Audit Bases of Soundness in EU Budgetary Governance

Volume I

Internal Audit and External Audit within the system of EU Budgetary Governance

Prof. Dr. Dimitrios V. Skiadas, LLB, MJur, PhD

Dept. of International & European Studies, Univ. of Macedonia
Jean Monnet Chair on EU Budgetary Governance and Audit

JEAN MONNET CHAIR
EU BUDGETARY GOVERNANCE AND AUDIT

ΕΚΔΟΣΕΙΣ ΠΑΝΕΠΙΣΤΗΜΙΟΥ ΜΑΚΕΔΟΝΙΑΣ

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Preface

The Jean Monnet Chair on EU Budgetary Governance and Audit is hosted at the Department of International and European Studies of the University of Macedonia in Thessaloniki, Greece. The Chair was awarded by the European Commission and the Education, Audiovisual, and Culture Executive Agency (EACEA), under the Jean Monnet Scheme within the Erasmus+ Programme of the European Union, which supports university initiatives aimed at creating teaching activities in European integration.

The purpose of the Chair is to enhance the limited, so far, academic work, in terms of teaching and research, with regard to EU Budgetary Governance and Audit, by increasing the interest and deepening the knowledge in the field of studies related to EU (legal, economic, political), as well as, to address the University's outward orientation by providing the general public and the specialised groups of stakeholders in the public and private sector, information and (when requested) specialised knowledge on issues regarding EU Budgetary Governance, as a means of interpretating the developments in the EU. Understanding at least the fundamentals of EU Budgetary Governance allows for a new look on the benefits of European integration, a look based on academically verified evidence that will enhance the dialogue and the cooperation between the academia and the civil society.

One of the tasks of the Chair is the production of materials regarding its academic topics. These materials entail a variety of texts such as Notebooks, Papers and Books.

This book aims to provide a point of reference on some

very technical and specialised issues pertaining EU Budgetary Governance and Audit. It will entail a focused analysis of the institutional and legal framework of the audit function, within the overall system of EU Budgetary Governance. The 1999 developments and the subsequent political and institutional options on EU governance, as well as the Lisbon Treaty have established several schemes pertaining the management of EU funds, and the corresponding audit schemes. Furthermore, the EU's response to the financial crisis lead to new schemes of providing financial support to Member States, establishing new lending mechanisms and using the EU budget as collateral. These new arrangements set significant challenges for the EU's control and audit system at all levels. The books will seek to establish that all these activities and the relevant transactions are being audited in an appropriate and efficient manner, and to examine whether these audit schemes are actually in a position to provide a substantive assurance on the soundness of the EU Budgetary Governance. The entire analysis will seek to establish the legitimacy of EU Budgetary Governance in the weberian perspective (traditional, charismatic and rational-legal legitimacy).

Given the extent of the EU's control and audit schemes, the book will comprise three volumes.

The first volume will examine the schemes of internal and external control and audit within the system of EU Budgetary Governance, their advantages and disadvantages, especially vis-a-vis each other, and their potential to establish the EU Budgetary Governance's soundness. These schemes are examined as an integrated system of control and audit.

The second volume will examine the political element of the audit schemes included in EU Budgetary Governance. The increased role of the European Parliament, as well as the involvement of national parliaments, on issues relevant to the management of EU funds, have pointed out, quite emphatical-

ly, that it is necessary for all budgetary activity to be explained and justified as the parliamentary institutions are becoming more and more demanding with regard to being well informed on such issues before approving or discharging the executive's actions with regard to the EU budget's implementation at EU and national levels.

The third volume will focus on the comparison between the classic/traditional types of audit (financial and compliance audit), as these types have been maintained in certain EU member states as the sole audit method, and the performance (value for money) audit, used by the European Court of Auditors and other national audit institutions as additional audit method. This comparison will help identifying the more suitable type of audit (including the possibility of combining their elements) taking into account the nature of the transactions and policies to be audited.

Professor Dimitrios Skiadas

Jean Monnet Chair
on EU Budgetary Governance and Audit

Introduction

In his seminal book "The Finances of Europe", Daniel Strasser provides right from the start the outlook which must be understood in order to assess the budgetary governance system of the European Union. Despite the fact that he refers to the scheme of the European Communities, his approach remains quite instrumental in providing a simple but quite informative tool of examining the budgetary functions of the European Union (See Strasser, 1992, p. 13):

> *"The European Communities are not international organisations. The relations between the Member States are quite different from those between the members of traditional international organisations. These differences are evident in various fields: the powers granted to the Communities, the operation of their institutions, in particular the existence of the Commission alongside the Council and the directly elected Parliament, the primacy of Community law over national law, and the method of financing the budgets. In fact, the Communities form a political structure which is superimposed in certain spheres on the structures of the States which created them. This superstructure operates by means of a subtle balancing process between the Member States and the Community institutions…. The finances of this superstructure are one of the facets of the Community, although they account for only just over 1% of its GNP. Their evolution reflects its chequered history…"*

This unique "superstructure scheme" has been the objective of lengthy analyses, focusing on the structure of the Union itself (known before the Lisbon Treaty as a "pillar structure"), which reflected the fields of policy in which the EU was granted com-

petence to act, at various degrees, ranging from exclusive action to mere supplementary or supportive action towards the corresponding action of its Member States (see for instance Weatherill, 2007, pp. 3-24, Craig & De Burca, 2011, pp.1-29 & 73-101, Chalmers & Tomkins, 2007, 2-43 & 182-231, Cairns, 1997, pp.1-18, Richardson, 1996). One of the most interesting aspects of this approach was the assimilation of the Union's functions to the functions of a single entity (resembling a state) and its governance, as the result of a lengthy transitional course from a sui generis, yet distinct, political system of states to a structured political order, based on political unity (see Chryssochoou, 2005).

At the same time, the gradual development of the Economic and Monetary Union, especially with regard to its monetary aspects and to the legislative framework that has been enacted as a response to the 2009-2012 financial crisis, has been seen as a substantive step towards the establishment of a new European budgetary order (see Degron, 2018), having as a distinct characteristic the growing empowerment of all EU institutional actors through an increasingly complex set of political interactions in which "new" dynamics of EU governance are being developed (see Schmidt, 2018). This new order, however, is being hampered by two facts: The first is that the corresponding budgetary power made available to the EU by its Member States is, as mentioned above, around 1% of its Gross National Income, thus making the Union a budgetary dwarf compared to, for instance, the USA and its federal financial power (see Degron, 2018). The second is that the Member States have demonstrated, during the entire course of the European integration experiment, their reluctance to relinquish their control over the sources of financing, procedures, and methods regarding the Union's budget, thus leading to a legal framework governing the finances of the Union increasingly characterised by fragmentation and complexity, especially af-

ter the Lisbon Treaty, the provisions of which have lead to a new "galaxy" of funds and instruments, with variable participation of Member states and a diverse range of decision making and accountability procedures (see Crowe, 2017).

It is undeniable that such a multifaceted new order (either on political or budgetary terms) poses quite interesting challenges in terms of effective governance. This concept is an element of good governance, which is interlinked with institutionalised values such as democracy, observance of human rights, accountability, transparency and greater efficiency and effectiveness of the public sector, aiming to promote productivity and improving performance in the pursuit of efficiency, effectiveness, economic growth, sustainable development and social justice (see Agere, 2000). Such values are included in both the EU Treaty (TEU) and the Treaty for the Functioning of the EU (TFEU), as bases for the existence, organisation and operation of the EU. Thus the EU, as a sui generis entity, seeking to – at least – act as a public authority, has endorsed the approach of good governance. This approach encourages better decision-making and efficient use of resources, while strengthening, at the same time, the responsibility for managing these resources, thus making accountability a core element of good governance (for more details on this, especially in the EU context see for instance Papadopoulos, 2010, Harlow & Rawlings, 2007, Curtin, Mair & Papadopoulos, 2010, Bovens, 2007, Laffan, 2003). Its aim is to ensure that public entities achieve their intended goals while acting in the public interest at all times, through the establishment and operation of managerial schemes suitable for reducing risks and achieving performance through robust internal control and strong public financial management, as well as the implementation of good practices in transparency, reporting, and audit, to deliver effective accountability (see IFAC & CIPFA, 2014 for more details).

In the case of the EU, the impetus for good governance, especially in budgetary terms, was bolstered after the events of 1998, when the European Commission was forced to resign after the revelation of significant cases of mismanagement, the relevant reports of the European Court of Auditors, and the relevant resolutions of the European Parliament which culminated in not granting the Commission a discharge for its management of the EU budget (for more details see Skiadas, 2000, pp. 64-76). The decisive element in that process, however, consisted of two reports presented by a Committee of Independent Experts, appointed to examine the European Commission's functions in detecting and tackling mismanagement, fraud and nepotism at the time (i.e. 1999). The first report entailed the examination of six cases (policy areas) in which serious instances of mismanagement and fraud were identified and also allegations of favouritism and nepotism against individual Commissioners were noted. Its findings prompted the Commission to resign (see Committee of Independent Experts, 1999a). The second report included a analysis of the culture, the practices and the procedures adopted by the Commission, at that time, aiming at formulating recommendations for reforms in the areas encompassed by its mandate, namely financial procedures, control mechanisms, personnel, etc. The analysis focused on six major relevant topics i.e. a) direct management, b) shared management, c) control environment, d) fighting fraud and corruption, e) personnel matters and f) integrity, responsibility and accountability in European political and administrative life, and resulted in a series of ninety (90) recommendations on these issues (see Committee of Independent Experts, 1999b). These recommendations provided the basis for further action which resulted in the Commission (under Romano Prodi) producing a series of Codes of Conduct, the White Paper on Reforming the Commission (COM(2000) 200 final) and the White Paper on European Governance

(COM(2001) 428 final). These documents provided a new operational framework for the Commission and the EU in general, focusing in ensuring legitimacy in shaping and delivering EU policy, through openness, accountability and responsibility for those involved, in an effective and coherent manner. The Commission, in particular, was to concentrate on its core functions such as policy conception, political initiative, and enforcing EU law, on linking priorities with resources more effectively, on seeking external expertise only when this was the most efficient option, and on developing sufficient internal resources to ensure proper control - especially financial control (see Chalmers, Davies & Monti, 2010, pp. 352-353, Graig & De Burca, 2011, pp. 39-40). The result was a complete overhaul of the Union's legislative framework on financial management, which was embodied in the 2002 amendments of the Financial Regulation (see below), providing the template for all future Financial Regulations of the EU. This approach is generally accepted given that good governance is considered to include clearly articulated ethical values, objectives, and strategies, appropriate tone at the top, and internal control (see Goodson, Mory & Lapointe, 2012, p. 9).

The current EU framework on internal and external control/audit can be found in the provisions of the relevant EU primary and secondary law. The former includes the text of the Treaties while the latter refers to the Financial Regulation. The Financial Regulation is the main rule governing the adoption and management of the EU budget, and it is known as the "financial bible" of the EU (see Barrueco, 2015, p. 74). The first Financial Regulation was adopted in 1977 (Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities, [1977] OJ, L 356/1), and has been subjected to three major revisions since then. The first reform was in 2002 (Council Regulation 1605/2002 on the Financial Regulation applicable to the General Budget of the European

Communities, [2002] OJ L 248/1), and represented an attempt to regain citizens' trust on financial accountability following the above mentioned developments which caused the resignation of the Commission in 1999. After ten years, with the experience gained during this period and in view of the Europe 2020 Strategy and the resources committed to that, the Financial Regulation was further amended (Regulation 966/2012 on the financial rules applicable to the general budget of the Union, [2012] OJ, L 298/1). In 2018, in order to simplify the financial management of EU resources for both those managing them as well as their recipients, and taking into account the debate on the Future of Europe and the necessity for better management of the relevant funds after 2020, the Financial Regulation was amended once again (Regulation 2018/1046 on the financial rules applicable to the general budget of the Union, [2018] OJ, L 193/1 – hereafter the current Financial Regulation). Both the relevant provisions of the Treaties and of the current Financial Regulation are included in the Annex of this analysis. Furthermore, in order to provide a complete picture of the concepts, the ideas and the approaches on which this framework is based, the list of the recommendations of the Committee of Independent Experts has been also included in the Annex.

The structure of the analysis entails a presentation of the internal control/audit organisation and functions of the EU, a presentation of the external control/audit organisation and functions of the EU and a comparison between these two schemes, aiming at highlighting their complementarity.

Before entering the analysis however, it is important to clarify some conceptual issues. It is not rare for people to use terms such as "control" or "audit" or "internal control" or "internal audit" or "external control" or "external audit" interchangeably, thus creating confusion as to the exact meaning of their content.

The term "control", in a legal context, is used to describe the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity (natural person/legal person), whether through the ability to exercise voting power, by contract or otherwise.[1] In a more general context, this term refers to the power to order, limit, or rule something, or someone's actions or behaviour.[2] Control is present in all human activities, aiming to ensure that the available resources are used in the best possible manner in order to increase the added value of the activity in question.

The term "audit" is used to describe the process of an official examination of the accounts of a business and the production of a relevant report.[3] However, this term is used in order to describe an internal audit process or an external audit operation, thus creating confusion as these two schemes assess different things, are being based on and developed in different frameworks and entail different procedures and workflows.

Further confusion occurs when using the terms internal control and internal audit. This confusion seems to be caused by the fact that an internal audit practically examines the effectiveness of controls put in place, within an entity (i.e. internally), in order for the entity to achieve its purposes.

Typically the objectives of an entity's function, with regard to its management, entail for instance the effectiveness and efficiency of operations, the protection of assets, the prevention and detection of frauds and errors, the accuracy and completeness of financial reporting, the adherence to the relevant legislation, etc. In this context, Internal Control is an integral

1 See https://www.lawinsider.com/dictionary/control, on 21.4.2020.

2 See https://dictionary.cambridge.org/dictionary/english/control on 21.4.2020.

3 See https://dictionary.cambridge.org/dictionary/english/audit on 21.4.2020

process that is effected by an entity's management and personnel and is designed to address risks and provide reasonable assurance that, in pursuit of the entity's mission, the following general objectives are being achieved: executing orderly, ethical, economical, efficient and effective operations, fulfilling accountability obligations, complying with applicable laws and regulations and safeguarding resources against loss, misuse and damage (see INTOSAI, 2004). In other words it is an ongoing (continuous) system, operating as a part of an entity's day-to-day management and administration, which includes all procedures, policies, measures and any other activity of the entity's leadership (individual or collective), aiming to make sure that the entity meets its objectives, by improving risk management and increasing the probability rate of achieving all objectives set. It should be noted that such internal control schemes apply to all activities, irrespective of whether they are financial or non-financial (see European Commission, 2017, p. 2). Thus the Internal Control includes examining whether the transactions are executed as decided by the entity's leadership, checking the prompt and correct recording of transactions in terms of amounts and accounting periods, ascertaining the protection of the entity's assets from unauthorized use, comparing the entity's recorded assets with existing ones and taking the appropriate action in cases of discrepancies.

