, including the ECA, must deal with as part of their regular work.[39] The contacts between them allow them to learn from each other and to develop common doctrines about audit, common auditing standards, common auditing methods. The ECA, as an audit institution of a sui generis scheme as the European Union, has a lot to offer but also a lot to gain from this kind of cooperations.

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[35] Ibid, p. 283.
[36] The meeting was named "Actions to assist the CEEC, the new independent states (former USSR) and Mongolia". See EUROSAI, issue No. 3, 1996, p. 11-12.
[37] European Court of Auditors, Press Release, 7-8 October 1997.
[38] Ibid.
[39] Ch. A. Bowsher, Mutual Experience does benefit all, IJGA, Vol.23, No 4, October 1996, p. 1-2 (1).

Chapter Five

The European Court of Auditors and the Policies of the European Union

Audit institutions have always considered interfering with political choices as something that is beyond their jurisdiction. This is the case for the ECA too. It has been analysed before what the limits of the ECA's competence are. It must be said though that the Court is entitled to take stock of policy decisions in order to clarify issues for the budgetary authority and the decision-makers.[1] This helps the Court to be as accurate as possible in its evaluations and to reach conclusions after taking into account all aspects (political, legal, financial, social) of an issue. So it is normal for the ECA to assess the policies adopted and implemented by the European Union.

A. The Common Agricultural policy

The Common Agricultural Policy (CAP), being the Union's premier common policy, has attracted the ECA's interest. The cost of the CAP, incurred mainly by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), has covered the major proportion of the European Union's budget despite its downward trend. In 1996 it was 48,6% of the total budget expenditure while in 1988 it was 59%.[2] The ECA, not being able to comment on whether this amount should be spent on CAP or not, focused on the management of the relative resources. Its findings were that the existence of numerous management committees resulted in fragmentation of responsibility for the financial aspects of the CAP implementation and prevented any effective action to limit expenditure.[3] The national controls concerning the quantity and quality of agricultural products eligible for Community funding were "very few or

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[1] European Court of Auditors, Sound Financial Management in the European Union Budget, Luxembourg 1997, p. 9.
[2] Eurostat, The European Union: Key Figures, Office for Official Publications of the European Communities, 1997, p. 37.
[3] European Court of Auditors, Sound Financial Management..., op. cit., p. 15.

superficial, or simply non-existent".[4] The objectives of the CAP, set by the EC Treaty,[5] have not always been taken into consideration. An example is the objective of the stabilisation of markets. The ECA has noted that since consumer demand has remained steady while productivity gains, there should have been a more balanced development of production, income and agricultural prices.[6] With regard to the assistance provided under Community subsidies, the Court has suggested the sugar market as a model for all the other market organisations because it was financed by producers themselves.[7]

When examinations of stocks' management took place, the Court, using its "system based" audit, spotted shortcomings in the quality of inventories, inaccurate monthly declarations of expenditure and an inadequate regulatory framework.[8] The same audit method, used in the area of export refunds, revealed inadequate customs controls, absence of risk analysis and misuse of the refunding advantages by traders.[9] It is obvious that both the storage and refunds areas are very sensitive to fraud. Another issue that has attracted the ECA's interest has been the implementation of the Integrated Administrative and Control System (IACS) for aid applications made by farmers. This system, introduced by Council Reg. 92/3508/EEC[10], has four main elements: a) the aid applications submitted annually by farmers indicating agricultural parcels for which the aid is requested, b) a computerised data base which will record the data provided by the applications, c) an alphanumeric identification system for the agricultural parcels in order to locate the areas declared and to monitor them via computerised cross checks and on the spot checks, d) an integrated control system for administrative control and field

[4] Ibid, p. 16.
[5] According to Art. 39 [33] of the EC Treaty the CAP has the following goals:
1) to increase agricultural productivity; 2) to ensure a fair standard of living for the agricultural community; 3) to stabilise markets; 4) to assure the availability of supplies; 5) to ensure that supplies reach consumers at reasonable prices.
[6] European Court of Auditors, Sound Financial Management...., op. cit., p. 16.
[7] Ibid, p. 16.
[8] Ibid, p. 17.
[9] Ibid, p. 17.
[10] OJ 1992, L-355/1.

inspections. The Court used its "system based" method to examine the IACS. The first remark was that the introduction of a system based on applications caused a series of bureaucratic procedures and increased the administrative work required by the national administrations in order to deal with these applications.[11] With regard to the computerised data base, the Court concluded that only the United Kingdom had applied adequate standards for computer developments whilst weaknesses and incompatibilities appeared in other countries.[12] In that field the Commission should have been more active and ensure good computer practice either by making reference to general industry standards or by using the guidelines issued by its own Informatics Directorate.[13] The administrative checks should include cross checks meant to detect double declarations of parcels.[14] The effectiveness of such controls is linked to the existence of a well established alphanumeric identification system and a fully developed computerised data base, which did not exist in the first years of the system's implementation.[15] Also the Court noticed that even though the payment of the aid should be made between 16 October and 31 December each year,[16] most of the Member States could not keep this deadline because they had to perform all necessary administrative checks.[17] So, in order to pay in time, the national administrations made the payments before completing the checks[18], making thus the area of aids very vulnerable to fraud. The situation had become worse because of the falsely completed inspection reports. These reports should indicate, among others, which agricultural parcels were measured during the inspection.[19] But in

[11] Annual Report of the Court of Auditors for the financial year 1996, OJ 1997, C-348/75.
[12] Ibid, p. 76.
[13] Ibid, p. 82-83.
[14] Ibid, p. 77.
[15] Ibid, p. 77. The cross checks system was implemented initially only in Italy (1993) and it was gradually developed in the other Member States. At the end of 1996 though, Greece, Ireland and Portugal had not yet developed the cross checks system.
[16] Council Regulation 92/1765/EEC, OJ 1992, L-181/12.
[17] Annual Report of the Court of Auditors for the financial year 1996, OJ 1997, C-348/77.
[18] Ibid, p. 77.
[19] Art. 12 of Commission Regulation 92/3887/EEC, OJ 1992, L-391/36.

the majority of cases, the Court found that the agricultural parcels measured were not specified, not allowing the checks performed to be revised.[20]

Another fault noted by the ECA is the complexity of the Regulations concerning CAP. There is a very large number of Regulations (several thousand) covering a very wide range of issues and these Regulations are renewed at a variable rate, depending on the subject matter, while their provisions are often very complicated.[21] So, there is always an uncertainty as to whether an issue is covered by a Regulation or not, and if it does, whether this Regulation has been amended by another one. A characteristic example is the case of IACS. The Court has found that the Regulations concerning this system were not precise enough and their instructions were vague while "the implementation regulation did not properly reflect some the provisions laid down in the Council Regulations".[22]

The background for changing this situation was provided by the Council Decision 88/377/EEC[23] concerning budgetary discipline. This Decision was followed by an Interinstitutional Agreement on 29 June 1988[24] on budgetary discipline and improvement of the budgetary procedure. The perspectives adopted with these documents divided Community expenditure in six categories[25] setting a ceiling for each of them regarding annual commitment appropriations. With regard to the CAP, the ceiling took the form of an "agricultural guideline". According to this guideline, the expenditure ceiling for the CAP of the financial perspective in year x corresponds to the basic amount of 27.500

[20] Annual Report of the Court of Auditors for the financial year 1996, OJ 1997, C-348/79-80.
[21] European Court of Auditors, Sound Financial Management...., op. cit., p. 18.
[22] Annual Report of the Court of Auditors for the financial year 1996, OJ 1997, C-348/82.
[23] OJ 1988, L-185/29.
[24] OJ 1988, L-185/33.
[25] 1) EAGGF-Guarantee Section (CAP), 2) Structural operations, 3) Policies with multiannual allocations, 4) Other Policies, 5) Repayments and administration, 6) Monetary Reserve. For a detailed analysis regarding these issues see P. Zangl, The Interinstitutional Agreement on Budgetary Discipline and Improvement of the Budgetary Procedure, CMLRev, Vol. 26, 1989, pp. 675-680 & L. Kolte, The Community Budget: New principles for finance, expenditure planning and budget discipline, CMLRev, Vol. 25, 1988, pp. 487-501.

millions ECU for 1988 plus 74% of the real rate of increase in GNP between 1988 and year x.[26] The ECA has evaluated this guideline positively:

> "The fact is that agricultural expenditure to date has always remained within the limits of the guideline, despite various unforeseen events ranging from German unification to the "mad cow" crisis and excessive compensation for cereal producers. The agricultural guideline has thus proved to be a useful instrument of EU financial policy, even if it is at its most effective in the area of budgetary management, and despite the fact that the EAGGF appropriations have been under-utilised for a number of years. There is every reason to suggest that the guideline should be maintained for a number of years to come. The matter would need to be reconsidered, however, should the financing of structural aspects of agricultural policy be taken over by the Guarantee Fund in the future."[27]