On the other hand, there are several definitions of Internal Audit. According to the International Organisation of Supreme Audit Institutions (INTOSAI) the Internal Audit includes the functional means by which the managers of an entity receive an assurance from internal sources that the processes for which they are accountable are operating in a manner which will minimise the probability of the occurrence of fraud, error or inefficient and uneconomic practices. It has many of the characteristics of external audit but may properly carry out the directions of the level of management to which it reports. The

Institute of Internal Auditors considers Internal Audit as an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations, by helping it to accomplish its objectives through a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes. The International Federation of Accountants (IFAC) defines internal auditing as an appraisal activity, established within an entity as a service to the entity, which includes, amongst other things, examining, evaluating and monitoring the adequacy and effectiveness of the accounting and internal control systems (for these three definitions see INTOSAI, 2004). Subsequently, it may be concluded that the Internal Audit entails the performance of functions, at specific times (yet at a regular basis), which evaluate, in a critical manner, the understanding of the entity's risks and the effectiveness of the relevant controls established within the entity (without however identifying risks or indicating the appropriate controls), as well as its entire system of governance. Thus, within the Internal Audit's scope the following may be identified: checking the accuracy and authenticity of the accounting records submitted to the entity's leadership, establishing whether the standard accounting practices are followed or not, verifying the nature of liabilities incurred, ensuring the detection and prevention of fraud, reviewing the activities of the internal control system, etc. It has been noted that the internal control is an objective of the internal audit, as the latter actually ensures/guarantees the quality of the former, bolstering its accuracy, its effectiveness and the leadership's confidence in it (see Jurchescu & Lesconi-Frumuşanu, 2010 and the references therein).

A final issue for clarification refers to the use of legal provisions as points of reference of the analysis. Law may have various functions (see Craig, 2006, p. 29-30) in a multifaceted field such as financial control and audit. In the Treaties it refers

to overarching principles governing the Union's institutional universe. In specific legislative texts, such as the Financial Regulation, it encapsulates choices that affect clearly the contents of the policy fields concerned. It is the legitimating basis of new institutions and also the tool to set the boundaries of their action. Thus, using it as an axis of analysis of the organizational and functional aspects of internal and external financial control and audit, allows for an overall evaluation of the existing arrangements de lege lata, as well as for the formulation of proposals, de lefe ferenda.

1

Internal Control/Audit in the Budgetary Governance of the EU

I.I. EU Primary Law

Despite the importance of the operations regarding internal control and internal audit, as this importance was highlighted by the events that took place during the 1998-1999 crisis within the Commission and the subsequent political and institutional developments, there has been no specific relevant reference in EU primary law. The Treaties, despite their amendments in 2000 (Nice Treaty) and in 2007 (Lisbon Treaty), have no provision on the internal control and internal audit schemes and functions in the EU institutions and especially the European Commission. The only provision that could be seen as making an indirect reference to these schemes and functions is that of Art. 317 TFEU.

This limited reflection of the internal control and internal audit schemes in EU primary law has not prevented the EU legislators of introducing very crucial, substantive and extensive relevant provisions in EU secondary law, mainly through the Financial Regulation applicable to the EU Budget. These provisions are seen as providing a framework of constitutional level and importance for the schemes in question. This "constitutionalisation" is understood, in formal terms, as enshrining

principles related to EU financial management and control/audit in a norm (such as the Financial Regulation) that is of constitutional importance, and in substantive terms, as signifying the emergence of overarching principles that frame the entire EU administration, including its financial management and control/audit elements, especially with regard to their restructuring in order to regulate the direct and shared management operations of the Union (see Craig, 2006, p. 25-26)

The EU primary law indirect reference to the Commission's scheme of internal control and audit was gradually developed. The initial provision (Article 205 of the EEC Treaty and then Article 274 of the EC Treaty) referred only to the Commission as the institution responsible for the implementation of the budget. It set the limits of the Commission's authority by stating that the implementation of the budget must take place only within the limits of the appropriations included therein. This authority, at least until the establishment of the European Union in 1992, was understood to be based also on a series of other provisions of primary of secondary law granting the Commission powers in various fields, such as the European Social Fund, the European Development Fund (which is not included in the EU Budget), the European Agricultural and Guarantee Fund, the European Regional Development Fund, as well as the general provisions on the Commission's implementing powers (see Strasser, 1992, pp. 220-228). Such a fragmented legal framework was considered, nevertheless, enough to allow the Commission to develop an entire scheme of prior internal control modeled on French practice, entailing the establishment and operation of an administrative structure at the level of Directorate General (DG XX on internal control), including three Directorates and several units (see Strasser, 1992, p.298 and p. 377).

The relevant contents of EU primary law were further enriched by the inclusion in Article 317 TFEU (new numbering

and contents after the Lisbon Treaty) of references to the principle of Sound Financial Management. This principle has always been regarded as a pivotal addition to the basic budgetary rules/principles in the EU public finances (see Strasser, 1992, pp. 69-70). Thus, adherence to this rule has become perhaps the most significant obligation of the European Commission as well as the Member States cooperating with the Commission, with regard to the implementation of the budget.

In order to understand the position and function of the internal control and audit schemes, it is necessary to have an overview of the types of management employed in EU budgetary governance. There are three types: centralised or direct management; decentralised management; and shared management (see Art. 62(1) of Regulation 2018/1046 on the financial rules applicable to the general budget of the Union, [2018] OJ, L 193/1 – hereafter the current Financial Regulation).

The centralised or direct management scheme focuses on the idea that the Commission-or any other institution as appropriate-manages the appropriations directly and completely (see Strasser, 1992, p. 218). In this context there is no formal systematic cooperation with national authorities, however there are five versions of direct management to be adopted by the Commission: a) Such activities can be undertaken directly by the Commission, b) Management tasks can be undertaken by executive agencies, c) Implementation can be entrusted to an EU body or agency, d) Some tasks can be delegated to networks or national agencies, and e) Certain activities can be contracted out. Examples of this type of management include the administrative appropriations of the budget, the expenses on the MED, TACIS and PHARE programmes, emergency aid etc. The main limitation to these options is that the Commission is not allowed to entrust its executive powers to third parties, where they involve a large measure of discretion, implying political choices. The delegated tasks must be clearly defined

and fully supervised by the Commission (for a more detailed analysis see Craig, 2006, pp. 32-34).

The decentralised management scheme covers those instances where the Commission works through national government departments, meaning that such a department is interposed between the Commission and the interested third party (see Strasser, 1992, p. 219). Usually this type of management refers to either the collection of certain types of resources in order to render them to the Union (see Strasser, 1992, p. 219) or to funds intended for third-country beneficiaries, and the funds are disbursed by the Commission, or by the authorities of the beneficiary state, or even an international organisation cooperating with the Commission (see Craig, 2006, p. 27).

The shared management scheme refers to the cases where the Commission works alongside national government departments on a complementary basis with regard to policies jointly financed (see Strasser, 1992, p. 219). The most characteristic example of shared management in the Union's public finances is the management of the resources provided for the Common Agricultural Policy and the EU Cohesion Policy (for a detailed analysis of these cases see Craig, 2006, pp. 58-97).

In order for all these types of financial management to be considered sound, it must be established that they meet three conditions representing three inter-related aspects of management: Economy, Efficiency and Effectiveness, more commonly known as the three "Es" (see Strasser, 1992, p. 279, James, 1984, p. 475). The "Economy" aspect relates planned input of resources to the actual input, determining whether the least expensive means of achieving a given target have been used or not (examination of alternatives). The "Efficiency" aspect concerns the relationship between actual input (resources) and actual output (results achieved), determining whether the means adopted were employed in the most appropriate man-

ner (examination of performance). "Effectiveness" is measured by comparing actual output with planned output, determining whether the purpose has been achieved or not (success rate). These aspects are now included in the provision of Article 33(1) of the current Financial Regulation.

The other two paragraphs of Art. 317 TFEU are of a more technical nature. The second paragraph is a legislative authorization providing for the contents of the EU secondary legislation regarding the management of the expenditure on behalf of each institution, as well as the control and audit obligations of the Member States (this indicates the importance of the shared management scheme in the EU budgetary governance), always with regard to the implementation of the Union's budget. The third paragraph establishes an exception of the Rule of Specification by allowing the Commission to transfer appropriations between categories of the expenditures included in the EU Budget, thus providing greater flexibility in its implementation. Finding the balance between predictability and flexibility is very difficult but imperative, given the various occasions of the EU budget's use to meet the pressure of extraordinary conditions and, thus, the legal possibility of reallocating some appropriations and transferring some funds between categories of expenditure is essential (see European Commission, 2010, p. 23, Kougeas, 2008, pp.202-212).

I.2. EU Secondary Law

In the current universe of the of EU's budgetary governance the authorizing officer has become the key figure (see Craig, 2006, p. 54) for the internal control and audit schemes. This has been the result of a series of papers adopted during the aftermath of the 1998-1999 crisis, the main aim of which was to improve the management capacity of the Commission through

measures such as the establishment of a closer link between political and budget priorities, the evaluation of functions in spending departments, the consolidation of audit and control mechanisms, the reduction of possible conflicts of interest, etc (see Ebermann, 1999, p. 52). These far-reaching reforms of financial management focused on enabling each department to develop its own, internal audit system, appropriate to its own needs, while a horizontal service (the Internal Audit Service-see below) would check the quality and reliability of each audit system. This arrangement changed in 2014/2015 when the Commission centralized its internal audit function, dismantled the Internal Audit Capabilities in its units and the Internal Audit Service remained the sole internal audit function for the Commission and its Executive Agencies.

The three pivotal reforming initiatives taken on board by the Commission entailed the following (see European Commission, 2000a, p. 20):

- A radical overhaul of the system, including the creation of new organisational structures and the replacement of others, in order to make the best use of resources and expertise and take into account the different types of expenditure for which the Commission is responsible;
- The definition of the responsibilities of authorising officers and line managers for the quality, correctness and efficiency of their actions;
- The adoption of measures to protect the Community's financial interests by improving the relevant legislation and the cooperation between the Commission and the competent authorities of the Member States.

Furthermore, the development of international best practices of internal control from a compliance-based system to a principle-based system with the aim of ensuring robust internal control through consistent assessment has lead to further

adjustments to the European Commission's internal control framework. The main components of this framework are five interrelated elements, each of which refers to specific characteristics, as follows (see European Commission, 2017, pp. 4-14):

- Control Environment:
  - It is characterised by the Commission's demonstration of commitment to integrity and ethical values,
  - The College of Commissioners demonstrates independence from management (takes overall political responsibility) and exercises oversight of the development and performance of internal control
  - There are management structures and reporting lines, while authority and responsibility is delegated in the pursuit of objectives
  - The Commission demonstrates commitment to attract, develop and retain competent staff in alignment with objectives
  - The Commission holds individuals accountable for their internal control responsibilities in the pursuit of objectives

- Risk Assessment:
  - The Commission specifies objectives with sufficient clarity to enable the identification and assessment of risks relating to objectives
  - The Commission identifies risks to the achievement of its objectives across the organisation and analyses risks as a basis for determining how the risks should be managed
  - The Commission considers the potential for fraud in assessing risks to the achievement of objectives
  - The Commission identifies and assesses changes that could significantly impact the internal control system

- Control Activities:
  - The Commission selects and develops control activities that contribute to the mitigation of risks to the achievement of objectives to acceptable levels
  - The Commission selects and develops general control activities over technology to support the achievement of objectives
  - The Commission deploys control activities through corporate policies that establish what is expected and in procedures that put policies into action

- Information and Communication:
  - The Commission obtains or generates and uses relevant quality information to support the functioning of internal control
  - The Commission internally communicates information, including objectives and responsibilities for internal control, necessary to support the functioning of internal control
  - The Commission communicates with external parties about matters affecting the functioning of internal control

- Monitoring Activities:
  - The Commission selects, develops, and performs ongoing and/or separate assessments to ascertain whether the components of internal control are present and functioning
  - The Commission assesses and communicates internal control deficiencies in a timely manner to those parties responsible for taking corrective action, including senior management and the College of Commissioners, as appropriate

The legislative expression of these developments is the current Financial Regulation, in the 29th recital of which the main strategic choice is being outlined:

> *"Authorising officers should be fully responsible for all revenue and expenditure operations executed under their authority, and for internal control systems, and should be held accountable for their actions, including, where necessary, through disciplinary proceedings."*

Creating a real sense of responsibility and accountability of authorising officers and Line Managers for sound financial management was deemed indispensable, therefore the clear definition of the responsibilities of each financial actor (authorising officer, accounting officer, financial controller), by enacting a set of clear relevant rules, was a major first step. Furthermore it was deemed more effective to confer power to authorise expenditure to EU officials on the principle that the person taking the decision to proceed with an operation involving expenditure should also be the one authorising the expenditure.

Thus, according to Art. 74 of the current Financial Regulation, the authorising officer is granted the responsibility for the implementation of all action relating to revenue or expenditure, and this is to be performed by adhering to the principle of sound financial management and the requirements of legality and regularity. The authorizing officer is also responsible for putting in place the arrangements regarding the internal control system, as this system is described in Art. 36 of the current Financial Regulation. His actions are reported on an annual basis, and the relevant report includes an overall assessment of the costs and benefits of controls and information on the extent to which the operational expenditure authorised contributes to the achievement of strategic objectives of the Union and generates EU added value. All this responsibility remains with the authorising officer, even in cases of subdelegating all

or some of the relevant authorising authority to other officials within the relevant service or a Union delegation falling within this officer's remit (see Art. 92 of the current Financial Regulation). The power granted to the authorising officer is further highlighted by the fact that in cases of external auditors (besides the European Court of Auditors) performing audits, they are obliged to inform the authorising officer of any suspected illegal activity, fraud or corruption which may harm the interests of the Union (see Art. 74(8) of the current Financial Regulation).

The internal control scheme of the Union is designed to achieve a series of objectives such as a) effectiveness, efficiency and economy of operations, b) reliability of reporting, c) safeguarding of assets and information, d) prevention, detection, correction and follow-up of fraud and irregularities, e) adequate management of the risks relating to the legality and regularity of the underlying transactions, taking into account the multiannual character of programmes as well as the nature of the payments concerned (see Art. 36(2) of the current Financial Regulation).

These objectives are to be met through controlling activities which include a) segregation of tasks, b) the adoption of appropriate risk management and control strategy that includes control at recipient level, c) avoidance of conflict of interests, d) adequate audit trails and data integrity in data systems, e) procedures for monitoring effectiveness and efficiency, f) procedures for follow-up of identified internal control weaknesses and exceptions and g) periodic assessment of the sound functioning of the internal control system (see Art. 36(3) of the current Financial Regulation).