Within this framework the Council attempted to erase some of the CAP's disadvantages with the 1992 reform. The overall aim of this reform was to reduce the CAP's cost without damaging its competitiveness in the world market.[28] The production had to be limited. The Council's reforms tried to balance production and demand, to reduce the volume and increase the quality of agricultural products, and to discourage overproduction which is disastrous for the environment.[29] The ECA considered that the Council's attempts did not go that far. In the Court's opinion the only way of limiting expenditure and redistributing income is abandoning guaranteed prices and placing a ceiling (or even regionalising) on individual compensatory aids for producers.[30] Developing the 1992 reform is crucial for the ECA. The price guarantees' system should be replaced gradually by a form of individual subsidies completely unrelated to production or prices.[31]

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[26] P. Zangl, op. cit., p. 680.
[27] European Court of Auditors, Sound Financial Management...., op. cit., p. 21.
[28] P. Fontaine, Europe in Ten Points, Office for Official Publications of the European Communities, 1995, p. 20.
[29] Ibid, p. 21.
[30] European Court of Auditors, Sound Financial Management...., op. cit., p. 27. According to the ECA's information only 20% of farms account for about 80% of production and consequently receive 80% of EAGGF subsidies. This minority of producers ought to be fully able to cope with external competition. The ECA thinks that if subsidies are adjusted to economically homogeneous regions, it will be possible to maintain the minimum of aid necessary for these producers and to make substantial savings which can be allocated to other objectives (environmental or social issues).
[31] Ibid, p. 27.

Another factor taken into account by the ECA is the possible enlargement of the European Union to the East. The Commission has estimated that after a transitional period of accession, on the assumption that conditions remain unchanged, the CAP's cost will be increased by 30% (about 12.000 millions ECU) while the new Member States' contributions in the form of own resources will cover only 25% of this increase (3.000 millions ECU).[32] These numbers are a good reason for trying to reduce the CAP's cost.

The ECA has also made some other remarks. Regarding the relation between agriculture and health/public hygiene, it noted that these latter issues have not been included as a general objective of the CAP in Art. 39 [33] of the EC Treaty.[33] The Court has pointed out also that more attention must be paid to the industrial utility of agricultural products (plants as energy sources, tax relief for "green energy" etc).[34] And with regard to the environment in general, it is the ECA's opinion that intensive agriculture is damaging the European landscape creating problems not only for the population as a whole but for agriculture itself (bad quality of air, unclean groundwater, dry land etc).[35]

In general, the ECA has approached so far the CAP basically from a financial point of view, though making some substantial remarks. The outcome of the CAP's assessment by the ECA is realising that European agriculture, developed under cover of a policy of public intervention, cannot support anymore the cost of overproducing in guaranteed prices.[36] The Court is in favour of an attempt to limit budgetary costs whilst

[32] Ibid, p. 28.
[33] Ibid, p. 29. For the ECA, the improvement of living standards requires for Community subsidies to be paid after taking into account not only the quantity but also the quality of the production.
[34] Ibid, p. 30.
[35] Ibid, p. 30.
[36] Ibid, p. 30.

preserving the European Union's productive potential in competitive agricultural sectors within the world market's framework.[37]

B. The Structural Measures

There are several instruments with which the European union implements its structural policies. The Structural Instruments are defined as the financing mechanisms managed by the Commission and the EIB and which may support actions or works realised within the Community for purposes of common interest: regional economic development, employment, environment, saving and new forms of energy, communications, etc.[38] The main ones are the three Structural Funds (European Regional Development Fund - ERDF, European Social Fund - ESF, and the Guidance section of the European Agricultural Guidance and Guarantee Fund - EAGGF), the Financial Instrument for Fisheries Guigance - FIFG, and the European Cohesion Fund - ECF. The two latter ones are of recent origin being established in 1993[39] and in 1994[40] respectively. The three Structural Funds were established much earlier (The ESF in 1957[41], the EAGGF in 1962[42] and the ERDF in 1975[43]).

A key point for the Structural Funds has been the 1988 reform. Before 1988, according to the ECA's remarks, most of the assistance provided by the Funds took the form of reimbursement of expenditure for the cofinancing of individual projects and programmes were financed exceptionally.[44] The background for the 1988 reform was provided by the Single European Act in 1986, which aimed to strengthen the

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[37] Ibid, p. 31.
[38] European Commission, Vade Mecum on the Reform of the European Community's Structural Funds, Brussels, 1989, p. 10.
[39] Council Regulation 93/2080/EEC, OJ 1993, L-193/1 and Council Regulation 93/3699/EC, OJ 1993, L-346/1.
[40] Council Regulation 94/1164/EC, OJ 1994, L-130/1.
[41] Art. 123 [146] of the EC Treaty.
[42] Council Regulation 62/25/EEC, OJ 1962, L-30/991.
[43] Council Regulation 75/724/EEC, OJ 1975, L-73/1.
[44] European Court of Auditors, Sound Financial Management...., op. cit., p. 41.

Community's economic and social cohesion.[45] This aim had been analysed in three levels: political, financial and legal. Regarding the political level, the principle of solidarity among the Member States and the purpose of the common market, required a reduction of the differences in the level of development between the various regions.[46] The financial aspect included not only the need of an assistance to the underdeveloped regions, but also the need to assure a better financial management of the Community's resources which are, actually, a burden paid by the European citizens.[47] The legal base was Art. 130D of the EC Treaty, as amended by the Single European Act, which provided for an amendment of Funds' structure and operational rules.[48] The reform was realised with the adoption of several Council Regulations.[49]

The results of the reform are obvious through an examination of the financial data. The Funds' resources increased from 6.800 millions ECU in 1987 to 20.700 in 1993 and the prediction for the period 1994-1999 is 147.000 millions ECU.[50] The expenditure regarding structural operations was 18% of the European Union Budget in 1988 and 31% in 1996.[51] This increase is justified by the enlargement of the Funds' objectives.[52] The ECA also noted a change in the financing policies: priority was given to

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[45] European Commission, Vade Mecum...., op. cit. , p. 9.
[46] Ibid, p. 11.
[47] Ibid, p. 11.
[48] Ibid, p. 11-12.
[49] Council Regulation, 88/2052/EEC, OJ 1988, L-185/9, Council Regulations 88/4253/EEC to 88/4256/EEC, OJ 1988, L-374/1-25.
[50] European Court of Auditors, Sound Financial Management...., op. cit., p. 42.
[51] Eurostat, op. cit., p. 37.
[52] The ECA (See European Court of Auditors, Sound Financial Management...., op. cit., p. 43, note 12), based on the respective Regulations has summarized the Funds' objectives, including those of the FIFG as follows:
objective 1: promoting the development and structural adjustment of regions whose development is lagging behind
objective 2: converting the regions, frontier regions or parts of regions (including employment areas and urban communities) seriously affected by industrial decline
objective 3: combating long-term unemployment and facilitating the integration into working life of young people and persons exposed to exclusion of the labor market
objective 4: facilitating the adaptation of workers of either sex to industrial changes and to changes in production systems

the financing of programmes instead of the financing of projects.[53] The result of this change was to finance sets of multi-annual measures, with greater impact because of their volume and duration, and to monitor the measures undertaken leaving the management to the national and regional authorities.[54] The Court has noticed that it has not been possible to concentrate aid on a small number of eligible areas and as a result over 50% of the Community's population is covered by one of the structural objectives with a regional context (1,2, 5b, 6, see note 52).[55] Also, the coordination between the structural Funds has not been the best possible. The administrative procedures used by the management authorities, both in the Commission and the Member States are different and there is no real coherent data regarding the Funds as a whole.[56] The ECA has suggested that there should be an extensive exchange of information and a harmonisation of the procedures and criteria followed.[57] The various structural instruments must operate in such a way as to be complementary to each other.[58] Thus all the necessary information will be available in order to have an effective overall assessment of the measures implemented. Another remark is about the nature of the implemented programmes. In the ECA's point of view, the programmes that are put forward

> "are not a succession of measures projected into the future that it is proposed to undertake in order to achieve a specific objective, but rather measures that are normally adopted and undertaken by the national and regional authorities in the course of their usual activities, the cost of which is then transferred to the programme."[59]

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objective 5a: promoting rural development by speeding up the adjustment of agricultural structures in the framework of the reform of the common agricultural policy; measures for the adjustment of fisheries structures

objective 5b: promoting rural development by facilitating the development and structural adjustment of rural areas

objective 6: promoting the development and structural adjustment of regions with a population density of eight inhabitants or less per km

[53] European Court of Auditors, Sound Financial Management...., op. cit., p. 43.

[54] Ibid, p. 43.

[55] Ibid, p. 44.

[56] Ibid, p. 44.

[57] Ibid, p. 49.

[58] Ibid, p. 49.

[59] Ibid, p. 45.

The examinations performed have revealed that the projects financed are often vague and there has been scant preparation as regards the definition of the operations to be carried out.[60] With regard to the monitoring of operations, the Court noted that project financing is decided at national or regional level while the Commission has no systematic information on these decisions.[61] But such information must be provided to the Commission, the national authorities and the public, while all selections of projects must be based on precise and controllable criteria, which will ensure that the selected projects are effective and have a lasting impact in terms of structural development.[62]

A characteristic example of the poor quality of information communicated regarding the management of Structural measures is the case of the final reports concerning programmes financed by the ERDF for the period 1989-1993. Art. 25(4) of Council Regulation 88/4253/EEC does not have any specific provisions regarding the structure of these reports. So each Committee monitoring a programme had to decide on the structure and the context of the final reports. As a result, the reports did not all have the same quality.[63] The Commission had asked that the reports should give a concise survey of the implementation of the programmes and an exhaustive account of the realisation rate for the physical and qualitative objectives laid down in the outset of the programme.[64] Some of the reports submitted did not meet these requirements, and they were limited only to a description of the activities financed, thus disallowing any substantial conclusions to be drawn.[65] In some cases, the financial information provided did not support the amounts in the final claim, so the reports had to be returned to the Member States for clarifications.[66]

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[60] Ibid, p. 51.
[61] Ibid, p. 46.
[62] Ibid, p. 47.
[63] Annual Report of the Court of Auditors for the financial year 1996, C-348/152-153.
[64] Ibid, p. 152.
[65] Ibid, p. 153.
[66] Ibid, p. 153.

The Structural measures sector is very vulnerable to fraud. Therefore, according to Art. 12 of Council Regulation 94/1681/EC[67], the Member States are required to report to the Commission irregularities with a financial impact of 4.000 ECU or over. From 1994 till 1996 for instance, 309 cases of irregularities, regarding ESF funding, have been reported with a financial impact of 34.498.717 ECU from which only 4.323.869 ECU were recovered.[68] The main cause of this situation are the faults existing in the implementation of the procedures regarding funding from the ESF. The amounts declared by the Member States and the agencies handling the programmes are often inaccurate since these declarations are based on insufficient on-going and final verifications of expenditure.[69] In the Court's opinion, the frequent over-declaration of ESF amounts by the final beneficiaries is symptomatic of a system where the eligibility of programmes to be funded was not always clearly set out and applied.[70] Thus the claimant gives himself the "benefit of the doubt", and relies on the national administrations to accept or question the amounts declared.[71] ECA has pointed out some weaknesses encountered in the checking and audit procedures in the Member States:[72] a) there were no agreed and generally available eligibility and audit guidelines, b) the follow up of audit results was not so clear and prompt which prevented corrections and recovery of wrongly paid sums, c) weak coordination between the various national inspection services which could lead to undetected double financing, d) an absence of a control programme based on risk analysis, e) lack of reviewing at management level errors detected during desk checks.

Problems have also been detected in the system of audit of expenditure incurred for the processing and marketing of agricultural produce, according to Council

[67] OJ 1994, L-178/43.
[68] Annual Report of the Court of Auditors for the financial year 1996, C-348/185.
[69] Ibid, p. 184-185.
[70] Ibid, p. 185.
[71] Ibid, p. 185.

Regulation 90/866/EEC.[73] This expenditure was covered by the Guidance Section of the EAGGF. The ECA noted the following:[74] a) there has not been always a sufficient verification of the viability of the aided enterprises and of their ability to demonstrate realistic market outlets prior to approving the aid, b) the eligibility of claimed expenditure was not always controlled adequately with documentary and physical inspections, c) the payment of the aid was not always made within the established time-limits.

With regard to the Fisheries sector, the Court has focused, inter alia, on the audits regarding the Financing of Small and Medium sized Enterprises. Because of the large number of payments made by the Commission within the framework of this financing scheme, it has been very difficult to carry out serious financial checks on cost statements put forward.[75] The Commission had not always compared the rates charged in the cost statements with the rates included in the technical annex of the financing contracts.[76] Also the actual time spent on the project has not been always cross-checked with the time budgeted in the technical annex.[77] All these faults weaken the possibility of spotting any irregularities, a possibility even more limited by the almost complete lack of on-the-spot checks.[78] An indication of the problem is given by the following figures: in 1996 the open contracts concerning financing small and medium sized enterprises in the Fisheries sector valued in total 6.716 mil. ECU while the value of the contacts audited was only 179,4 mil. ECU and the amounts recovered as a result of this audits were 8,7 mil. ECU.[79]

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[72] Ibid, p. 186.
[73] OJ 1990, L-91/1.
[74] Annual Report of the Court of Auditors for the financial year 1996, C-348/203-204.
[75] Ibid, p. 245.
[76] Ibid, p. 245.
[77] Ibid, p. 245.
[78] Ibid, p. 245.
[79] Ibid, p. 246.

The Court has also examined an argument based on the principle of subsidiarity:[80] In the Structural operations, project management is the exclusive responsibility of national and regional authorities and the Community authorities must only examine the overall effects of the financing provided.[81] In the Court's opinion, the Community authorities need to be aware of how these powers are exercised and to supervise things better.[82] After all, according to Art. 23(2) of the Council Regulation 88/4253/EEC[83] the Commission is entitled to perform on the spot inspections regarding the measures financed by the Structural Funds. These inspections of course must coexist with controls performed by the Member States and coordination between the controlling national and Community authorities must be established.[84] On the other hand the dispositions of the Treaties concerning the ECA's competences do not exclude any expenditure from its auditing powers. Therefore, subsidiarity cannot prevent Community audit authorities (Commission, ECA) from checking the implementation of the structural policies.

Finally, special reference must be made to the European Cohesion Fund (ECF). Before being created in 1994, it had been preceded by an interim scheme, the Cohesion Financial Instrument, established in 1993.[85] This instrument and the first period of the ECF's function have been examined by the ECA and the results of examination were presented in a Special Report.[86] According to the Court's findings, the organisational structure of the instrument (a directorate, responsible for the management, within the framework of the Commission) is not adequate because it does not separate the duties of the authorising officer, the financial controller and the accounting officer, as required by

[80] Art. 3b [5] of the EC Treaty.
[81] European Court of Auditors, Sound Financial Management...., op. cit., p. 48.
[82] Ibid, p. 48.
[83] OJ 1988, L-374/10.
[84] For more information on the controls performed by national authorities regarding measures financed by the Structural Funds see J. Castex, M.-P. Cordier, Le controle des Fonds Structurels de l' Union Europeene, RFFP, No 56, 1996, p. 119-126.
[85] Council Regulation 93/792/EEC, OJ 1993, L-79/74.
[86] Special Report No 1/1995 of the Court of Auditors concerning the Cohesion Financial Instrument, OJ 1995, C-59/1.

Art. 21 of the Financial Regulation.[87] With regard to the projects financed, the Court has noticed that the relative information available is not adequate to provide a complete image of the project's quality and to assure coordination with other structural measures.[88] In contrast with the method used for the Structural Funds after the 1988 reform, the Cohesion Financial Instrument and later the ECF are financing individual projects and not programmes.[89] The main objects of financing have been for both the Cohesion Financial Instrument and the ECF environmental and transport infrastructure projects. The beneficiary States are Spain, Portugal, Greece and Ireland, which have absorbed in total about 1.565 millions ECU in 1993[90] and the predictions are 2.550 millions ECU for 1998 and 2.600 millions ECU for 1999[91].

C. Measures Outside the European Union

The ECA has noted that generally during the last twenty years, the Community external aid has increased and has been diversified geographically.[92] The Court has noted two main categories of Community aid. The first one consists of the European Development Funds (EDFs) which exist outside the Community budget and are financed by separate contributions by the Member States. Their objectives are helping the African, Caribbean and Pacific countries.[93] The second one consists of budget expenditure and covers aid to Latin America, Asia, Mediterranean non-member countries, measures in Central and Easter European countries, food and humanitarian aid at world level etc.[94] According to the financial data available in 1996 the EDFs had as expenditure 1.317

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[87] Ibid, para. 2.1.
[88] Ibid, para. 2.9.
[89] Ibid, para. 3.1.
[90] European Commission, The European Union's Cohesion Fund, Europe on the move Series, Office for Official Publications of the European Communities, 1994, p. 8.
[91] Special Report No 1/1995...., op. cit., table 1.
[92] European Court of Auditors, Sound Financial Management...., op. cit., p. 59.
[93] Ibid, p. 59.
[94] Ibid, p. 59.

millions ECU, the commitment appropriations for the aid to non member countries amounted to 5.132 millions ECU in 1996 and for the aid to countries of Central and Eastern Europe amounted to 1.773 millions ECU in 1996.[95] In total, the external aid covered 5% of the overall expenditure in the Union's Budget in 1988 and 9% in 1996.[96] There has been a noteworthy imbalance between the volume of external aid amounts and the resources provided to manage this aid.[97] A characteristic example of this situation is the case of the PHARE and TACIS programmes.