The efficiency of the internal control system is based on a) the implementation of an appropriate risk management and control strategy coordinated among appropriate actors involved in the control chain, b) the accessibility for all appro-

priate actors in the control chain of the results of controls carried out, c) the reliance, where appropriate, on management declarations of implementation partners and on independent audit opinions, provided that the quality of the underlying work is adequate and acceptable and that it was performed in accordance with agreed standards, d) the timely application of corrective measures including, where appropriate, dissuasive penalties, e) the clear and unambiguous legislation underlying the policies concerned, including basic acts on the elements of the internal control, f) the elimination of multiple controls and g) the improvement of the cost benefit ratio of controls (see Art. 36(4) of the current Financial Regulation).

Based on the findings of the internal control proceedings, and especially when these entail fraud, irregularities or breach of obligations, the authorising officer is entitled to reduce, suspend or even terminate the payments regarding a legal commitment, or to resume them, as soon as it is verified that there is no case of such occurances (see Art. 131(3) of the current Financial Regulation). Also the authorising officer is responsible for allowing someone to participate or excluding someone from participating in EU tenders, based on internal control findings which entail a long list of reasons of exclusion, as provided for in Art. 136 of the current Financial Regulation. It is obvious that the authorising officer has become the catalyst in the internal control scheme of the EU.

Also, cases of financial errors or irregularities not involving fraud, before the initiation of the relevant disciplinary proceedings, are being referred to specialized panels (see Art. 143 of the current Financial Regulation) which take a more systematic view and consider whether there are systemic shortcomings and, if so, which is the responsibility of the persons involved in managing the control system (see European Commission, 2000a, pp. 20-21, European Commission, 2000b, pp. 53-54).

The standards of internal control applied in cases of direct

or shared management of EU funds, must be applied also in cases of indirect management of such funds, and the Commission, according to Art. 154 of the current Financial Regulation, is responsible for verifying that the appropriate arrangements are in place, especially with regard to the detection, prevention or/and correction of irregularities and fraud.

Separating the internal audit operation from the *ex ante* internal financial control and the creation of an Internal Audit Service, as suggested by the Committee of Independent Experts, was also a catalyst in overhauling the Commission's system of financial management, control and audit. This Service was established by Commission Decision (SEC 2000/560) on 11 April 2000 as an independent unit, i.e. it enjoys the status of a Directorate General. The rational for this measure is that since the internal audit will include an evaluation of the internal control system, this will lead to a conflict of interests as the officials performing the audit will be obliged to evaluate controlling operations which they have conducted themselves. Thus, their audit will be probably biased and any defects in the internal control will not be reported. Consequently the internal audit must not be performed by the same body which performs the internal *ex ante* financial control. Therefore the Internal Audit Service was established and entrusted with the internal audit operation. More specifically, its mission and objective have been formulated as follows (see Internal Audit Service of the European Commission, 2017, pp. 2-3):

> *"The mission of the Internal Audit Service is to enhance and protect organisational value by providing risk-based and objective assurance, advice and insight. The IAS helps the Commission accomplish its objectives by bringing a systematic, disciplined approach in order to evaluate and improve the effectiveness of risk management, control and governance processes. Its tasks include assessing and making appropriate recommendations for improving the risk*

management, control and governance process in the accomplishment of the following objectives: promoting appropriate ethics and values within the organisation, ensuring effective organisational performance management and accountability and effectively communicating risk and control information to appropriate areas of the organisation. Thereby it promotes a culture of efficient and effective management within the Commission and its departments.

…

The primary objective of the IAS is to provide the Commission with assurance as to the effectiveness and efficiency of the risk management, control and governance processes, with special reference to the following aspects:

- *Risks are appropriately and continuously identified, assessed and managed,*
- *Significant financial, managerial and operating information is accurate, reliable and timely,*
- *The Commission's policies, procedures and applicable laws and regulations are complied with,*
- *The Commission's objectives are achieved effectively and efficiently,*
- *The development and maintenance of high-quality control processes are promoted throughout the Commission."*

The limits of the IAS authority have been set both in a positive and a negative manner, taking into account the above mentioned rational for separation of competences regarding the conduct of internal control operations. Thus, this Service is authorised to have unrestricted access to all functions, information systems, records, property and personnel within the Commission, as considered necessary for the fulfillment of its duties, to seek and obtain the necessary assistance of Commission's staff in all DGs and Services, to allocate resources, select subjects, determine the scope of work and apply the tech-

niques required to accomplish its audit objectives and to be informed, as early as possible, about the development of new systems and changes to existing systems that may substantially affect the Commission's internal control system. However the IAS is not authorised to perform any operational duties for the Commission, to initiate or approve financial transactions, and to direct the activities of Commission staff not employed by the IAS, except to the extent such staff members have been appropriately assigned to auditing teams or to otherwise assist the IAS (see Internal Audit Service of the European Commission, 2017, pp. 5-6).

Such internal audit schemes have been foreseen for all EU institutions (see Art. 117-123 of the current Financial Regulation), thus upgrading the relevant recommendation of the Committee of Independent Experts (see Committee of Independent Experts, 1999a, p. 143, Committee of Independent Experts, 1999b, p. 130) to a horizontal political choice for the EU budgetary governance.

Thus, according to Art. 117 of the current Financial Regulation, each EU institution must have an internal auditor, and this auditor cannot be the authorising officer or the accounting officer (separation of tasks). The scope of the internal auditor's mission must be reflecting the specific features and requirements of the relevant institution. The same auditor may be responsible for two or more institutions.

The quality of management and control systems, as well as their improvement, constitute the contents of the internal auditor's report and recommendations, according to Art. 118 of the current Financial Regulation. The suitability, efficiency and effectiveness of internal management and control are being assessed within the internal audit function. These assessments are being performed in a regime of full and unlimited access to all information deemed necessary, including on-the-spot audits. The findings of the internal auditor are presented

annually in a report stating the number and type of internal audits carried out, the principal recommendations made and the action taken with regard to those recommendations. The criterion for the auditor's conclusion is the adherence of the principle of sound financial management. The internal auditors' reports may be available to the public only after validation by the internal auditor of the action taken for their implementation.

Particular importance is attributed to the internal auditors' independence, which should be guaranteed according to Art. 120 of the current Financial Regulation.

An internal auditor may be held liable for actions during or relevant to the performance of the audits, after an investigation in which all interested parties, including the auditors, will have the opportunity to express their views. The whole process is based on the treatment of the auditor as a member of staff of the institution concerned (see Art. 122 of the current Financial Regulation).

The actual decentralisation of the control operations within the Commission was realized with the abolition of the Directorate General for Financial Control.

The new arrangement, however, regarding the management and control in each Directorate General became relative to the size of its budget as well as the "sensitivity" of the transactions this Directorate General had to handle. For instance, with regard to the Secretariat General of Commission a centralized structure was selected which practically re-created the model of the Directorate General for Financial Control within the Secretariat, whose financial unit became responsible for initialization and financial verification of all transactions (see Schön-Quinlivan, 2011, pp.125-127). In the other Directorates General, the relevant tasks have been distributed as follows: the ex ante control and verification of operations is performed by the authorising officers within the operational

Directorates; the internal audit is performed by the Internal Audit Service; the training and coordination of the relevant officials (especially in the Member States) is undertaken by the Central Financial Service, which is a Directorate within the Commission's Directorate General for Budgets; and the ex post verifications and system audits in the Member States is performed by the operational Directorates. Based on common minimum standards defined by the Central Financial Service, the Directorates-General review their internal control systems and prepare a report to be sent to the Central Financial Service which oversees the implementation of the standards. Within the Directorates General there are financial units producing the Annual Activity Report of the Directorates and ensuring that the accounting information supporting each transaction is complete. It is obvious that the Central Financial Service plays a key role as it provides assistance to all Commission services on matters relating to financial rules, procedures and control systems (see Crowe, 2018, p. 590).

2

External Control/Audit in the Budgetary Governance of the EU

2.I. EU Primary Law

In stark contrast to the very limited and indirect references made in EU primary law to the internal control and audit schemes, the Treaties include specific provisions on the external control and audit schemes of the EU budgetary governance.

The Treaty for the European Coal and Steel Community (ECSC) and the Treaty for the European Economic Community (EEC) and the Treaty for the European Atomic Energy Community (Euratom), in their original versions provided for the establishment of external audit schemes (the ECSC Auditor and the Audit Board for the EEC and Euratom), making it clear that the external audit of accounts was to be carried out within each Community (see O' Keeffe, 1994, p. 177, Skiadas, 2000, p. 2-4).

With regard to the EEC and the Euratom, the content of the relevant provisions (Art. 206 EEC, Art 180 Euratom) established the Audit Board as the competent body for the examination of the accounts of all revenue and expenditure, provided for a minimum of its administrative form (the Board was to be chaired by one of its members) and set a general

condition for the Board's membership (the members' independence was to be beyond doubt). The auditors (one from each member state) and the chairman were appointed unanimously by the Council for a period of five years (see Strasser, 1992, p. 270), on a part-time basis, and the Board had a staff of only 25 persons. The Board did not publish its reports, but sent them to the auditees, the Commission, the Council and to the European Parliament for information and for their replies, and there was little follow-up on the Board's remarks (See James, 1984, p, 470, National Audit Office, 1996, p. 220).

With regard to the ECSC Auditor, the original ECSC Treaty (Article 78(6)) provided that an auditor shall be appointed by the Council for a period of three years (renewable term), and that this auditor would be completely independent in performing his duties, and the relevant position would be incompatible with any other position in the ECSC.

Despite their separate operations and the lack of impact of their report, these audit schemes presented, from the first time that all three had to execute of their duties, i.e. in 1959 for the financial year 1958, a unified report, which contained also a chapter with various observations and considerations of a more general nature (e.g. providing evaluations for the managerial behaviour of the auditees, identifying strengths and weakness in the relevant legal framework, putting forward suggestions and proposals for amendments, etc), all deemed useful for all institutions of the Communities and their budgetary governance and performance (see Rapport de la Commission de contrôle relatif aux compes de l'exercice 1958 CEE, CEEA, available on line at http://aei.pitt.edu/39349/ on 30.4.2020). This may be seen as a useful precedent for understanding the subsequent audit behaviour of the European Court of Auditors.

In 1965, this arrangement was amended as an Audit Board for all Communities was established and replaced the then

existing schemes. The auditing operations of this new Board were conducted with the aim to compile evidence that would lead to the production of an annual report based on which the Council and the Parliament of the Communities were to give to the Commission a discharge in respect of the implementation of the budget. Thus, the audit function of the Board was actually a part of the annual discharge decision system (see Issac, 1977, p. 780). Yet again, this new scheme, despite its efforts, was proved inadequate to execute its tasks appropriately, resulting in long delays in the production of its report and causing severe parliamentary criticism (Wooldridge & Sassela, 1976, p. 14). The Board itself identified two major reasons that decreased its efficiency (see Wooldridge & Sassela, 1976, p. 21, Issac, 1977, pp. 785-786, 788-789): the narrow interpretation of its authority (for instance it could review only closed accounts of transactions and the sound financial management elements were not used extensively during the audits) and the lack of competence in performing on-the-spot checks in the Member States for transactions entailing resources from the budget of the Communities (these transactions were controlled only by the Commission, internally, and the Commission did not allow the Audit Board to interfere in these controls). Furthermore, the part-time nature of the auditors' occupation prevented them from dedicating much time to the audit of the Communities, and the limited staff was obliged to reduce its activity to deskwork, in the Commission's premises and files (Price, 1982, p. 239). In general, the audit performed by the Audit Board was more of a purely formal ex post audit of expenses, based on checking the supporting vouchers (see O' Keeffe, 1994, p. 178). As to the follow-up of its remarks, the Audit Board complained that they remained "a dead letter" (see for instance the Board's Report on the accounts for the financial year 1971, p. 169).

These quite serious shortcomings in the external audit

scheme and operations of the Communities were highlighted, at political level, especially by the European Parliament, triggering a series of institutional debates and developments which culminated in the signing of the Second Budget Treaty (formally known as 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), on 22 July 1975. This Treaty established the European Court of Auditors (ECA) for all three Communities, as the institutional response to the above described weaknesses of the previous scheme, taking also into account the changes introduced to the financing system of the Communities in the 1970s, with the "own resources" system (see Laffan, 2003, pp. 764-765).

Despite the fact that this new external audit scheme was created to improve the relevant performance of the entire EU budgetary governance, there have been arguments aiming at limiting its auditing scope and jurisdiction, the most notable being the questioning of its institutional status. Even the case law of the Court of Justice of the EU seemed to deny to the ECA the status of an EU institution. However, there has been an approach arguing 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 (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 Staff Regulations), operational autonomy (the ECA can adopt its own Rules of Procedure and regulate the methods of performing its duties by itself). Based on this, the Member States decided to eliminate any doubts about its authority and other undesirable side-effects, and, in the Maastricht Treaty (1991), they included the ECA in the list of the EU institutions, the scope of its audit covering the entire spectre of the EU's activities in all

policy fields (see Skiadas, 2016, pp. 285-7 to 285-13, for more details).

Since its establishment, in 1977, the ECA embarked on a herculean task to build up an institutional capacity that would enable it to fulfil its mandate, a task that absorbed its energies for almost a decade. This entailed the establishment of an organizational structure, and of a set of internal principles, processes and procedures for auditing and of relations with the bodies that it had to audit, (see Laffan, 2003, pp. 766-767 and the references therein).

The current wording of the relevant provision of EU primary law (Art. 285 TFEU) sets the authority of the ECA by making it the competent institution for carrying out the audit of EU, obviously meaning the external audit. This broad definition gives the impression of enlarging the ECA's scope of action (see Strasser, 1992, pp. 196-197), but it actually consolidates the limits of its jurisdiction.

The Lisbon Treaty added two more sentences to this provision, both referring to the membership of the ECA. The first is practically the transfer of the provision on the exact number the ECA's members and their nationality from Art. 286 TFEU, formalizing the practice followed till then, according to which each Member State was "represented" by a member of the ECA, in its composition (see Harden, White & Donnelly, 1995, p. 609, O' Keeffe, 1994, p. 179). The second contains an already existing rule which establishes the ECA members' operational independence, i.e. their legal and actual ability to maintain an unbiased attitude throughout the audit and the ECA's proceedings in general. The Union's general interest is set as a limit to prohibit the ECA's membership of taking into account, in the performance of their duties, the national interests of their respective countries. This provision is further analysed in Art. 286 (1) and (3) TFEU.

The contents of Art. 286 TFEU have been maintained sub-

stantively the same since 2000. The first paragraph of this provision sets two qualifications which are necessary for the appointment of the ECA members: a) suitability for the office and b) independence (Dagtoglou, 1985, p. 283). Such qualifications, which must exist before the appointment, are common to appointment in other similar bodies. A careful reading of this provision indicates that prior experience to similar duties and/or operations and participation to national bodies of external audit are considered to be adequate proofs of existence for the required qualifications, but they do not consist, by any means, exclusive prerequisites. The main objective is to secure, in an undisputed manner, the independence of the persons selected as members of the ECA. To that end, Art. 286(3) TFEU provides for the prohibition of the ECA members seeking or even merely taking instructions from any government or any other body. The prohibition is extended also to any action that may be deemed incompatible with the ECA's duties. The incompatibility is always determined on an *ad hoc* basis, however the overall idea is to avoid any activity that either affects their personal or operational independence, or creates situations of conflict of interests with regard to the discharge of their duties. These restrictions are further enhanced by Art. 286 (4) TFEU, which sets specific limitations with regard to engaging in any other occupation (with or without remuneration), during a member's term of office. During this term the auditors must demonstrate integrity and discretion, respect of the obligations deriving from their capacity as members of the ECA, and refrain from accepting certain appointments (see Themelis, 1984, p. 119). The origins of these strict provisions may be sought in the experience of the function of the Audit Board and the deficiencies caused by the lack of such rules, especially with regard to the part-time status of employment of that Board's members (see Wooldridge & Sassela, 1976, p. 45, Issac, 1977, p. 796. James, 1984, p. 471). To complete this

framework, Art. 286(8) TFEU assimilates the capacity of an ECA member to that of a Judge at the EU Court of Justice, by providing for the application of the Protocol on the privileges and immunities of these Judges to the ECA members.

The ECA members are appointed (see Art. 286(2) TFEU) by the Council acting by a qualified majority, while the European Parliament's participation in that procedure, although not entailing a formal veto power, is quite influential as the Parliament scrutinizes the candidates and delivers an opinion with increased political weight that cannot be easily ignored (see Skiadas, 2000, pp. 7-8, O Keeffe, 1994, p.180, Harden, White & Donnelly, 1995, pp. 609-610).

On the other hand, the termination of the duties of the ECA members is regulated by paragraphs 5 and 6 of Art. 286 TFEU. These are practically self-explaining provisions with regard to the reasons and procedure of termination of duties. It is interesting, however, that only the ECA is designated as competent (this competence paying tribute to its independence – see O' Keeffe, 1994, p. 181) to ask the EU Court of Justice to find that a member no longer fulfils the requisite conditions, nor meets the obligations arising from his office. The wording of this provision gives the impression that the judgment would be of a declaratory nature, meaning that the Court of Justice will merely declare the unsuitability of the person involved and deprive this person of office.

As for the personnel of the ECA, there is no provision in EU primary law. Originally this personnel came from the personnel of the institutions it had replaced (see Issac, 1980, p. 350). Today the ECA personnel comes from all the Member States of the Union, and it includes two main categories: auditors and administrative personnel. The ECA personnel consists of qualified professionals, with guarantees of independence and impartiality, able to perform complicated audits and to understand the financial management system of the European

Union (see Skiadas, 2000, p. 9).

As for the ECA's organization, with the exception of the provision of Art. 286 (2) which grants the ECA members the power to elect the Court's President from among their number for a three-year term and allows for the possibility of the President's re-election, the ECA is completely free to draw up and adopt its own rules of organization and procedure, having as its only obligation to respect the dispositions and the principles set by the Treaties (see James, 1984, p. 471, Lelong, 1983, p. 102). It is noteworthy that the ECA is organized and acts as a collegial body. This means that, despite the internal allocation of responsibilities and competences among the members of the Court, they all share the collective responsibility for the proper organization and operation of the ECA (in order to avoid overlapping responsibilities and lack of coherence in the Court's work), as well as the collective responsibility for the validity and correctness of the Court's findings.

While Art. 286 TFEU focuses on the organizational aspects of the ECA, Art. 287 TFEU provides for its activities.

The first paragraph of Art 287 TFEU sets the wide scope of the Union's external audit operation: the examination of the accounts of all revenue and expenditure, regardless of their inclusion in the Union's budget. This includes schemes such as the European Development Fund, whose extra-budgetary nature had caused the impression that it could not be audited by the ECA (see Wooldridge & Sassela, 1976, p. 45, Issac, 1977, p. 796, Orsoni, 1991, p. 79). This extensive scope of audit reflects a relevant principle (see Art. 257 (5) of the current Financial Regulation) according to which any EU payment 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 (see Strasser, 1992, pp. 271-272). The audit authority of the ECA comprises also various legal entities established under

EU law either to facilitate, in technical terms, the implementation of specific programmes adopted within the framework of an EU policy, or to fulfil certain functions in order to make the executive more effective at European level, providing advanced expertise and credibility. These are known either as "executive agencies or as "agencies" or "decentralised bodies" (for these entities see Craig, 2006, p. 37–50 & p. 143–190). There have been, however, institutions and bodies of the EU that maintain that at least some of their operations do not fall within the scope of the ECA's audit, thus necessitating the adoption of specific arrangements with regard to the conduct of audit in these cases (e.g. the European Central Bank and the European Investment Bank with regard to their lending operations, see European Court of Auditors, 2018, Skiadas, 1999 for more details).

The "products" of the EU's external audit scheme comprise a variety of documents, presenting global as well as in depth insights of the EU budgetary governance. More specifically, the ECA has three main outputs: its annual reports, which comprise the results of its financial and compliance audit work for a specific financial year; its special reports, published throughout the year, presenting the results of its other audits, mainly performance audits assessing the economy, efficiency and effectiveness of EU spending; and its opinions on draft legislation with financial management impact (see Caldeira, 2008, p. 7).

The point of reference of this entire scheme is the ECA's Annual Report (see Art. 287(4) TFEU). This Report is considered to be the ECA's most important contribution to the European Union's institutional system, and is, traditionally, seen as the ECA's primary operational mission (see Isaac, 1980, p. 350), in which its work culminates and provides it with the most vivid means of expression (see Leonard, 1975, p. 226). There are detailed provisions about the ECA's Annual Report in the current Financial Regulation, as there were in all previous Financial

Regulations.

Another very important document is the Statement of Assurance provided by the ECA (see Art. 287(1) TFEU). The production of this document was introduced by the Maastricht Treaty as an ECA competence, in an effort to provide the Union with a declaration that, after having conducted all the necessary audits, the ECA has reached a point of assurance that all the accounts presented reflect the reality and that all underlying transactions are legal and regular. The Statement of Assurance is a document that a) provides a basis for a global evaluation on the Union's budgetary performance, b) constitutes a mechanism for the ECA to acquire information on issues of its competence, and c) puts pressure on the ECA to adopt a more coherent approach to its work (see Harden, White, & Donnelly, 1995, p. 614). Since 1996, this Statement is incorporated in the ECA's Annual Report, a development that does not diminish its importance in the slightest, but allows for gathering all information about the annual performance of the EU's financial management in one document.

The ECA also provides special reports and opinions, on specific issues, either on its own initiative, or after a relevant request of a European institution. Producing these documents provide the ECA with an means to express itself, comparable to that provided by the annual report, but with a greater degree of flexibility in time and space (see Strasser, 1992, p. 276). The special reports analyse in depth a particular group of related activities and can be completed and issued relatively rapidly and thus with greater immediacy draw the attention of all competent EU and national authorities to particular weaknesses identified. The flexibility and the substantive homogeneity of these reports allows for a more effective handling on behalf of those to whom they are addressed (see James, 1984, p. 479). As for the opinions, these are included in the so called "consultative competence" of the ECA (see Lelong, 1983, p.

108, James, 1984, p. 480). These opinions have only "advisory" force, but because of their technical nature (due to the ECA's duties) and the fact that some of them are often published in the Official Journal, they are given some further weight (see James, 1984, p. 481).

Furthermore, in 2014, the ECA developed another product, the Landscape Reviews. These Reviews consider broad themes on the basis of the ECA's research and accumulated knowledge and experience, serving as an important basis for consultation and dialogue with its stakeholders and for future audit work. They enable the ECA to submit observations on matters that are not necessarily susceptible to audit per se, but are nonetheless important for public accountability and the EU's external audit function (see European Court of Auditors, 2014a, p. 9).

A very significant relevant issue is the legal nature of all these reports and opinions. It has been determined judicially that the ECA's special reports are not binding for the institution or body to which they are addressed, allowing them significant freedom of action. Nonetheless, given their nature as actions of an European institution with considerable prestige, especially in circles which play an influential role in political and economic terms, they may constitute a basis for admissible action for damages against the ECA (see Case T-277/97, *Ismeri Europa Srl v Court of Auditors of the European Communities*, [1999] ECR, pp. II-1828 – II-1870, at p. II-1848 and p. II-1853).

As for the contents of the audits performed by the ECA, Art 287(2) TFEU provides their objectives. In everything that concerns the revenue, the objective is to check that the amounts due to the Union have been duly established, recorded and entered in the accounts. Respectively, with regard to the expenditure, the objective is 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 (see Strasser, 1992, p. 279, European Court of Auditors, 1996, p. 18, Themelis, 1984, p. 122).

Furthermore the ECA has been granted the authority, as the external auditor of the EU, to perform both ex ante and ex post audits, since it may audit a financial transaction either before a payment is made to or by the Union or after, not only locating where the Union has already wrongly collected or given money but also preventing the EU 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 resources and consequently any damage to the Union (see Sarantopoulos, 1975, p. 17). 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 (see Issaac, 1977, p. 797). This had created a gap that undermined the whole audit system. 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 (European Court of Auditors, 1996, p. 22-23).

The wording of Article, 287(3) TFEU actually establishes a right and an obligation, at the same time, for the ECA, as the EU external auditor, to audit all EU funds, regardless of the manager of these funds. In order to enhance the effectiveness of this audit, the ECA's right of access to information is recognised unambiguously, allowing it to perform on the spot

audits on the premises of every entity managing revenue or expenditure on behalf of the Community and of any natural or legal person in receipt of Community funds. The term "body" has been further specified by the amendments of the Lisbon Treaty, making explicit reference to "offices or agencies" managing revenues or expenditures on behalf of the Union, as mentioned above. In other words, the trigger of the ECA's audit power lies in the origin of the funds as Union's funds, and the ECA can then follow the money downwards to the very last recipient. Its audit authority is thus defined *ratione materiae*, i.e. on the substance of the case regardless of the persons involved, unlike other accounting offices and courts of auditors (at national level) whose powers are defined *ratione personae,* i.e. they can control the funds of sole national public administrative bodies, regardless of the sources of the funds (see Barrueco, 2015, p. 78).

A crucial issue with regard to the external audit scheme in the EU budgetary governance is the relationship between the auditor and the auditee. Given that the Commission is the institution responsible for managing the EU budget, it is the main auditee. The ECA has traditionally treated the Commission not just as an auditee but also as an associate in auditing the use of the EU's resources, taking into account the internal control and audit functions developed by the Commission, as it has adjusted its own auditing system on the existence of these functions (see below). This kind of relationship has allowed for the organisation of joint audit tasks, the exchange of information and the reconciliation of points of view between these two institutions (see Strasser, 1992, 280).

In all auditing procedures, and especially those of external audit, one very important aspect is the presentation of the auditee's replies. This is based on the understanding that the findings of an audit are complete, and any third party may derive accurate conclusions, only if the causes or justifications of

the findings are presented by those responsible for their existence, i.e. the auditees. In the case of the external audit system of the EU, the procedures concerning all reporting activities of the ECA include the presentation of the auditees' 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 (see European Court of Auditors, 1996, p. 14). This process of exchanging views, between the auditor and the auditee, is called the "Contradictory Procedure" (although some consider the term "Adversarial Procedure" as more accurate – see Harden, White, & Donnelly, 1995, p.617), during which the right of the audited bodies to be granted a hearing by their auditor is completely guaranteed (see Vitalis, 1984, p. 130). The exchange of views between the ECA and the auditee reflects the principle that such proceedings must be "inter pares" (i.e., on equal terms); however, the ECA retains its discretionary power over the contents of its reports and the right to maintain its point of view with regard to its findings (see Case T-277/97, *Ismeri Europa Srl v Court of Auditors of the European Communities*, [1999] ECR, p. II-1828 – II-1870, at p. II-1858) . As noted above, 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 in its mission which is to present the situation in the EU's financial management and also to focus on any anomalies of this management. The EU Court of Justice has found that this procedure is intended to contribute to improving the financial management of the EU by providing for reports to be transmitted to EU institutions and bodies and for the latter to respond to them (*See* Case C-315/99, *Ismeri Europa Srl v Court of Auditors of the European Communities,* [2001] ECR, p. I-5315 – I-5331, at p. I-5323). The aim of the reports is to make the executive power (in the case of the EU 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 (see Vitalis, 1984, p. 126). In general, given the particularities of the Union's system, allowing the Commission, as auditee (and that applies to all auditees), the right to be granted a hearing, the ECA informs all 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 (see Lelong, 1983, p. 113).

2.2. EU Secondary Law

Given that the provisions of EU primary law relating to the Union's external audit entail such detailed relevant arrangements, the provisions of the Financial Regulation serve as means of explaining and analyzing further the provisions of the Treaties.

This, given the wide scope of the ECA's audit authority, as established by the Treaties, the current Financial Regulation provides that the ECA must provide a specific annual report for each EU body whose basic act (i.e. its founding act) does not provide otherwise, by using the work of independent external auditor for the body in question, and any action taken in response to the auditor's findings (see Art. 70(6) of the current Financial Regulation). The same approach has not been adopted, however, with regard to the Union's trust funds established within the framework of the EU external action (see Art. 235(5) of the current Financial Regulation), as these funds are subject to annual independent external audits. Nevertheless, any EU budget resources given to such funds are being audited by the ECA.

As for the scope of the ECA's auditing authority, the Financial Regulation grants it full access to any information related to the financial instruments, budgetary guarantees and financial assistance, including by means of on-the-spot checks, as the external auditor for all projects and programmes supported by financial instruments, budgetary guarantees and financial assistance, all funded by the EU Budget (Art. 208(5) of the current Financial Regulation.