The Court noted that the Commission did not have the adequate means to be able to manage properly the implementation of the PHARE and TACIS programmes.[98] So, external personnel had to be hired increasing thus the expenditure. But in that case also the lack of any plan on behalf of the Commission created the same uncertainties regarding the successful implementation of the programmes and the role of the external personnel.[99]

This method of seeking assistance (mainly on technical issues) from external personnel has been used repeatedly by the Commission. The aims of this are to increase the management capacity of the Commission (central services and Delegations) and to provide administrative support to national authorities managing programmes financed by the Community.[100] In the Court's opinion though this method is causing some problems. Hiring experts encourages competition between them and increases the expenditure whilst by the time these experts have been adjusted to the Community working system, they have to leave because their contracts have expired.[101] And if, in order to have continuity, the Commission considers experts under contract as temporary staff, this

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[95] Ibid, p. 60.
[96] Eurostat, op. cit., p. 37.
[97] Ibid, p. 61.
[98] Annual Report of the Court of Auditors for the Financial Year 1995, OJ 1996, C-340/254.
[99] Ibid, p. 254.
[100] European Court of Auditors, Sound Financial Management...., op. cit., p. 61.
[101] Ibid, p. 61.

creates a sort of dependence of the Commission, without reassurance that it has the best experts.[102]

ECA believes that the management system of the Union's external aid must be decentralised because of the geographical spread, the diversity of instruments used and of management systems in the various beneficiary countries.[103] Of course, the EU Treaty and the documents providing for external aid (for instance the Lome Conventions[104]), require that the decentralisation must not involve a loss of decision making power or responsibilities on behalf of the Commission.[105] In practice so far, several schemes have been tested. For instance, regarding the EDFs, management is the responsibility of the beneficiary states, whilst in the case of the PHARE programme, the Commission's Delegations are responsible for its implementation, and in the case of the MED programmes, the Commission's functions have been subcontracted to private enterprises.[106] The Court has located several weaknesses in controlling, monitoring and evaluating external aid on behalf of the Commission.[107] According to the ECA findings

> "The economic and social problems of many non-member countries have grown, despite the increase in resources allocated to development aid and the introduction of new aid instruments. This situation is due in part to the increase in those countries' foreign debt burden, which has led to them devoting a growing proportion of their budget to servicing it and, in consequence, the danger that the initial destination of foreign aid might be changed in net terms (including the recipient country's budget contribution to the financing of expenditure on the target sectors). Under these conditions, better monitoring and better evaluation of programmes and projects is essential if aid is to be more fairly and more effectively allocated. It would be therefore necessary to redefine the role of the Commission itself and its Delegations in order to achieve these objectives."[108]

This focusing on the Delegations is very important. The Delegation is the Commission's point of contact with reality in the recipient country and must be involved in all stages of

[102] Ibid, p. 62.
[103] Ibid, p. 62.
[104] For more details on the Lome Conventions see D. Swann, op. cit., p. 358-363.
[105] European Court of Auditors, Sound Financial Management...., op. cit., p. 62.
[106] Ibid, p. 63.
[107] Ibid, p. 66.
[108] Ibid, p. 67.

the aid management process.[109] Often, the Delegation has to make good with the local authorities failures and plays a political role in the relations between the recipient State, other States, international organisations and the European Union.[110] It is of essential importance to equip the Delegations with the necessary personnel and powers (authorising, accounting, auditing) in order to have a better monitoring of the external aid's management.

[109] Ibid, p. 67.
[110] Ibid, p. 67-68.

Chapter Six

The European Court of Auditors as an Institution of both the European Communities and the European Union

A. Institutional status and nature of the Court

The institutional status of the ECA had always been a problem with two parts. The first one included the question: "Is the ECA an institution of the European Communities?" This question was raised because when the ECA was established by the Second Budget Treaty, there was no provision concerning its institutional status. More specifically, the ECA was not recognised as equal to the other institutions of the Communities (Council, Commission, Parliament, European Court of Justice).[1] The ECA's status was considered to be more similar to that of the Economic and Social Committee.[2] This point of view was based on the fact that the ECA was not mentioned in Art. 4(1) of the EC Treaty, along with the other institutions but only in the disposition of Art. 4(3) (now abolished by the EU Treaty) in which it was stated that

> *"The audit shall be carried out by a Court of Auditors acting within the limits of the powers conferred upon it by this Treaty."* [3]

Another argument used in order to support the opinion that the ECA was not an institution of the Communities concerned the method for the appointment of its members.[4] It has been noted above the difference between the method for the appointment of the members of the Commission and the ECJ and the method of appointment of the ECA members. This had been considered to be an indication of distinction between the European institutions and the ECA.

But there has also been an opposing point of view, according to which the ECA, although not mentioned by Art. 4(1) of the EC Treaty, was to be considered as a European Institution. This opinion was based first on the fact that according to the

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[1] F. Wooldridge, M. Sassella, op. cit., p. 49.
[2] G. Isaac, Renovation des institutions...., op. cit., p. 792.
[3] Ibid, p. 792.

suggestions of the Parliament before the establishment of the ECA[5], the Communities in order to reassure the independence of the new audit body should place it along with the other European institutions. Given that the Parliament's efforts have been a very important factor for the ECA's establishment, this suggestion could not be ignored in the search for the ECA's institutional status. Another argument had been that the disposition of Art. 4(1) had not been modified by the Second Budget Treaty because of its general, historical (since 1957) and "declarative" nature.[6] But the most decisive argument had been that the Member States would not like to have an insignificant audit body, therefore they equipped it with all the main prerogatives of a European institution: budgetary autonomy (according to the dispositions of the Financial Regulation the ECA can draw up, modify and audit its budget), administrative autonomy (the ECA can appoint its own staff, the status of which is governed by the EC Staff Regulations), operational autonomy (the ECA can adopt its own Rules of Procedure and regulate the methods of performing its duties by itself).[7] It had been suggested that the Member States should "elevate" the ECA to the status of a European institution, in order to eliminate any doubts about its authority and other undesirable side-effects.[8]

The ECJ's case law seemed to support the first of the above mentioned points of view. The Court of Justice had pointed out that since the ECA was not mentioned in the dispositions specifying the institutions of the Communities, it was not possible to consider the ECA as an institution of the Communities.[9] In the ECJ's opinion, the ECA was treated as Community institution with regard to the Staff Regulations just in order to

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[4] D. Strasser, The Finances...., op. cit., p. 270.
[5] H. Aigner, The Case for a European Audit Office, Office for Official Publications of the European Communities, 1973, p. 25.
[6] P. Lelong, op. cit., p. 100-101.
[7] Ibid, p. 101, T. M. James, op. cit., p. 471, D. Strasser, The Finances.....,op. cit., p. 270, & G. Orsoni, op. cit., p. 78.
[8] Ch. Kok, op. cit., p. 347.
[9] Case 828/79, *Adam v Commission*, [1982] ECR, p. 269-295 (290).

have these Regulations applied to the ECA's officials and servants, and this treatment did not extend to the application of the Treaties' provisions regarding the institutions.[10]

The Maastricht Treaty on the European Union resolved this problem irrevocably. Art. 4(1) of the EC Treaty was modified and the ECA was recognised as an institution of the Communities. The dispositions concerning the ECA were moved from the Chapter concerning the Financial Provisions to the Chapter concerning the Institutions of the EC.[11] This amendment demonstrates the importance of the ECA's role in the Communities operational system.[12] The cause of this "elevation" is probably the will of the Member States to rationalise the Communities' financial management system and combat fraud against the European Funds.[13] But this amendment has been the result of a very complicated procedure and "hazardous" diplomatic negotiations.[14] The Commission and the Parliament did not include in their final proposals such an amendment and the representatives of the Member States asked the ECA to state its opinion on becoming an institution of external control of the European Union[15] (enlarging thus the object of audit). The ECA's reply showed that the Court sought to be recognised as an institution of the Communities (thus reducing its competence only to the first pillar of the Union) and to be able to have access to the ECJ by virtue of Art. 175 of the EC Treaty.[16] This has been the solution finally adopted by the Intergovernmental Conference.