The ECA's Annual Report, its main audit product, is the result of a long and complex procedure described in Articles 245–246 and 258 of the current Financial Regulation: By 1 March, all institutions (except the Commission) must send to the ECA and the Commission their provisional accounts of the previous year along with the report on budgetary and financial management. The Commission must do the same by 31 March. The Court transmits to the institutions concerned by 1 June and to the Commission by 15 June its observations on the provisional accounts and by 30 June at the latest, any observations which are, in its opinion, such that they should appear in the annual report. These observations must remain confidential. The accounts are finalised and approved by the Commission and sent to the ECA before 31 July. As for the specific remarks regarding the Annual Report, each institution addresses its reply to the Court of Auditors by 15 October at the latest. The replies of institutions other than the Commission are sent to the Commission at the same time. The Court transmits to the authorities responsible for giving discharge and to the other institutions, by 15 November at the latest, its annual report accompanied by the replies of the institutions and ensures publication thereof in the Official Journal of the European Union. As soon as the ECA has transmitted the annual report, the Commission informs the Member States concerned immediately of the details of that report which relate to management of the funds for which

they are responsible under the rules applicable. Following receipt of such information, the Member States must reply to the Commission within 60 days. The latter then transmits a summary to the ECA, the Council and the European Parliament before the end of February.

Furthermore, Art. 258 of the current Financial Regulation provides for the contents of the ECA's Annual Report. This document contains an assessment of the soundness of financial management. There is a section for each audited institution and the Court may add any summary report or general observations which it sees fit to make, while, at the same time, it ensures that the replies of each institution to its observations are published immediately after the observations to which they relate. However the ECA has decided to enrich its Annual Report with further observations and remarks always relevant to the scope of its auditing function as the Union's external auditor. Thus, for instance, in its Annual Report for 2010, the ECA added a new chapter entitled "Getting Results for the EU Budget". This chapter presented the ECA's observations on the Commission's self-assessment on performance as stated in the Annual Activity Reports of the Commission's Directors-General and the main performance audit results for the last financial year as presented in the Court's Special Reports. For these purposes, performance was assessed on the basis of the sound financial management principles (economy, efficiency and effectiveness) as described in the Financial Regulation. Its measurement was pivotal throughout the public intervention process, covering inputs (financial, human, material, organisational or regulatory means needed for the implementation of the programme), outputs (the deliverables of the programme), results (the immediate effects of the programme on direct addressees or recipients) and impacts (long-term changes in society that are, at least partly, attributable to the EU's action). The ECA also examined the adherence of the principles which

govern good planning: initiatives should be set in a strategic context and prioritised; specific, measurable, achievable, relevant and timed (SMART) objectives should be established, and consistently articulated in the various planning documents as a good *ex-ante* impact assessment can play an important role in the decision-making process (see European Court of Auditors, 2010, pp. 205-226).

The special reports produced by the ECA are regulated by Art 259(1) of the current Financial Regulation. This provision describes in detail the adversarial procedure to be followed. Once the ECA, after the audit operations, decides to adopt a special report, it has to notify the institution concerned of all observations which are, in its opinion, such that they should appear in this report. These observations must remain confidential. The institution concerned must inform the ECA, within six weeks, of any comments it wishes to make on the observations in question. A special report is to be drawn up and adopted within a time frame not exceeding normally 13 months. All special reports, together with the replies of the institutions concerned, are transmitted without delay to the European Parliament and the Council, each of which decides, where appropriate in conjunction with the Commission, what action is to be taken in response. The publication of a special report in the Official Journal includes also the replies of the institutions concerned.

As for the opinions of the ECA, Art. 259(2) of the current Financial Regulation clearly identifies two types. The first one is mentioned in Article 287(4) TFEU. These opinions are not obligatory in a sense 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

(see Lelong, 193, p. 108). The second kind of opinions entails those delivered in relation to proposals or drafts covered by the legislative consultation, like for instance in Article 322 TFEU, for the adoption of the Union's Financial Regulation or the enactment of rules concerning the responsibility of financial actors in the EU. In such occasions the ECA must obligatorily be requested to deliver an opinion on the issues mentioned in the relevant provisions, but this obligation covers only the request of the opinion and does not extent to the substance of the opinion, which is not binding (see Lelong, 1983, p 108, O' Keeffe, 1994, p. 184).

The external audit procedure in the EU, as formally established in Art. 287(3) TFEU is further analysed in Articles 255 and 257 of the current Financial Regulation. According to these provisions, the bases and the limits of the ECA's examination with regard to revenue collection and expenditure incurring are the Treaties, the EU Budget, the Financial Regulation, the delegated acts adopted pursuant to the Financial Regulation and all other relevant acts adopted pursuant to the Treaties. The multiannual nature of programmes should be taken into account. Once again, the ECA's right of full access to documents and information deemed necessary for the performance of its audit is being stated. The auditees must place at the ECA's disposal all documents concerning the award and performance of contracts financed by the EU Budget, all accounts of cash or materials, all accounting records or reporting documents, any administrative documents relating thereto, all documents relating to revenue and expenditure, all inventories, all organisation charts of departments which are considered necessary to be audited on the basis of records or on-the-spot auditing and, for the same purposes, all documents and data created or stored electronically (the ECA has access also to all IT systems used for the management of revenue or expenditure). The ECA's audit authority entails also hearings

of officials responsible for revenue or expenditure operations. These officials must provide the ECA with their records of cash in hand, any other cash, securities and materials of all kinds, the supporting documents in respect of their stewardship of the funds with which they are entrusted, and also any books, registers and other documents relating thereto, as well as with the correspondence and any other documents required for the full implementation of the audit. As for non-EU recipients of EU financing, they are obliged to be subjected to audits by the ECA with regard to the use made of the financing granted. The Commission is obliged to inform the ECA, upon its request, on any borrowing and lending operations. This may be seen as a basis for the ECA to audit any relevant schemes developed since the 2009-2010 financial crisis for the provision of support to Member States experiencing problems. Also the ECA may ask to be present during audit operations performed by other (internal or external) auditors for transactions within the framework of the EU Budget's implementation. The ECA's cooperation with Member States' competent authorities is to be undertaken is a spirit of mutual trust and independence.

It is obvious from the Financial Regulation's provisions that the ECA may perform both on-the-spot audits and audits based on records, which allow the ECA to have access to all documents concerning any kind of account run by the Commission. The ECA's findings, especially those relating to the Commission's internal control system, have been, occasionally, very criticizing. It is noteworthy that in 1994, for instance, after the publication of the 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, acting in order to serve the Union's interests (see Harden, White & Donnelly, 1995, p. 619).

A final issue has to do with the system of the EU external audit. The position of the ECA as the EU's external auditor

necessitated the formulation and use of an appropriate system of audit, which would correspond to both the reality of the Union's arrangements on its financial management and the international standards on auditing issued by INTOSAI, taking always into account the ECA's limited resources.

As explained above, the ECA is granted the authority to conduct a variety of audit activities, in its capacity as the external auditor of the EU. These activities are grouped into two major types of audit.

The first type entails the financial and compliance audits. The financial audits refer to the reliability of accounts as they include the examination of the accounts of all EU revenue and all EU expenditure and of all entities set up by the EU, provided that the legislation establishing the entity concerned does not preclude such an examination. The compliance audits are the audits of legality and regularity as they include the examination of whether all revenue has been received and all expenditure incurred in a lawful and regular manner. The audit of revenue is carried out on the basis both of the amounts established as due and the amounts actually paid to the Union. The audit of expenditure is carried out on the basis both of commitments undertaken and payments made. The compliance audits focus in particular on any cases of irregularity and fraud. The financial and compliance audits form the basis for the materials in the ECA's Annual Report. They lead also to the production of special reports containing specific observations and replies to specific questions. ECA's financial and compliance audits consist of a process of gathering, updating and analysing information from different sources, in order ultimately to make decisions, draw conclusions and, where required, issue an audit opinion, based on sound professional judgment. This knowledge allows the ECA to be considered the most suitable institution to provide the Statement of Assurance on the reliability of the EU's accounts and the regu-

larity of the transactions underlying them. Such audits involve testing a random sample of transactions and evaluating supervisory and control systems to determine whether revenue and payments are calculated correctly and comply with the legal and regulatory framework. Detailed testing takes place across all spending schemes and Member States, and is used to provide specific assessments of the different areas of the EU budget. Other sources of evidence, such as the work of other auditors, are also used to support the conclusions (for more details on this type of audits see European Court of Auditors, 2017a).

The second type entails the performance audits. These audits address the quality of EU revenue or spending, and whether the principles of sound financial management have been applied. They involve an examination of programmes, operations, management systems and procedures of bodies and institutions that manage EU funds, to assess whether they are achieving economy, efficiency and effectiveness in the use of those resources. The ECA's performance audits cover a wide range of topics with a particular focus on issues related to growth and jobs, European added value, management of public finances, the environment and climate action. Performance audits results are set out in special reports. Auditing performance involves assessing different aspects of the public intervention process, including inputs (financial, human, material, organisational or regulatory means needed for the implementation of the programme), outputs (the deliverables of the programme), results (the immediate effects of the programme on direct addressees or recipients) and impacts (long-term changes in society that are attributable to the EU's action). Thus, a performance audit is an independent, objective and reliable examination of whether undertakings, systems, operations, programmes, activities or organisations are operating in accordance with the principles of economy, efficiency and effectiveness, and whether there is room for improvement

(for more details on this type of audits see European Court of Auditors, 2017b).

Since its establishment, the ECA had always sought to perform its auditing task in a manner of making the best possible use of its limited auditing personnel in controlling the very important and complex capital flows to and from the Union in extensive policy areas, so it decided to adopt a method called "systems-based approach of audit" (see Themelis, 1984, p. 122). This system has been described by the ECA itself in its Annual Report for 1980, as follows (see European Court of Auditors, 1981, p. 8-9):

> *"… 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, the main concepts and substance of which is still valid (see James, 1984, p. 477):

"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."

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 compliance of the system's actual function in practice with the theoretical model made by the ECA after the first examination (see Kok, 1989, p. 354). 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 (European Court of Auditors, 1996, p. 21).

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 Article 254 of the current Financial Regulation, to inform the Court about any rules (internal or other) that they adopt in respect of financial matters, so the ECA has always had a complete and detailed picture of their internal financial system. 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 (see Lelong, 1983, p. 106-107).

Generally speaking, given the size and complexity of the EU's budgetary governance structure, the audit system adopted by the ECA is considered to be inevitable and sensible (see House of Commons/Committee of Public Accounts, 1982, para 13).

3

A comparative review of the schemes of internal control/audit and external control/audit in the Budgetary Governance of the European Union

Usually, when trying to examine two different aspects of the same activity, there is an indirect, yet quite evident, tendency of comparing them in an adversarial manner, i.e. the one against the other. This approach assumes that the best way to reach valid conclusions is through a competitive process to determine accurately the strengths and weaknesses of the compared aspects against each other.

Thus, in the case of control and audit, it is not rare to encounter several comparisons between the internal and external aspects of these two functions, usually trying to establish the validity, or the suitability, or even the supremacy of the one over the other.

However, in the context of the EU budgetary governance such an approach would be at least erroneous and potentially dangerous.

Given the multi-level structure of the Union's organisation, and the correspondingly formulated operations, one should take into account that the controlling and auditing functions have been set up accordingly. The supervisory and control/audit systems, the range of procedures and processes (such as checks) of which are employed by the EU in order to administer and manage its budget and ensure that funds are collected

and spent properly, are operated in a manner poised to prevent errors or detect and correct them when they occur and in many areas, these systems involve a number of different actors at different levels i.e. local, regional, Member State and EU level (see Caldeira, 2008, p. 10).

Any attempt to examine the EU controlling and auditing schemes, both at internal and external level, in a perspective of diminishing the importance or usefulness of the one over the other, would lead to overlooking their operations within their respective scope of action and thus practically ignoring the added value that each of them contributes to the entire EU budgetary governance and the relevant financial management system. Therefore, a more useful approach is to treat these schemes as mutually complementary elements of a more global system that provides the required assurance with regard to the reliability and the soundness of the EU finances.

This approach, nevertheless, does not mean that the internal and external schemes of financial control/audit are amalgamated. On the contrary, the internal control/audit is distinct and different from the external control/audit. While they are complementary functions within the overall assurance framework which may work closely together and need to be coordinated, they have differences that should be recognised, and each should maintain its own value and expertise. Both forms of audit are essential for the effective governance of an organization such as the EU. Both need to be independent, objective, properly resourced and work according to their respective international standards. But they perform different functions and need to report separately (see Chartered Institute of Internal Auditors, 2015, p. 1).

In other words, there are some similarities but also significant differences that need to be highlighted. And this comparative review is also applicable in the EU budgetary governance context.

Especially with regard to internal and external audits, the similarities have been considered (see Jurchescu & Lesconi-Frumuşanu, 2010, p. 133) to entail a) the existence of legal provisions (such as those in EU primary law and EU secondary law) regarding the exertion of internal or external auditor function, b) the importance of internal and external controls/audits' findings in the entity's management (given both the managerial efficiency required for the proper function of the EU finances and the political significance attached to such results due to the EU's status as a political entity accountable to the peoples of its sovereign Member States), and c) the production of a report as the culminating result of the respective workings of the internal and external controls/audit (in the EU the relevant reports are the points of reference for the formulation and implementation of the corresponding actions).

As for the differences, the following table provides a relevant comparative account, based on the general understanding for internal and external audits, while it makes specific reference to the EU regime, in cases that this is differentiated from the overall status quo.

Table of differences between internal audit and external audit[4]

Basis for comparison	Internal Audit	External Audit
Definition	Internal Audit refers to an ongoing audit function performed within an entity by a separate internal auditing department.	External Audit is an audit function performed by the independent body which is not a part of the organization.
Objective/ Purpose	The key objective is to review the routine processes and activities in the entity's governance and provide suggestions on the scope for improvement, focusing on risks and their handling	The key objective is to analyze and verify the accounts and financial statements of the audited entity, in order to provide assurance on their credibility and reliability.
Legal Obligation	Voluntary in the private sector / Obligatory for the EU	Obligatory
Who conducts the audit	It is conducted by the internal audit department of the entity, comprising employees of the entity	It is conducted by a third party / In the EU this party is the ECA
Scope/Range	The scope is decided by the management of the entity / In the EU it is provided for by the relevant rules of EU law	The scope is provided for by the relevant rules

4 See indicative relevant tables in https://www.wallstreetmojo.com/internal-audit-vs-external-audit/, on 3.5.2020, https://keydifferences.com/difference-between-internal-audit-and-external-audit.html, on 3.5.2020, https://www.educba.com/internal-audit-vs-external-audit/, on 3.5.2020.

Reporting responsibilities	Internal audit must be independent of the management of the entity and to report functionally (directly) to the specific board / In the EU the report is submitted to the College of Commissioners	External auditors are responsible to the shareholders of the entity / in the public sector and the EU they are ultimately responsible to the legislature (Parliament). They do not report to the management of the auditee.
Recipients/ Users of the Audit Reports	The management of the entity uses the audit report to address its findings and act upon them	The members, shareholders, the public at large, etc. / In the EU context primarily the European Parliament and the other EU institutions and bodies
Opinion	Opinion is provided on the effectiveness of the operational activities of the organization.	Opinion is provided on the truthfulness and fairness of the financial statement of the company
Period	Continuous Process	Once in a year / In the EU the ECA conducts various audits in several policy fields
Contents	Internal audits focus on operational efficiency as they evaluate the entity's internal controls which include its accounting process and governance, they ensure compliance with the laws and regulations and provision of accurate and timely financial reporting and data collection, and they identify the issues and correct the lapses before their discovery in an external audit.	External audit purpose is to determine the accuracy and validity of the auditee's financial statement, by examining whether the auditee is providing a fair and complete representation of its financial position, using the available information such as bookkeeping records, bank balances, and financial transactions./ In the EU further to this financial and compliance audits, the ECA conducts performance audits.

As it is obvious from this comparison, internal and external audits are not opposed to each other, but, as already noted, they complement one another. The primary concern of internal audit is to establish the regularity and performance of the financial-accounting function exertion, while the external audit provides an opinion assuring on the regularity, sincerity and faithful image of accounts and financial statements. Thus, the internal audit provides the external audit with necessary information for its task, and the external audit's findings help the internal audit to reach conclusions on its objectives. The external auditor may use the work that is conducted in the internal audit, but this will not reduce the scope and the responsibility of the external audit. The internal audit acts as a check on the process and the activities of the entity and aids by advising on different matters to gain operational efficiency. Despite their distinct roles, the external auditors may use the internal auditors' work to avoid duplication, to improve its understanding on the auditee and its control environment, and to help it identify and assess the risks of material misstatement. Such interaction will contribute to create an environment in which the external auditor can be informed of significant matters that may affect its work. It is also of crucial importance that internal audit does not simply become "a tick in the external audit box", or that internal audit is distracted from its core roles, while, at the same time, the external audit scheme must also assure itself on the objectivity and quality of the internal audit function (see Jurchescu & Lesconi-Frumuşanu, 2010, p. 133, Chartered Institute of Internal Auditors, 2015, p. 3).

Finding the right balance on the cooperation between internal and external audit is a challenging endeavour. In order to achieve that, one should bear in mind that the interaction between these two audit functions aims to help those responsible of the entity's governance to obtain a more comprehensive view of its operations and its risks. Channels of good commu-

nication between internal and external audit should also be established and the subsequent recommendations of the two audit schemes should be better coordinated. Attention needs to be paid to the fact that whilst the objectives of external and internal audit activities are different, there may be some potential areas of overlap, particularly in the area of financial reporting, and the identification of internal control weaknesses. The internal auditors should consider these points in their audit planning process and may initiate separate follow-up activities to ascertain the effectiveness of management's corrective actions, while the external auditors should consider the internal audit's relevant findings as an input into their own work. In order to improve this cooperation potential between the internal and external audit, a range of levels of interaction has been suggested as follows (see European Confederation of Institutes of Internal Auditing, 2013, p. 7-8):

A **minimum level** of interaction may include:

- Audit planning by both audit types should be coordinated in order to avoid duplication and overlap
- The internal auditors should make available the executive summary of their report to the external auditor and the external auditor should send a copy of their report to the internal auditors
- The internal and external auditors should meet at least once a year to discuss common issues and concerns and ensure coordination
- The internal auditors should discuss items matters arising from the external auditors report.

A **higher level** of cooperation may include:

- Exchange of information and discussion during the risk assessment exercise concerning financial and other types of risks

- Evaluation of internal controls evidenced in the detailed internal audit reports to be made available to the external auditors
- Exchange of views on methodology and framework in order to establish a mutual understanding of audit approach
- Regular information to the external auditor on updates to the internal audit plan
- Access, upon request and where allowed by law, to specific working papers
- Internal audit interim reports including current status and progress on implementation of recommendations to be made available to external audit
- Regular meetings between the internal auditors and external auditors to discuss any relevant issues
- Inclusion of the external auditors' recommendations in the internal audit report, depending on the level of risks detected

Such cooperation can be beneficial also in the EU context, as it allows for the smooth operation of the EU internal and external audit mechanisms, taking into account the multi-level architecture of the EU budgetary governance and providing with a framework of gradual interaction while respecting each scheme's scope of action and position in the EU institutional arrangement.

The prospects of success for such a cooperation can be seen by the fact that the ECA, as the external auditor of the EU, has provided the European Commission with useful insights regarding the organization of the latter's internal control scheme, in a period during which the Commission's Internal Audit Service was being set up and organised. More specifically, the Commission was introducing the concept of "single audit" as a means to tackle the complexity of EU budgetary

governance, especially in occasions of shared management in view of the programming period 2007-2013, aiming at formulating an integrated internal control framework (see European Commission, 2005). In this context, the "single audit" scheme (see European Court of Auditors, 2013, p. 16)

> *"refers to a system of internal control and audit which is based on the idea that each level of control builds on the preceding one. Single audit aims at preventing the duplication of control work and reducing the overall cost of control and audit activities at the level of the Member States and the Commission. It also aims at decreasing the administrative burden on auditees. The Commission (which holds ultimate responsibility for the implementation of the EU budget) is at the top of the 'single audit' pyramid."*

The core of the single audit mechanism lies with the establishment of an internal control system having as its basis, a chain of control procedures operating to common standards, with each level having specific defined objectives which take into account the work of the others. Claims of expenditure or costs over a certain threshold should be accompanied by an independent audit certificate and report, based on common standards of approach and content (see European Court of Auditors, 2004, p. 9). Taking into account the complexity of managerial structures in various budgetary areas in the EU, as well as the national organizational arrangements on EU funds' management and control in the Member States, the ECA suggested a chain-based model with the following levels (see European Court of Auditors, 2004, p. 18):

- ***Primary*** *controls would be those undertaken by the paying organisation on the grant application or claim (local level). They generally comprise administrative checks, together with checks of reality on the spot for claims consi-*

dered at risk.

- ***Secondary** controls would also be undertaken at a local level, but by a functionally separate control unit or organisation, and would obtain evidence that the primary systems and controls are operating effectively, and then undertake risk-based checking of transactions in line with the tolerable risk.*
- ***Central** controls would be undertaken by Member State central or regional level and would examine the operation of the primary and secondary controls, and undertake testing of a representative sample of transactions to estimate the residual level of risk in the population.*
- *Commission **supervisory** controls would oversee the process in the Member State to ensure that it was being implemented correctly and monitor the cost/benefit balance.*

Furthermore the ECA identified a set of principles necessary for the successful establishment and operation of the Commission's internal control framework, as follows (see European Court of Auditors, 2013, p. 53):

- *In order to ensure effective and efficient internal control of EU funds, a Community internal control framework should be developed containing common principles and standards, to be used as a basis for developing new or existing control systems at all levels of administration;*
- *Controls should be applied to a common standard and coordinated to avoid unnecessary duplication;*
- *Controls should be applied, documented and reported in an open and transparent way, allowing the results to be used and relied upon by all parts of the system,*
- *To allow controls to be effective and efficient, legislation underlying policy and processes should be clear and unambiguous and avoid unnecessary complexity;*
- *Internal control systems should have, at their basis, a*

chain of control procedures, with each level having specific defined objectives which take into account the work of the others. Claims of expenditure or costs over a certain threshold should be accompanied by an independent audit certificate and report, based on common standards of approach and content;

- *The Commission should define the minimum requirements for internal control systems whilst taking into account the specific characteristics of the different budgetary areas. Systems in each area should be accompanied by a coordinated information approach to ensure beneficiaries are clearly aware of the objectives and consequences of being checked;*

These suggestions were taken on board by the Commission, leading to a quite noticeable improvement of its internal control system, as it was demonstrated in the impact assessment performed by itself (see European Commission, 2009), and the relevant external audit of the ECA, although the latter identified some issues to be addressed by the Commission in order to eliminate certain shortfalls such as strengthening the verification of national reported error rates, introducing net financial corrections, applying consistent and transparent criteria when establishing single audit schemes, etc (see European Court of Auditors, 2013, pp. 44-48).

Having examined both the internal control and audit schemes of the EU, as well as its external audit mechanism, and having established that all these should be complementary elements of an integrated system aimed at providing the EU with assurances regarding the legality and regularity of its transactions and the soundness of the financial management operations undertaken within its budgetary governance, it is safe to attempt to outline the resulting complete EU system of internal and external control/audit.

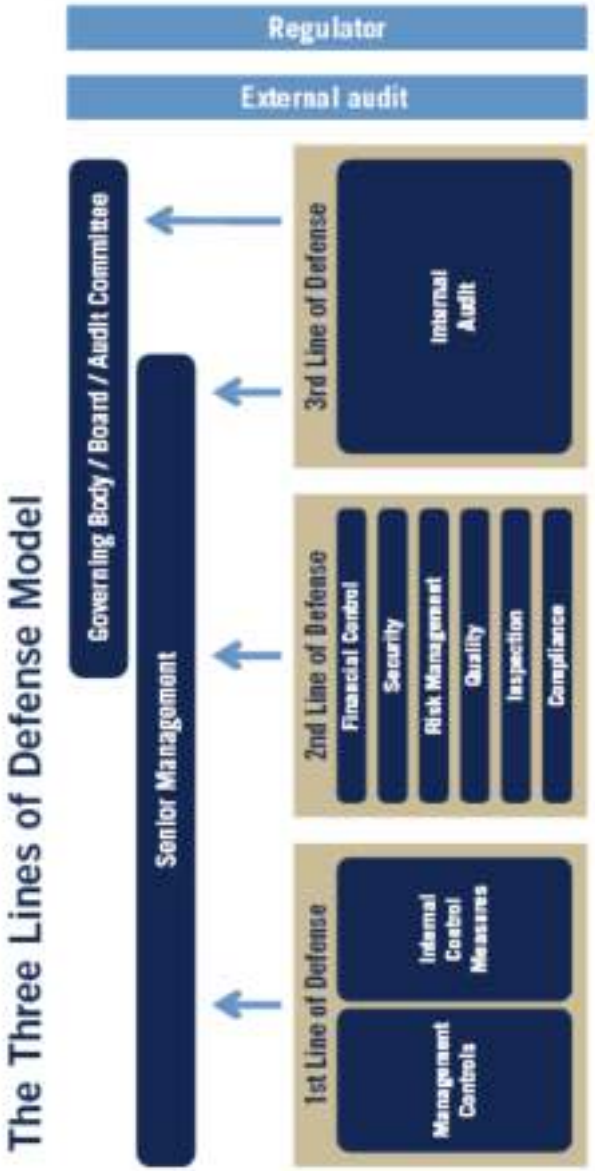
The most appropriate model for such an effort can be found in the acquis communautaire that the EU has produced for the audit function within the framework of EU Company Law. More specifically, Art. 41 of the 8th EU Company Law Directive (i.e. Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts, [2006] OJ, L 157/87) provides for the establishment of an Audit Committee to all public interest entities, and this Committee is responsible to monitor the financial reporting process, ensuring that the financial statements are consistent with international accounting standards, to monitor the effectiveness of the entity's internal control and internal audit, ensuring that the latter and their audit is conducted based on international auditing standards, especially with regard to the auditors independence (for more details see Bajra U & Cadez S., 2018).

This development in EU Company Law has allowed for the formulation of a proposal regarding a simple and effective way to enhance communications on risk management and control, by clarifying essential roles and duties, and – most importantly for this analysis – it is appropriate for any organization, regardless of size or complexity: the Three Lines of Defence model (see Institute of Internal Auditors, 2013).

According to this model, the first line of defence entails management control, i.e. functions that own or manage risks, and the staff involved has to identify, assess, controls, and mitigate risks, guiding the development and implementation of internal policies and procedures and ensuring that activities are consistent with goals and objectives (see Institute of Internal Auditors, 2013, p. 3) The second line of defence entails the various risk control and compliance oversight functions established by management, which a) monitor the implementation of effective risk management practices by operational management, and assist risk owners in defining the target risk exposure and reporting adequate risk-related information

throughout the organization, b) monitor various specific risks such as noncompliance with applicable laws and regulations and reporting to senior management, c) control of financial risks and of financial reporting issues (see Institute of Internal Auditors, 2013, pp. 4-5). The third line of defence entails functions providing independent assurance, which form the internal audit scheme (the Audit Committee foreseen by the 8th EU Company Law Directive) and their scope of action focuses on assuring the effective and efficient operation of governance, risk management, and internal controls, including the manner in which the first and second lines of defence achieve risk management and control objectives (see Institute of Internal Auditors, 2013, pp. 5-6). It is obvious that each of these three "lines" plays a distinct role, always within the entity's wider governance framework, but at the same time there are external factors to be taken into account, such as external auditors or regulators outside the entity's structure, which they can have an important role in the organization's overall governance and control structure, by assessing the whole or some part of the first, second, or third line of defence with regard to the relevant requirements, and thus constitute additional lines of defence, providing further assurance (see Internal Auditors Institute, 2013, p. 6).

This entire model is represented in the following figure:



Source: Internal Auditors Institute, 2013, p. 2

Transferring this model in the context of the EU budgetary governance and more specifically of the EU internal control and audit and the EU external audit functions, the following could be identified, at least with regard to the European Commission's relevant structures:

- The first line of defence includes the various desk officers managing EU funds, which undertake also the verification of the arrangements made at Member State level.
- The second line of defence includes the authorising officers, whose competences include also the setting up and operation of the internal control schemes, as well as the accounting officers who are signing of the accounts.
- The third line of defence includes the Internal Audit Service of the Commission, as well as the equivalent schemes in EU bodies not covered by the IAS.
- The external lines of defence include:
  - The ECA which is the external auditor of the EU, undertaking a) financial and compliance audit for the provision of assurance of reliability and correctness and b) performance audits for the verification of adhering to the principle of sound financial management.
  - The European Parliament and the Council which possess the legislative authority, and may, based on the reports of the Commission's competent departments and the ECA, produce the legislation necessary to safeguard the proper functioning of the EU budgetary governance.

The corresponding scheme is the following:

This scheme covers the main functions for EU budget implementation. The necessary budgetary commitments (reserving the necessary funds in the budget) and legal commitments (signature of a contract or grant agreement), preceding any payment, are prepared by the desk officers (1st line) and approved by the authorising officers who validate expenditure and authorize payments that are being made by accounting officers who check the relevant documentation to conform with the validated accounting standards (2nd line) while the entire financial "circuit" is being reviewed by the Internal Audit Service (3rd line), that provides the assurance on the circuit's proper operation. The "four-eyes" principle is adhered to as each financial transaction is divided into 2 steps: initiation on the one hand, and verification/validation on the other hand, and these two steps are done by two different officials without any subordinating official relation between them. And all these operations are being examined in terms of compliance and soundness of financial management by the ECA as a further (external) line of defence, while the legislative mechanism

of the EU may enact any provision necessary according to the findings of the reports produced within this system.