But this solution did not cover the other two pillars of the European Union. The ECA though, according to the dispositions of the Maastricht Treaty (see the above mentioned Art. J.11(2) [28(2)] and Art. K.2(2) [41(2)]) had to audit the administrative

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[10] Ibid, p. 291.
[11] J. Shaw, Law of the European Union, MacMillan Press LTD, 1996, p. 132.
[12] I. Anastopoulos, New institutional balances of the Communities' institutions after Maastricht in Th. Christodoulidis, K. Stefanou, The Treaty of Maastricht-A Comprehensive View, Sideris Publications, 1993, p. 127-139 (134).
[13] M. I. Tsinisizelis, The institutions of the European Union and their operation, in N. Maravegias, M. I. Tsinisizelis, The Integration of European Union, Themelio Publications, 1995, p. 65-96 (92).
[14] D. Strasser, Les dispositions financieres....., op. cit., p. 196.
[15] Ibid, p.196.
[16] Ibid, p.196.

expenses caused by the operation of these two pillars. So, the ECA was found in a very strange position, auditing a organization to the institutional system of which it did not belong. This problem had been pointed out repeatedly. It had been presumed that since there has been no budget of the European Union (the expenditure of the second and third pillar is charged to the Communities' budget), it was logical for the ECA not be mentioned in Art. E[5] of the EU Treaty.[17] During the Intergovernmental Conference Meeting on 5 and 6 May 1997 in Brussels among the discussed proposals concerning the ECA, there was also one (brought forward by the German delegation) for the insertion of the ECA in Art. E [5] of the EU Treaty. Since the ECA was already auditing the majority of the expenditure (all the administrative and most of the operational) of the European Union's second and third pillar, the proposed modification of Art. E [5] would merely recognize this reality without giving the ECA additional powers. This proposal was finally approved and the ECA is now also an institution of the European Union. This is very important because now the ECA, like any other institution of the Communities which is also an institution of European Union, is responsible -within the limits of its competence of course- for the consistency and the continuity of the activities carried out within the framework of all three pillars of the Union.[18]

The second part of the problem concerning the institutional status of the ECA is the nature of this institution. Is it an administrative or a judicial institution? There is no provision in the Treaties concerning the nature of any of the European institutions. So, the methods used in order to assess this issue is either an assimilation/equation of the European institutions with the respective national institutions, or the interpretation of the Treaties' dispositions concerning these institutions. The first method has been characterized as "deeply misconceived".[19] The Community order has a unique and "sui

[17] I. Harden, F. White, K. Donnelly, op. cit., p. 600, note 1.
[18] P.N. Stagkos, E.R. Sahpekidou, European Communities Law, Sakkoulas Publications, 1994, p. 116.
[19] A. Dashwood, op. cit., p. 127.

generis" nature and its features have their own function.[20] So, any attempt to try to understand the operation of an institution of the Communities, having as a model the operation of a respective national institution might be misleading. But of course this does not mean that such an assessment must be completely excluded. After all, when the representatives of the Member States established the various institutions of the Communities, they used as models, at least at a very basic level, the respective national institutions of their countries.

Given that in some Members States (Italy, Greece, France) the state's audit is being performed by lawyers while in other (United Kingdom, Ireland) by accountants, it has been difficult to assimilate completely the ECA with the national audit institutions of the Member States.[21]

The ECA is generally considered to have a rather misleading name.[22] Despite bearing the name of "Court", this institution is believed not have the traditional powers of a Court meaning it cannot declare the law and pronounce judgments.[23] Its tasks have been called "supervisory" and the ECA is not considered to have a judicial role.[24] It has been suggested that the ECA functions are more of an administrative nature rather than judicial[25]. According to another opinion, the ECA cannot impose any legal or administrative sanctions upon audited bodies or individuals.[26] All these points of view clearly show that the auditing activities of the ECA are considered to be deprived from any judicial nature and that the institution is not judicial.[27] The ECA itself has admitted that it has no jurisdictional powers and that its pronouncements do have any "res

[20] Ibid, p. 127
[21] Sir N. Price, op. cit., p. 240.
[22] I. Harden, F. White, K. Donnelly, op. cit., p. 601.
[23] Ibid, p. 602 & D. Strasser, The Finances....., op. cit., 270.
[24] J. Shaw, op. cit., p. 132.
[25] A. Charlesworth, H. Cullen, European Community Law, Pitman Publishing, 1994, p. 32.
[26] T. M. James, op. cit., p. 478.
[27] P. N. Stagkos, E.R. Sahpekidou, op. cit., p. 112.

judicata" value.[28] The Court has no jurisdiction not even to enforce its controls measures or to investigate suspicions of irregularity arising from its examination.[29] It cannot invoke legal sanctions against national officials who obstruct its work.[30] One of the most characteristic examples has been the examination of whether the VAT own resources had been collected in 1985 and 1986. Several Member States refused to accept the examinations planned by the ECA (reviewing statistic data, examining documentation, carrying out compliance tests).[31] The Court could only point this out in its Annual Reports and inform the discharge authorities that it had not been able to fulfill its responsibilities regarding the VAT own resources.[32] It could not do anything more and the situation has remained unchanged so far. It is though noteworthy that according to the Parliament's proposal, back in 1973, for a new audit institution, this new body would be able to take disciplinary action regarding infringements of financial regulations by officials of the Commission.[33] It is obvious that this suggestion has not been followed up.

Examining the dispositions of the Treaties concerning the ECA it is possible to reach some very useful conclusions. First, the qualifications required for the members of the ECA are similar to the ones required for the members of the ECJ:[34] a) independence and b) suitability for office. Also, the Privileges and the Immunities of the Judges of the ECJ apply to the members of the ECA. And, as pointed out before, the members of the ECA can be deprived of their office only by an ECJ's ruling. This ruling is considered to be more of a "declarative nature", since its context is described by the Treaties. Given that the ECJ's ruling is produced after a relative request by the ECA, it can be said that

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[28] European Court of Auditors, Auditing the finances.....,op. cit., p. 30.
[29] Kl.-D. Borchardt, The ABC of Community Law, Office for Official Publications of the European Communities, 1994, p. 30.
[30] I. Harden, F. White, K. Donnelly, op. cit., p. 626.
[31] Annual Report of the Court of Auditors for the Financial Year 1985, OJ 1986, C-321/32 & Annual Report of the Court of Auditors for the Financial Year 1986, OJ 1987, C-336/39.
[32] Annual Report of the Court of Auditors for the Financial Year 1985, OJ 1986, C-321/32 & Annual Report of the Court of Auditors for the Financial Year 1986, OJ 1987, C-336/39.
[33] H. Aigner, op. cit., p. 27.
[34] Art. 167 [223] of the EC Treaty.

practically the ECA decides the suitability or not of the person concerned and the ECJ simply declares that decision. The relative provision seems not to allow to the ECJ to disagree with the ECA, in case that the later decides that one of its members must be replaced. Of course, the ECJ's ruling must be issued according to the relative dispositions of the ECJ's procedure rules, so the ECA must prove that the person involved is not suitable for office. Otherwise the ECJ is obliged to deny the ECA's request. Consequently the ECA in its decision concerning the unsuitability of the member involved must state and prove all facts leading to its decision. From all this provisions it is clear that the Member States wish for the European Union to have an audit institution, the members of which will be so impartial and independent as the judges of the ECJ.

With regard to the proceedings of the ECA's performance of competences, it must be noted that they have been adjusted to the auditing nature of the tasks and the quantity of the audit required. All the methods of audit used by the Court have been elaborated so they will give a picture of the finances of the European Union, as accurately as possible. And the fact that the audited institutions, organizations, bodies and individuals have the right to reply to the ECA's remarks and findings, explaining their point of view, must not be overlooked. This "contradictory procedure", guarantees that the auditee will be heard by the ECA. All this procedural framework has a very strong resemblance with the proceedings followed in a court of law. Of course the ECA is not equivalent to the ECJ, since, as noted before, it does not deliver any kind of judgments and does not have a competence of interpreting Community law as a judicial institution. Even the Financial Regulation, the context of which is exactly within the ECA's competence, is not interpreted originally by the ECA but by the ECJ, according to the procedure of preliminary rulings described in Art. 177 [234] of the EC Treaty.