Thus an integrated system of internal control and audit and external audit in the EU budgetary governance is formulated, taking as point of reference the complementarity of its elements, not their institutional competition.

Conclusion

The establishment of an integrated system of control and audit (comprising both internal and external aspects) has always been a feature desired in public sector governance, at national, supranational and transnational level. It is considered to be a cornerstone of good public sector governance, as it provides unbiased, objective assessments of whether public resources are managed responsibly and effectively to achieve intended results, it promotes accountability and integrity, it contributes to the improvement of public sector operation, and it reinforces confidence between citizens and any form of audited authority. Furthermore it supports the governance responsibilities of a) oversight which entails examining whether public sector entities are doing what they are supposed to do, as well as detecting and detering public corruption, b) insight which entails assisting decision-makers by providing an independent assessment of public sector programs, policies, operations, and results and c) foresight which entails the identification of trends and emerging challenges (see Institute of Internal Auditors, 2012, p.5).

The public sector at subnational, national and supranational level may be represented in a principal-agent scheme, in which the principal is the people while the agent is the organized public authority, which must account periodically – at least in the context of a democratic regime – for the use of the resources made available to it and the accomplishment of the relevant objectives. The system of the internal and external control and audit performs a dual role in the context of this relationship as it verifies and validates the agent's management and accounts and it reports to the principal on the use of the resources and the results of the agent's actions (see Institute

of Internal Auditors, 2012, p.13). This position and function of the integrated control and audit system and especially the added value it provides to serving the public interest through the output of its operations is seen as a public good that must be provided by a state (for the relevant analysis see Stewart, 2015). And like any public good, it must be provided in the best possible manner, and it must achieve the best possible results. The quality of an integrated control and audit system is a well established concept, and its meaning has been defined as the possibility and the corresponding probability that those involved in it will both discover and report possible breaches of rules or defaults in the accounting system in question (see for instance Reis & Giroux, 1992, p. 462 and the references therein). Thus the integrated control and audit system has been developed as a mechanism (see Diamond, 2002, p. 4) that provides assurance both to the executive (through the system's internal aspects) and the legislature i.e. the Parliament as the people's elected representatives (through the system's external aspects) that the resources are received and spent in compliance with the appropriate laws (compliance control and audit), that the executive's reported use of the resources has been fair and accurate, representing its real financial position (financial control and audit) and that the elements of sound financial management (economy, efficiency, effectiveness) have been adhered to (value for money or performance audit).

These considerations are obviously applicable in the EU context.

It has been demonstrated throughout this analysis that the EU has developed an extensive system of internal and external control and audit in its budgetary governance. This system has been activated with the aim to operate in accordance with the above described template of an integrated control and audit, so as to provide EU finances with qualities such as reliability, compliance and soundness. However, the ECA has identified

various types of risks, such as external, financial and activity risks that can occur in transactions within the EU budget framework, related to either revenue or expenditure. One major category of such risks refers to the EU control and audit systems, and it entails the following (European Court of Auditors, 2014b, p. 40):

- With regard to control systems (including financial controls)
  - Lack of internal control systems to monitor the 3 Es (economy, effectiveness and efficiency)
  - Weaknesses in design or performance of control systems, supervision and control systems are nonexistent or unsuitable
  - Complex control systems (ineffective or costly)
  - Differences in control systems among beneficiaries/ Member States
  - Operations are not fully subject to usual controls
  - Onthespot inspections or monitoring rights are not taken up or are infrequently used
  - Beneficiaries' accounting systems are incompatible with Union systems
  - Excessive costs in the programme, or costs beyond expectations, or budget targets are missed to a significant degree
  - Difficulty in determining costs of inputs
  - Lack of accounting system/poor audit trail

- With regard to audit and evaluation systems
  - Inadequate audit system (coverage, quality, reporting, follow-up)
  - Past audit findings not acted upon
  - Poor evaluations/no follow-up of evaluation results

If these risks materialise, they may result in a series of failures such as:

- failure to deliver on policy or to achieve the intended outcome because the wrong or inappropriate processes are used to get the desired results and impact;
- failure to add value, especially at the European level, as EU funds may bring some benefits to EU citizens or other recipients, but this expenditure does not have a distinctive EU dimension, or the same results could have been achieved using other funds, or fewer EU funds;
- failure to use the appropriate management and operational methods to achieve the policy objectives, i.e. the results could have been achieved better, or better results could have been achieved by using other methods;
- failure to implement adequate internal control systems to achieve the objectives (taking account of risks related to management, operations, legality and regularity of expenditure, finance, procurement, fraud and other irregularities, use of IT, human resources, assets, health and safety, etc.), or to set performance management systems in place to monitor progress.

On the contrary the successful management of the above mentioned these risks will result in good quality transactions, i.e. effective, economic and efficient collection and use of resources, in accordance with the rules (see European Court of Auditors, 2014b, p.21).

Such risks can be managed properly if the various components (internal and external) of the integrated control and audit system of the EU are treated, employed and combined as a totality, with, nonetheless, distinctive parts. It has been established (for more details see Rija & Rubino, 2018) that only an integrated system allows ensuring the adequacy of the control modes with respect to the needs arising from the risks to be guarded against and such functionality depends on the ability to employ alternative checks, which are based on ho-

mogeneous criteria for recognition and measurement. This assumes that the various components of the system are mutually coordinated and interdependent. The key issue, especially for the EU in this regard, is to formulate, enact and enforce effective rules for coordination between organs and functions, take care of any issues of overlapping and aiming at rationalisation and simplification of the procedures. Having several bodies of control and audit could give rise to dangerous flaws in efficiency, namely unnecessary duplication of activities. The various components (internal and external) must therefore be treated as integrated within a global system of EU controls and audits. This integration is based on clearly defined competences and responsibilities, thus allowing for a sense of common empowerment which will be based on the common understanding of the adjusted model of "three lines of defence" for control and audit in the context of EU budgetary governance.

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ANNEX

I. Provisions on Internal Control/Audit

A. EU Primary Law

Treaty on the Functioning of the European Union

Part Six
Institutional and Financial Provisions

…

Title II
Financial Provisions

…

Chapter 4
Implementation of the Budget and Discharge

Article 317 TFEU

The Commission shall implement the budget in cooperation with the Member States, in accordance with the provisions of the regulations made pursuant to Article 322, on its own responsibility and within the limits of the appropriations, having regard to the principles of sound financial management. Member States shall cooperate with the Commission to ensure that the appropriations are used in accordance with the principles of sound financial management.

The regulations shall lay down the control and audit obligations of the Member States in the implementation of the budget and the resulting responsibilities. They shall also lay down the responsibilities and detailed rules for each institution concerning its part in effecting its own expenditure.

Within the budget, the Commission may, subject to the limits and conditions laid down in the regulations made pursuant to Article 322, transfer appropriations from one chapter to another or from one subdivision to another.

…

B. EU Secondary Law

Regulation 2018/1046 on the financial rules applicable to the general budget of the Union, OJ [2018], L 193/1. (The 2018 Financial Regulation)

Recitals

…

(28) The European Parliament, the Council, the Court of Auditors and the accounting officer of the Commission should be informed of the appointment or termination of the duties of an authorising officer by delegation, internal auditor and accounting officer within two weeks of such appointment or termination.

(29) Authorising officers should be fully responsible for all revenue and expenditure operations executed under their authority, and for internal control systems, and should be held accountable for their actions, including, where necessary, through disciplinary proceedings.

…

(55) Each Union institution should establish an internal audit progress committee tasked with ensuring the independence of the internal auditor, monitoring the quality of the internal audit work and ensuring that internal and external audit recommendations are properly taken into account and followed up by its services. The composition of that internal audit progress committee should be decided by each Union institution, taking into account its organisational autonomy and the importance of independent expert advice.

…

(156) The rules applicable to provisioning and to the common provisioning fund should provide a solid internal con-

trol framework. The guidelines applicable to the management of the resources in the common provisioning fund should be established by the Commission after having consulted the accounting officer of the Commission. The authorising officers of the financial instruments, budgetary guarantees or financial assistance should actively monitor the financial liabilities under their responsibility and the financial manager of the resources of the common provisioning fund should manage the cash and the assets in the fund following the rules and procedures set out by the accounting officer of the Commission.

…

(179) With a view to ensuring sound financial management of the ERDF, the ESF, the Cohesion Fund, the EAFRD and the EMFF ('the European Structural and Investment Funds' – 'ESI Funds') which are implemented under shared management, and to clarify Member States' obligations, the general principles set out in Article 4 of Regulation (EU) No 1303/2013 should refer to the principles set out in this Regulation concerning internal control of budget implementation and avoidance of conflicts of interests.

…

Title II
Budget and Budgetary Principles

…

Chapter 7
Principle of sound financial management and performance

…

Article 35

Compulsory financial statement

…

3. In order to reduce the risk of fraud, irregularities and non-achievement of objectives, the financial statement shall provide information on the internal control system set up, an estimate of the costs and benefits of the controls implied by such a system and an assessment of the expected level of risk of error, as well as information on existing and planned fraud prevention and protection measures.

…

Article 36

Internal control of budget implementation

1. Pursuant to the principle of sound financial management, the budget shall be implemented in compliance with the effective and efficient internal control appropriate to each method of implementation, and in accordance with the relevant sector-specific rules.

2. For the purposes of budget implementation, internal control shall be applied at all levels of management and shall be designed to provide reasonable assurance of achieving the following objectives:

(a) effectiveness, efficiency and economy of operations;
(b) reliability of reporting;
(c) safeguarding of assets and information;
(d) prevention, detection, correction and follow-up of fraud and irregularities;
(e) adequate management of the risks relating to the legality and regularity of the underlying transactions, taking into account the multiannual character of programmes as well as the nature of the payments concerned.

3. Effective internal control shall be based on best international practices and include, in particular, the following elements:
(a) segregation of tasks;
(b) an appropriate risk management and control strategy that includes control at recipient level;
(c) avoidance of conflict of interests;
(d) adequate audit trails and data integrity in data systems;
(e) procedures for monitoring effectiveness and efficiency;
(f) procedures for follow-up of identified internal control weaknesses and exceptions;
(g) periodic assessment of the sound functioning of the internal control system.

4. Efficient internal control shall be based on the following elements:
(a) the implementation of an appropriate risk management and control strategy coordinated among appropriate actors involved in the control chain;
(b) the accessibility for all appropriate actors in the control chain of the results of controls carried out;
(c) reliance, where appropriate, on management declarations of implementation partners and on independent audit opinions, provided that the quality of the underlying work is adequate and acceptable and that it was performed in accordance with agreed standards;

(d) the timely application of corrective measures including, where appropriate, dissuasive penalties;
(e) clear and unambiguous legislation underlying the policies concerned, including basic acts on the elements of the internal control;
(f) the elimination of multiple controls;
(g) the improvement of the cost benefit ratio of controls.

5. If, during implementation, the level of error is persistently high, the Commission shall identify the weaknesses in the control systems, analyse the costs and benefits of possible corrective measures and take or propose appropriate action, such as simplification of the applicable provisions, improvement of the control systems and redesign of the programme or delivery systems.
…

Title IV
Budget Implementation

Chapter I
General Provisions

…

Article 57

Information on transfers of personal data for audit purposes

In any call made in the context of grants, procurement or prizes implemented under direct management, potential beneficiaries, candidates, tenderers and participants shall, in accordance with Regulation (EC) No 45/2001 be informed that, for the purposes of safeguarding the financial interests of the Union, their personal data may be transferred to internal audit services, to the Court of Auditors or to the European An-

ti-Fraud Office (OLAF) and between authorising officers of the Commission, and the executive agencies referred to in Article 69 of this Regulation and the Union bodies referred to in Articles 70 and 71 of this Regulation.

…

Chapter 2
Methods of implementation

…

Article 63

Shared management with Member States

…

3. In accordance with the criteria and procedures laid down in sector-specific rules, Member States shall, at the appropriate level, designate bodies to be responsible for the management and control of Union funds. Such bodies may also carry out tasks not related to the management of Union funds and may entrust certain of their tasks to other bodies.

When deciding on the designation of bodies, Member States may base their decision on whether the management and control systems are essentially the same as those already in place for the previous period and whether they have functioned effectively.

If audit and control results show that the designated bodies no longer comply with the criteria set out in sector-specific rules, Member States shall take the measures necessary to ensure that deficiencies in the implementation of the tasks of those bodies are remedied, including by ending the designation in accordance with sector-specific rules.

Sector-specific rules shall define the role of the Commission in the process set out in this paragraph.

4. Bodies designated pursuant to paragraph 3 shall:
(a) set up and ensure the functioning of an effective and efficient internal control system;
…

Chapter 3
European offices and Union bodies

…

Article 64

Scope of competences of European offices

…

4. The internal auditor of the Commission shall exercise all responsibilities laid down in Chapter 8 of this Title.
…

Article 70

Bodies set up under the TFEU and the Euratom Treaty

1. The Commission is empowered to adopt delegated acts in accordance with Article 269 of this Regulation to supplement this Regulation with a framework financial regulation for bodies which are set up under the TFEU and the Euratom Treaty and which have legal personality and receive contributions charged to the budget.
…

5. The internal auditor of the Commission shall exercise the same powers over the bodies referred to in paragraph 1 as those exercised in respect of the Commission.
…

Chapter 4
Financial Actors

…

Article 74

Powers and duties of the authorising officer

1. The authorising officer shall be responsible in the Union institution concerned for implementing revenue and expenditure in accordance with the principle of sound financial management, including through ensuring reporting on performance, and for ensuring compliance with the requirements of legality and regularity and equal treatment of recipients.

2. For the purposes of paragraph 1 of this Article, the authorising officer by delegation shall, in accordance with Article 36 and the minimum standards adopted by each Union institution and having due regard to the risks associated with the management environment and the nature of the actions financed, put in place the organisational structure and the internal control systems suited to the performance of his or her duties. The establishment of such structure and systems shall be supported by a comprehensive risk analysis, which takes into account their cost effectiveness and performance considerations.

…

8. If a member of staff, involved in the financial management and control of transactions, considers that a decision he or she is required by his or her superior to apply or to agree to is irregular or contrary to the principle of sound financial management or the professional rules which that member of staff is required to observe, he or she shall inform his or her hierarchical superior accordingly. If the member of staff does so in

writing, the hierarchical superior shall reply in writing. If the hierarchical superior fails to take action or confirms the initial decision or instruction and the member of staff believes that such confirmation does not constitute a reasonable response to his or her concern, the member of staff shall inform the authorising officer by delegation in writing. If that officer does not reply within a reasonable time given the circumstances of the case and in any event within a month, the member of staff shall inform the relevant panel referred to in Article 143.