Taking into account all the similarities and the differences between the ECA and the ECJ, described in the Treaties' dispositions, we can say that the audit institution of

the European Union is not a judicial institution, but it is also not an administrative one. The President of the ECA said in January 1989, during a public hearing organized by the Commission:

> "The Court....is not an administrative or a legislative body...., it does not play the role of the public prosecutor..."[35]

This statement defines what the ECA is not. But there has been no definition of which exactly is the ECA's position in the institutional framework of the European Union. This is why so far the only real arm of the ECA is the influence or moral effect it can bring to bear upon the financial management of the Union.[36] But the fact that the ECA cannot directly impose sanctions does not mean that its observations are not taken into account by the other institutions, national or European.[37] It has been noted that the financial management authorities, European or national, very often voluntarily take the necessary corrective actions when the ECA submits its observations (either by drafts or in its official reports) concerning their management.[38]

This is though the "Achilles' heel" of this system of audit. The whole idea of having an effective audit in the European Union seems to be based on the "good will" of the various institutions and organizations managing the finances of the Union. That conception is though completely incompatible with the need of an effective audit within the Union. If the auditor cannot impose the measures necessary for the conduction of a sound financial management to the auditees, then the whole system is by definition defective. Of course the Court is not going to dictate the policies to be followed (that is a political task) but it can and should prescribe, from a financial and legal point of view, the sound ways of achieving the goals set.

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[35] D. Strasser, The Finances....., op. cit., p. 297.
[36] T. M. James, op. cit., p. 478.
[37] European Court of Auditors, op. cit., p. 30.
[38] Ibid, p. 30.

One way has been the granting to the Court of the right to take action before the ECJ in order to protect its prerogatives (audit rights) towards the other European institutions and the Member States. This solution has been divided into two proposals (one concerning the institutions and one concerning the member states) which have been discussed at the Intergovernmental Conference meeting of 5 and 6 May 1997 in Brussels. It had already been pointed out that the Court should be able to take legal action against any other institution's behavior which hindered its ability to audit the accounts.[39] So the respective proposal was brought forward by the Dutch Presidency, which pointed out that the ECA, although one of the European institutions, did not have the possibility of bringing an action before the ECJ in order to protect its prerogatives. Therefore an amendment of Art. 173(3) [230(3)] was deemed to be necessary in order to add the ECA to the institutions mentioned in that disposition. This proposal has been accepted and the necessary amendments to the Treaties have been made. The second proposal, introduced by the UK delegation, included an amendment of Art. 169 [226]. This Article provides that:

> *"If the Commission considers that a Member State has failed to fulfil an obligation under this Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.*
> *If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice".*

So, from this disposition it is clear that in order to protect the ECA's prerogatives, an appeal must be brought before the ECJ by the Commission. The proposal's aim is to make the ECA responsible for the protection of its own prerogatives by giving it the right to bring an action before the ECJ. This proposal is substantially connected with the provisions of Art. 188c(3) [248(3)] concerning the cooperation between the ECA and the Member States during audit (on the spot audits, forwarding of necessary

[39] D. O' Keeffe, op. cit., p. 192.

documentation, participation of national audit institutions in the audit procedure). It had though been rejected by the delegations of the southern countries of the Union and therefore not adopted.

But even the right to take action before the ECJ is not the most effective way for the ECA to be as effective as possible in the European Union. It is suggested that the ECA should be granted judicial authority, like the respective institutions in Italy, Greece, France, Belgium, Luxembourg, Spain and Portugal. The jurisdiction should include all disputes created during the procedure of audit, namely disputes concerning substantial and procedural issues of audit (for instance the responsibility of the final beneficiaries or the persons responsible for the management of the European resources within the Commission, to compensate the European Union in case of misuse of these resources). The ECA might as well have jurisdiction in cases involving fraud against the European Union, only with regard to the financial aspect (refund of the resources misused) and not the criminal aspect. Also a procedure, similar to that of Art 177 [234] of the EC Treaty, concerning the preliminary rulings of the ECJ, might be introduced. Naturally, the preliminary rulings of the ECA will be limited to issues concerning its jurisdiction.

Of course there is going to be a problem concerning the people involved in the relative judicial procedure. Since the ECA's staff is conducting the audit and most probably this staff is going to be one part of the dispute, it is at least strange to ask the members of the ECA to judge this dispute, since the staff is performing the audit under the ECA's members guidance. The solution to that problem could be the existence of a position similar to that of the Advocate-General in the ECJ. In Greece, for instance, the officer holding this position in the Greek Court of Audit is called General Commissioner of the State and he is a member of the Court's composition. The duties of the person holding this position at the ECA should be to represent the European Union's general interest, according to Art. 188a(4) [246(4)] , by making reasoned submissions on cases

before the ECA in order to assist it in reaching a decision. When a case is brought before the ECA by an auditor against an auditee (institution, Member State, organization, individual etc) or by an auditee against an auditor, this person would address the Court presenting his opinion, which of course would not be binding for the ECA. The person having this position might be permanently appointed (or elected by the ECA members like the President of ECA) for this task. Otherwise he might be the ECA member who is in charge, according to the ECA's organization, of the respective group of audit to which the auditor involved in the trial belongs. This latter suggestion means that in each trial there might be a different person holding this position if the auditor involved belongs in a different group. So, the ECA, under these circumstances can operate as a judicial institution, having all the guarantees of impartiality and independence necessary for this task.

An argument to support the idea of granting to the ECA judicial authority beyond the authority of the ECJ may be based on Art. 173(1) [230(1)] and 175(1) [232(1)] of the EC Treaty. According to these dispositions, the acts (or omissions: failures to act) of the ECA regarding audit activities are not subjected to review by the ECJ. For some, this is an indication that the ECA is not an institution with decision-making or legislative powers such as the institutions mentioned in these dispositions.[40] But as mentioned above, even the Court does not consider itself to be a legislative body. Its acts, concerning audit, are legally binding since according to the EC Treaty[41] the ECA carries out the audit and it decides whether a transaction is legal, regular and within the framework of the sound financial management principles or not. So, in the European Union's legal order the characterization of a transaction by the ECA as legal, regular and according to the sound financial management institutions, is binding for the other

[40] Ibid, p. 191-192.
[41] Art. 188a [246] and Art. 188c(2) [248(2)].

institutions and the Member States. Otherwise the Statement of Assurance of Art. 188c(1) [248(2)], regarding the reliability of the accounts and the legality and regularity of the underlying transactions, would be meaningless. Also, the ECJ's case-law provides with another argument on this point. It has accepted the ECA's power to examine the legality of expenditure with reference to the budget and the secondary legislation on which the expenditure is made, while the ECJ is reviewing the legality of this secondary legislation.[42] There is a clear distinction between the ECA's and the ECJ's object of review. So, since the ECA's acts are not subjected to judicial review by the ECJ but they, in fact, form a parallel review of certain other acts (transactions), then it could be possible to accept the upgrading of their adopting institution, the ECA, to a judicial level. Considering the importance of the ECA's acts for the function of the European Union, such an upgrading would reinforce the Union's audit system, since the latter would include a judicial institution.

Such a proposal though demands for two very important conditions in order to be realized. First, it is necessary to increase the number of staff (auditors). Only with more personnel the ECA will be able to meet the requirements of such a judicial function. Second, in order to have a new judicial institution in the European Union, the European integration must have reached a very advanced level. The idea of having practically a financial court in the Union can be realized only under conditions of financial harmonization of the Member States, leading to a "Fiscal Federalism", a federal financial system. Otherwise, such a institution is not going to be successful as a judicial audit institution. The ECA is correctly assumed to be a "specialized court"[43] but in order to grant it judicial authority the Member States must be determined to accept the jurisdiction of a "supra-national" court that is going to audit their management with

[42] Case 294/83, *Parti ecologiste "Les Verts" v European Parliament*, [1986] ECR, p. 1339-1373 (1367).
[43] A. Charlesworth, H. Cullen, op. cit., p. 32.

regard to the Union's resources. The reactions of the Member States to the above mentioned proposals of the ECA during the Intergovernmental Conference 1996-1997 are a very clear indication that this determination does not exist yet.

B. Position of the Court in the European institutional system

The issues concerning the institutional nature of the ECA are not the only ones concerning this body. Its sole existence in the European Union system poses another interesting question: why is it necessary to have an audit institution? The reply to this question may have a practical and a theoretical aspect. According to the practical aspect, is necessary for an organization like the European Union to audit its financial management., since accounting mistakes (which some time are deliberate) are constantly discovered, concerning the collection of revenue or the payment of expenditure.[44] The theoretical aspect is more complex and involves some political analysis.

According to the Preamble on the EU Treaty, the Member States decided to establish the European Union

> *"...CONFIRMING their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law,...*
> *...DESIRING to enhance further the democratic and efficient functioning of the institutions so as to enable them better to carry out, within a single institutional framework, the tasks entrusted to them,...".*

This is a clear demonstration of the Member States' will to establish a democratic regime within all three pillars of the European Union. One of the most basic elements of democracy is the notion of controlling the Executive. This control has three dimensions: Legality Control, Political Control and Financial Control (Audit).[45] The context of financial control is that the Executive has to justify its choices: The resources created by the revenue have to be spent for purposes approved by the Legislature in the most

[44] K. Stefanou, op. cit., p. 71.
[45] D. Beetham, K. Boyle, Democracy - 80 questions and answers, UNESCO 1995, p. 86-87.

efficient and effective way possible.[46] This control is performed by an independent audit institution, established for that purpose, namely to examine thoroughly and on a professional basis all kinds of expenditure.[47] So, the ECA is that institution. It is charged with the task of auditing all financial activity within the three pillars of the European Union. Its existence in the institutional scheme of the European Union is required by the democratic context of the Union. It guarantees the financial control of the Union's Executive which is the Commission and this guarantee is incorporated in the Statement of Assurance provided by the ECA to the Council and the Parliament.

C. Information and the Court

The second issue has to do with the way the ECA makes the results of its audits known. It has been analysed above that one of the most important tasks of the ECA is its reporting activity. These reports, containing very important conclusions reached by the ECA with regard to the European Union's financial management, are being published in the Official Journal of the European Communities. The dispositions concerning the publication of these reports practically establish a right and at the same time an obligation of the ECA to make known the results of its audits.[48]

There are two categories of recipients of the information provided by the ECA. First there are the European institutions and the Member States. The European Parliament, as analysed above, must have the ECA's Annual Report in order to give a discharge to the Commission with regard to the implementation of the budget. The Council, along with the Parliament, must be provided with the Statement of Assurance, in order to have a certification of the accounts of the European Communities. The

[46] Ibid, p. 87.
[47] Ibid, p. 87-88.
[48] C. Mayenobe, The Court and Information in Democracy, in Minutes of the Convention "Historical Development of the institution of the Court of Audit in Greece and France", Athens 1993, p. 153-157

Commission, being the main auditee, must have all the reports adopted by the ECA, in order to be able to reply to the observations included in them, within the framework of the "Contradictory Procedure". Finally the Member States (governments, national audit institutions, organisation handling European Union's resources etc) must be informed of the ECA's findings since thus they can improve the financial management made by them with regard to European Union's resources.

The second category includes the so called "European Public Opinion" and the Media that are sometimes forming this opinion. Of course it has been very successfully remarked that publication in the Official Journal does not automatically imply bringing to public attention or publicise.[49] The citizens of the Member States, who, ultimately, are financing all the effort for the European Union (the "Own Resources" system is based on various ways of taxation paid by the Member States' taxpayers) must know which are the results of the financial management of the Union's resources. The Media, in order to provide this kind of information, are organising debates between specialists or are asking from journalists to analyse the technical and sometimes incomprehensible information provided by the ECA. But there lies the danger of distortion, meaning the use of the Court's information by the journalists in order to produce an important piece of news.[50] Another danger is the premature spreading of information concerning some ECA audits before the completion of these procedures.[51] These so called "leaks" may have disastrous effects since any information provided through them is incomplete and therefore inaccurate. The ECA, like any other audit institution, has to face a increased publication of information which itself has started by publishing its reports.[52] It must have a very good understanding of these dangers. Its place in the democratic regime of the European

(153). This author focuses mainly on the French Court of Audit, but the dispositions in question have a meaning similar to the meaning of the respective dispositions concerning the ECA.

[49] Ch. Kok, op. cit., p. 348.

[50] C. Mayenobe, op. cit., p. 156.

[51] Ibid, p. 157.

Union requires for a flawless performance. Its members and staff must perform their auditing duties as seriously and accurately as possible. These are very important conditions in order for the audits' results to accepted and respected by the auditees and the public.[53] And this is very important given the fact that the ECA cannot impose any sanctions and it is up to the "good will" of the auditees to follow its remarks. Especially in everything that concerns tackling fraud, the information provided to European taxpayers can make them appreciate the existing "scandalous" situation regarding the fraudulent flow of their own money.[54] This information will mobilise the European public opinion and the taxpayers' reaction to the extent of the scandal will create the necessary political pressure that will compel the competent institutions (national and European, mainly the Council) to act more effectively in the direction of combating fraud.[55]

The ECA, in order to resolve these problems, has adopted an alternative method of publication of its audits' findings. It is called "restrained publication" and is consists of publishing mainly summaries of the ECA's observations, reports and opinions.[56] There are two objectives obtained by this method:[57] First, since some information included in the reports and opinions of ECA is confidential, this information is not presented in the summaries, avoiding thus the violation of the confidentiality rules and principles. Second, the impact of the ECA's summarised reports or opinions either directly on the citizens of the Member States or on their parliamentary representatives, may constitute a very efficient mean of pressure in order to face the reaction of an audited organisation.

D. Other proposals

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[52] Ibid, p. 156.
[53] Ibid, p. 156.
[54] House of Lords, Select Committee on the European Communities, Financial Control and Fraud in the Cpmmunity....., op. cit., para. 52.
[55] Ibid, para. 52.
[56] P. Lelong, op. cit., p. 114.
[57] Ibid, p. 114.

So far it has been noted that the ECA participates in the implementation of the European Union's Budget by controlling the financial management of the resources made available by the Budget. It has been suggested that the Court should participate also in the preparation of the Budget.[58] Since because of its duties, the ECA can have a global picture of the Union's finances, its opinion would be very useful. An alternative to that proposal could be to include the Court's Annual Report in the documents that the Commission, the Council and the Parliament take into consideration during the drawing of the Budget.[59] The idea of an audit institution to participate in the Budget's preparation is not new and has been already applied. In the United Kingdom, the National Audit Office has performed for the first time an Audit of Assumptions for the July 1997 Budget Projections. The aim of such an audit is to assist the Executive in preparing its forecasts of the public finances.[60] There is not a set of financial statements prepared by reference to relevant accounting standards to which the audit could be related so such an audit cannot be conducted by strict application of normal audit standards.[61] The assumptions audited in such a procedure do not represent or generate forecasts of the likely outcome but provide a sound and cautious basis for fiscal planning within the framework of an inevitable uncertainty.[62] Using the same basis of audit the ECA could provide a valid opinion on the assumptions incorporated in the Union's Budget.

There have been also other proposals concerning a future reform of the ECA. Most of them have focused on the structure and the organisation of the Court.[63] Some of them include strengthening of the President's role, reducing the number of the Court's members, dividing the Court in smaller chambers, reinforcing the Parliament's say during

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[58] D. Skiadas, The enactment of the European Community 's Budget and the Intergovernmental Conference, OIKONOMIKOS TAHYDROMOS, issue no 21 (2246) dated 22.05.1997, p. 43.
[59] Ibid, p. 43.
[60] National Audit Office, Audit of Assumptions for the July 1997 Budget Projections, London 1997, p. 2.
[61] Ibid, p. 2.
[62] Ibid, p. 2.
[63] I. Harden, F. White, K. Donnelly, op. cit., p. 627-628.

the appointment of the ECA members, etc. It has to be said though that mainly, the ECA needs an increase of its staff. The limited number of auditors reduces respectively the transactions that are going to be audited.

CONCLUSION

> "...the specific objectives of auditing are the proper and effective use of public funds; the development of sound financial management; the orderly execution of administrative activities; and the communication of information to public authorities and the public through the publication of objective reports..."[1]

This definition of the function of auditing provides a very good instrument to evaluate whether or not the ECA is a truly effective audit institution.

The ECA has really come a very long way. Its predecessor, the Audit Board, was more or less a "second class body" in the European Communities. The Court managed to overcome this unpleasant inheritance and to be a well-established institution of the European Communities and the European Union. Its auditing powers allow it to go beyond a simple examination of the regularity and the legality of the transactions made within the framework of the Union's financial management. The soundness of this management is assessed through its "systems based" audit method. Thus the Court plays a very active role in protecting the Union's financial interests, especially in the battle against fraud where it is considered to have done admirable work.[2]

In a rather pessimistic evaluation it has been noted that so far the Court has an uneasy relationship with the Commission, its cooperation with the Parliament is not the best whilst the Council has largely ignored it.[3] Despite its negative approach, this evaluation points out some situations that could be improved. It is logical that there will be tension in an auditor-auditee relationship such as the one between the ECA and the Commission. But since both institutions exist to serve the Communities' interest, this could provide a formula of cooperation between them. Such a formula seems to have been found in the sector of combating fraud in Communities. The Court and the Commission exchange information and coordinate their controlling activities. Such a

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[1] The "Lima Declaration", adopted by the International Organization of Supreme Audit Institutions (INTOSAI), in October 1977, during a congress on Fundamental principles of Auditing, held in Lima.
[2] House of Lords, Select Committee on the European Communities, Financial Control and Fraud in the Community...., op. cit., para. 50.

cooperation could and should exist whenever the ECA and the Commission are "facing" each other during the audit procedure. With regard to the Parliament, the ECA should refrain from getting into the political "games" developed in the various parliamentary committees. The Parliament desires to get more and more decisive authority on issues concerning the European Union's finances. So its committees and mainly the Budgetary Control Committee adopt very offensive positions against the Council and the Commission which have resulted even in judicial proceedings in the European Court of Justice.[4] The ECA must stay out of all these disputes. It should continue to provide the Parliament with the information necessary to enable it to give discharge to the Commission according to Art. 206 [276] of the EC Treaty. But as an institution will have its own voice and position in the institutional framework of the European Communities. The Council, on the other hand is obliged to work more closely with the ECA. The new dispositions of Art. 209a(4) [280(4)], as amended by the Treaty of Amsterdam, provide for such a cooperation in order to combat fraud in the European Union.

Generally speaking the Treaty of Amsterdam includes provisions towards the enhancement of the ECA's status, thus making it a real "watchdog" for European spending.[5]

The financial issues have always been at the centre of European public attention, since they are of vital importance for every effort made for the development of the European integration process. The Union's citizens should know more about the financial management in Europe. Thus openness and transparency in this sector is no longer just a slogan but the basis for practical action.[6] Like all the Community

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[3] I. Harden, F. White, K. Donnelly, op. cit., p. 627.
[4] Case 34/86, *Council v. European Parliament*, (1986) ECR, p. 2155, Case 41/95, *Council v. European Parliament*, (1995) ECR I, p. 4411.
[5] Representation of the European Commission in the UK, The Treaty on European Union-The Meaning of Amsterdam, Fact Sheet, London 1997, p. 16.
[6] Kl.-D. Borchardt, European Integration-The origins and growth of the European Union, Office for Official Publications of the European Communities, 1995, p. 79.

institutions, the ECA is making its activities more open and tries to present the matters it deals with as more understandably as possible.[7] The reports and opinions issued by the Court are accessible by everybody who wants to know how the European resources are managed.

Given the perspective of the European Union taking in new members, the Commission is working towards the reform of the financial framework of the Union. The new financial framework will aim, inter alia, to ensure the sound management of public finances in the Union.[8] Public finances must be kept on a tight rein with regard to the Union's Budget (both at preparation and implementation level) in order to consolidate sound growth.[9] The ECA can and should play an important part in that area by working on maintaining the budgetary discipline required by the new financial perspectives. After all, the Court is the "financial conscience" of the European Communities and the European Union.[10] And it is obvious from the efforts made so far that the Court has realised the importance of its mission:

> "In the present state of accounting and financial management arrangements, the financial significance of audit is very high in terms of identification of expenditure which should not have been incurred, of amounts potentially recoverable and of possible future savings....The audit of Community finances whether by the Commission, by Member State auditors or by the Court is more than ever necessary to protect the interests of the European Citizen."[11]

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[7] Ibid, p. 79-80.
[8] European Commission, Agenda 2000 - Vol. I: For a Stronger and Wider Union, DOC 97/6 (final), Part Three: The New Financial Framework, para. I.3.
[9] Ibid, para. I.3.
[10] This characterization had been given to the ECA by Mr. H. Kutscher, the President of the European Court of Justice at the time of the Court's inauguration in October 1977.
[11] Annual Report of the Court of Auditors for the financial year 1996, OJ 1997, C-348/11.

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ANNEXES

ANNEX 1

List of the Presidents of the European Court of Auditors since its foundation in 1977*

Sir Norman Price (UK) Presiding Senior Member	18.10.1977 to 10.11.1977
Michael Murphy (IRL)	11.11.1977 to 17.10.1981
Pierre Lelong (F)	18.10.1981 to 17.10.1984
Marcel Mart (L)	18.10.1984 to 8.1.1990
Aldo Angioi (I)	9.1.1990 to 20.12.1992
Andre Middelhoek (NL)	21.12.1992 to 31.12.1995
Bernhard Friedmann (D)	18.1.1996 to 17.1.1999

* Source: European Court of Auditors, Auditing the Finances of the European Union, 1996, Office for official publications of the European Communities, p. 8-9.

ANNEX 2

European Court of Auditors (1977 Scheme)*

Michael MURPHY **President of the Court** External Organizations (European Schools, Business Cooperation Centre, Institute for Economic Analysis and Research, Euratom Supply Agency, Subsidies to Institutions of higher education, Subsidies to European movements, European Trade Union Institute, European Centre for the Development of VocationaL Training, European Foundation for the Improvement of Living and Working conditions), Regulations and Internal and External procedures.	**Sir Norman C. PRICE** **Member of the Court** Own Resources (a. Levies, premiums, supplementary or compensatory amounts within the framework of the common agricultural policy, b. Levies and other duties in the sugar sector, c. Custom duties, and other duties, d. VAT), Annual Report and presentation of Opinions of the Court, follow-up of the observations of the Court.	**Pierre LELONG** **Member of the Court** EAGGF-Guarantee Section, Work program of the Court
Aldo ANGIOI **Member of the Court** EAGFF-Guidance Section, European Regional Development Fund, Studies, Documentation and Legal Service of the Court.	**Paul GAUDY** **Member of the Court** European Social Fund, ECSC, Accounting and Budget of the Court.	**Marcel MART** **Member of the Court** European Development Fund, Aid to non-member countries, Food aid, Relations with the other institutions, Public relations.
Arne K. JOHANSEN **Member of the Court** Operational expenditure (buildings, equipment, miscellaneous), Publications Office, Statistical Office, Information Office, European Export Bank, Liaison with national audit bodies.	**Albert LEICHT** **Member of the Court** Staff expenditure, Energy, Administration of the Court (staff, building accommoda-tion, supplies and repairs).	**Andre J. MIDDELHOEK** **Member of the Court** Research and investment expenditure, Ex-budget accounts, Working methods and training.

* Source: European Yearbook, Vol. XXV, 1977, p. 453-455.

ANNEX 3

European Court of Auditors (1997-1998 Scheme)*

Bernhard FRIEDMANN **President of the Court** Coordination and follow-up to the activities of the Court, Legal Service, institutional external relations and public relations	**John WIGGINS** **Member of the Court** SoA group : Drawing-up of the draft Statement of Assurance, coordination of the financial audit, general accounting audit	**Giorgio CLEMENTE** **Member of the Court** European Development Funds
Barry DESMOND **Member of the Court** EAGFF-Guarantee 3 : Common organisation of the markets in the animal products & sugar sectors, common policy on fisheries & sea, specific measures in the veterinary field	**Patrick EVERARD** **Member of the Court** Measures to benefit Central and East European countries, the newly independent States (ex USSR) and Mongolia	**Armindo de Jesus de SOUSA RIBEIRO** **Member of the Court** European Coal & Steel Community, loans & borrowings, banking activities, Guarantee Fund & European Investment Fund
Antoni CASTELLS **Member of the Court** Regional sector, IMPS, Transport, tourism, Cohesion Fund(transport infrastructure)	**Jan O. KARLSSON** **Member of the Court** Cooperation with developing and other third countries (general budget of the EU)	**Hubert WEBER** **Member of the Court** ADAR group: Coordination of work on the annual report & monitoring of the observance of the deadlines set. Professional training, work program, working methods and Audit Manual, computerised audit support, production of reports & opinions, studies, coordination of horizontal topics and ex post facto assessment of audit quality
Aunus SALMI **Member of the Court** Administrative expenditure of the institutions, Office for Official Publications of the EC, external offices & delegations of the Communities, European Schools, subsidies, satellite bodies (except Thessalonica) Centre & Dublin Foundation	**Jørgen MOHR** **Member of the Court** Social field, industrial policies, Thessalonica Centre, Dublin Foundation, Cohesion Fund (protection of the environment)	**Kalliopi Nikolaou** **Member of the Court** EAGGF-Guarantee 2 : Vegetable products
François COLLING **Member of the Court** EAGGF-Guidance, research, energy and new policies, JET, EURATOM Supply Agency	**Maarten B. ENGWIRDA** **Member of the Court** EAGGF-Guarantee 1:Budgetary management and control procedures and general matters	**Jean-Francois BERNICOT** **Member of the Court** Own resources, refund to the Member States

* Source: Wide World Web Site of the European Court of Auditors (HTTP://WWW.ECA.EU.INT/).