In the event of any illegal activity, fraud or corruption which may harm the interests of the Union, the member of staff shall inform the authorities and bodies designated in the Staff Regulations and in the decisions of Union institutions concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any other illegal activity detrimental to the interests of the Union. Contracts with external auditors carrying out audits of the financial management of the Union shall provide for an obligation of the external auditor to inform the authorising officer by delegation of any suspected illegal activity, fraud or corruption which may harm the interests of the Union.

9. The authorising officer by delegation shall report to his or her Union institution on the performance of his or her duties in the form of an annual activity report containing financial and management information, including the results of controls, declaring that, except as otherwise specified in any reservations related to defined areas of revenue and expenditure, he or she has reasonable assurance that:

(a) the information contained in the report presents a true and fair view;
(b) the resources assigned to the activities described in the report have been used for their intended purpose and in accordance with the principle of sound financial manage-

ment; and

(c) the control procedures put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions.

The annual activity report shall include information on the operations carried out, by reference to the objectives and performance considerations set in the strategic plans, the risks associated with those operations, the use made of the resources provided and the efficiency and effectiveness of internal control systems. The report shall include an overall assessment of the costs and benefits of controls and information on the extent to which the operational expenditure authorised contributes to the achievement of strategic objectives of the Union and generates EU added value. The Commission shall prepare a summary of the annual activity reports for the preceding year.

The annual activity reports for the financial year of the authorising officers and, where applicable, authorising officers by delegation of Union institutions, Union bodies, European offices and agencies shall be published by 1 July of the following financial year on the website of the respective Union institution, Union body, European office or agency in an easily accessible way, subject to duly justified confidentiality and security considerations.

…

Article 76

Powers and duties of Heads of Union Delegations

…

3. Heads of Union delegations acting as authorising officers by subdelegation in accordance with Article 60(2) shall report to

their authorising officer by delegation so that the latter can integrate their reports in his or her annual activity report referred to in Article 74(9). The reports of Heads of Union delegations shall include information on the efficiency and effectiveness of internal control systems put in place in their delegation, as well as on the management of operations subdelegated to them, and provide the assurance referred to in the third subparagraph of Article 92(5). Those reports shall be annexed to the annual activity report of the authorising officer by delegation, and shall be made available to the European Parliament and to the Council having due regard, where appropriate, to their confidentiality.

…

Chapter 5
Liability of financial actors

…

Article 92

Rules applicable to authorising officers

…

4. In the event of subdelegation within his or her service, the authorising officer by delegation shall continue to be responsible for the efficiency and effectiveness of the internal management and control systems put in place and for the choice of the authorising officer by subdelegation.

5. In the event of subdelegation to Heads of Union delegations and their deputies, the authorising officer by delegation shall be responsible for the definition of the internal management and control systems put in place, as well as their efficiency and

effectiveness. Heads of Union delegations shall be responsible for the adequate setting up and functioning of those systems, in accordance with the instructions of the authorising officer by delegation, and for the management of the funds and the operations they carry out within the Union delegation under their responsibility. Before taking up their duties, they shall complete specific training courses on the tasks and responsibilities of authorising officers and budget implementation.

Heads of Union delegations shall in accordance with Article 76(3) report on their responsibilities pursuant to the first subparagraph of this paragraph.

Each year, Heads of Union delegations shall provide to the authorising officer by delegation of the Commission assurance on the internal management and control systems put in place in their delegation, as well as on the management of operations subdelegated to them, and the results thereof, in order to allow the authorising officer to make the statement of assurance provided for in Article 74(9).

This paragraph shall also apply to deputy Heads of Union delegations when they act as authorising officers by subdelegation in the absence of Heads of Union delegations.

Article 93

Treatment of financial irregularities on the part of a member of staff

1. Without prejudice to the powers of OLAF and to the administrative autonomy of Union institutions, Union bodies, European offices or bodies or persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU in respect of members of their staff and with due regard to the protection of whistle-blowers, any infringement of this Regulation, or of a provision relating to financial mana-

gement or the checking of operations, resulting from an act or omission of a member of staff shall be referred for an opinion to the panel referred to in Article 143, by any of the following:
(a) the appointing authority in charge of disciplinary matters;
(b) the authorising officer responsible, including Heads of Union delegations and their deputies in their absence acting as authorising officers by subdelegation in accordance with Article 60(2).

…

3. In the cases referred in paragraph 1 of this Article, the panel referred to in Article 143 shall be competent to assess whether, on the basis of the elements submitted to it pursuant to paragraph 2 of this Article and any additional information received, a financial irregularity has occurred. On the basis of the opinion of the panel, the Union institution, Union body, European office or body or person concerned shall decide on the appropriate follow-up actions in accordance with the Staff Regulations. If the panel detects systemic problems, it shall make a recommendation to the authorising officer and to the authorising officer by delegation, unless the latter is the member of staff involved, as well as to the internal auditor.

Chapter 8
Internal auditor

Article 117

Appointment of the internal auditor

1. Each Union institution shall establish an internal audit function which shall be performed in compliance with the relevant international standards. The internal auditor appointed by the Union institution concerned shall be accountable to the latter for verifying the proper operation of budget implementation

systems and procedures. The internal auditor shall not be the authorising officer or the accounting officer.

2. For the purposes of the internal auditing of the EEAS, Heads of Union delegations, acting as authorising officers by subdelegation in accordance with Article 60(2), shall be subject to the verifying powers of the internal auditor of the Commission for the financial management subdelegated to them.

The internal auditor of the Commission shall also act as the internal auditor of the EEAS in respect of the implementation of the section of the budget relating to the EEAS.

3. Each Union institution shall appoint its internal auditor in accordance with arrangements adapted to its specific features and requirements. Each Union institution shall inform the European Parliament and the Council of the appointment of its internal auditor.

4. Each Union institution shall determine, in accordance with its specific features and its requirements, the scope of the mission of its internal auditor and shall lay down in detail the objectives and procedures for the exercise of the internal audit function with due respect for international internal audit standards.

5. Each Union institution may appoint as internal auditor, by virtue of their particular competence, an official or other servant covered by the Staff Regulations selected from nationals of Member States.

6. If two or more Union institutions appoint the same internal auditor they shall make the necessary arrangements for the internal auditor to be declared liable for his or her actions as laid down in Article 121.

7. Each Union institution shall inform the European Parlia-

ment and Council when the duties of its internal auditor are terminated.

Article 118

Powers and duties of the internal auditor

1. The internal auditor shall advise his or her Union institution on dealing with risks, by issuing independent opinions on the quality of management and control systems and by issuing recommendations for improving the conditions of implementation of operations and promoting sound financial management.

The internal auditor shall in particular be responsible for:

(a) assessing the suitability and effectiveness of internal management systems and the performance of departments in implementing policies, programmes and actions by reference to the risks associated with them;

(b) assessing the efficiency and effectiveness of the internal control and audit systems applicable to each budget implementation operation.

2. The internal auditor shall perform his or her duties in relation to all the activities and departments of the Union institution concerned. He or she shall enjoy full and unlimited access to all information required to perform his or her duties, if necessary also on-the-spot access, including in Member States and in third countries.

The internal auditor shall take note of the annual report of the authorising officers and any other pieces of information identified.

3. The internal auditor shall report to the Union institution concerned on his or her findings and recommendations. The Union institution concerned shall ensure that action is taken with regard to recommendations resulting from audits.

Each Union institution shall consider whether the recommendations made in the reports of its internal auditor are suitable for an exchange of best practices with other Union institutions.

4. The internal auditor shall submit to the Union institution concerned an annual internal audit report indicating the number and type of internal audits carried out, the principal recommendations made and the action taken with regard to those recommendations.

That annual internal audit report shall mention any systemic problems detected by the panel set up pursuant to Article 143 where it gives the opinion referred to in Article 93.

5. The internal auditor shall, during the elaboration of the report, particularly focus on the overall compliance with the principles of sound financial management and performance, and shall ensure that appropriate measures have been taken in order to steadily improve and enhance their application.

6. Each year, the Commission shall, in the context of the discharge procedure and in accordance with Article 319 TFEU, forward on request its annual internal audit report with due regard to confidentiality requirements.

7. Each Union institution shall make available the contact details of its internal auditor to any natural or legal person involved in expenditure operations, for the purposes of confidentially contacting the internal auditor.

8. Each year each Union institution shall draft a report containing a summary of the number and type of internal audits carried out, a synthesis of the recommendations made and the action taken on those recommendations and forward it to the European Parliament and to the Council as provided for in Article 247.

9. The reports and findings of the internal auditor, as well as the report of the Union institution concerned, shall be accessible to the public only after validation by the internal auditor of the action taken for their implementation.

10. Each Union institution shall provide its internal auditor with the resources required for the proper performance of the internal audit function and a mission charter detailing the tasks, rights and obligations of its internal auditor.

Article 119

Work programme of the internal auditor

1. The internal auditor shall adopt the work programme and shall submit it to the Union institution concerned.

2. Each Union institution may ask its internal auditor to carry out audits not included in the work programme referred to in paragraph 1.

Article 120

Independence of the internal auditor

1. The internal auditor shall enjoy complete independence in the conduct of the audits. Special rules applicable to the internal auditor shall be laid down by the Union institution concerned and shall be such as to guarantee that the internal auditor is totally independent in the performance of his or her duties, and to establish the internal auditor's responsibility.

2. The internal auditor shall not be given any instructions nor be restricted in any way as regards the performance of the functions which, by virtue of his or her appointment, are assigned to him or her under this Regulation.

3. If the internal auditor is a member of staff, he or she shall exercise exclusive audit functions in full independence and

shall assume responsibility as laid down in the Staff Regulations.

Article 121

Liability of the internal auditor

Each Union institution alone, proceeding in accordance with this Article, may act to have its internal auditor, as a member of staff, declared liable for his or her actions.

Each Union institution shall take a reasoned decision to open an investigation. That decision shall be communicated to the interested party. The Union institution concerned may put in charge of the investigation, under its direct responsibility, one or more officials of a grade equal to or higher than that of the member of staff concerned. In the course of the investigation, the views of the interested party shall be heard.

The investigation report shall be communicated to the interested party, who shall then be heard by the Union institution concerned on the subject of that report.

On the basis of the report and the hearing, the Union institution concerned shall adopt either a reasoned decision terminating the proceedings or a reasoned decision in accordance with Articles 22 and 86 of and Annex IX to the Staff Regulations. Decisions imposing disciplinary measures or financial penalties shall be notified to the interested party and communicated, for information purposes, to other Union institutions and the Court of Auditors.

The interested party may bring an action in respect of such decisions before the Court of Justice of the European Union, as provided for in the Staff Regulations.

Article 122

Action before the Court of Justice of the European Union

Without prejudice to the remedies allowed by the Staff Regula-

tions, the internal auditor may bring an action directly before the Court of Justice of the European Union in respect of any act relating to the performance of his or her duties as internal auditor. He or she shall lodge such an action within three months running from the calendar day on which the act in question came to his or her knowledge

Such actions shall be investigated and heard in accordance with Article 91(5) of the Staff Regulations.

Article 123

Internal audit progress committees

1. Each Union institution shall establish an internal audit progress committee tasked with ensuring the independence of the internal auditor, monitoring the quality of the internal audit work and ensuring that internal and external audit recommendations are properly taken into account and followed up by its services.

2. The composition of the internal audit progress committee shall be decided by each Union institution taking into account its organisational autonomy and the importance of independent expert advice.

Title V
Common Rules

…

Chapter 2
Rules applicable to direct and indirect management

…

Article 131

Suspension, termination and reduction

…

3. The authorising officer responsible may suspend payments or the implementation of the legal commitment where:

(a) the implementation of the legal commitment proves to have been subject to irregularities, fraud or breach of obligations;

(b) it is necessary to verify whether presumed irregularities, fraud or breach of obligations have actually occurred;

(c) irregularities, fraud or breach of obligations call into question the reliability or effectiveness of the internal control systems of a person or entity implementing Union funds pursuant to point (c) of the first subparagraph of Article 62(1) or the legality and regularity of the underlying transactions.

Where the presumed irregularities, fraud or breach of obligations referred to in point (b) of the first subparagraph are not confirmed, the implementation or payments shall resume as soon as possible.

The authorising officer responsible may terminate the legal commitment in whole or with regard to one or more recipients in the cases referred to in points (a) and (c) of the first subparagraph.

…

Article 136

Exclusion criteria and decisions on exclusions

1. The authorising officer responsible shall exclude a person or entity referred to in Article 135(2) from participating in award procedures governed by this Regulation or from being selected for implementing Union funds where that person or entity is in one or more of the following exclusion situations:

(a) the person or entity is bankrupt, subject to insolvency or winding-up procedures, its assets are being administered

by a liquidator or by a court, it is in an arrangement with creditors, its business activities are suspended, or it is in any analogous situation arising from a similar procedure provided for under Union or national law;

(b) it has been established by a final judgment or a final administrative decision that the person or entity is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the applicable law;

(c) it has been established by a final judgment or a final administrative decision that the person or entity is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the person or entity belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence, including, in particular, any of the following:
    (i) fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfillment of eligibility or selection criteria or in the implementation of the legal commitment;
    (ii) entering into agreement with other persons or entities with the aim of distorting competition;
    (iii) violating intellectual property rights;
    (iv) attempting to influence the decision-making of the authorising officer responsible during the award procedure;
    (v) attempting to obtain confidential information that may confer upon it undue advantages in the award procedure;

(d) it has been established by a final judgment that the person or entity is guilty of any of the following:

(i) fraud, within the meaning of Article 3 of Directive (EU) 2017/1371 of the European Parliament and of the Council and Article 1 of the Convention on the protection of the European Communities' financial interests, drawn up by the Council Act of 26 July 1995;
(ii) corruption, as defined in Article 4(2) of Directive (EU) 2017/1371 or active corruption within the meaning of Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997, or conduct referred to in Article 2(1) of Council Framework Decision 2003/568/JHA, or corruption as defined in other applicable laws;
(iii) conduct related to a criminal organisation as referred to in Article 2 of Council Framework Decision 2008/841/JHA;
(iv) money laundering or terrorist financing within the meaning of Article 1(3), (4) and (5) of Directive (EU) 2015/849 of the European Parliament and of the Council;
(v) terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA, respectively, or inciting, aiding, abetting or attempting to commit such offences, as referred to in Article 4 of that Decision;
(vi) child labour or other offences concerning trafficking in human beings as referred to in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council;

(e) the person or entity has shown significant deficiencies in complying with main obligations in the implementation of a legal commitment financed by the budget which has:
(i) led to the early termination of a legal commitment;

(ii) led to the application of liquidated damages or other contractual penalties; or
(iii) been discovered by an authorising officer, OLAF or the Court of Auditors following checks, audits or investigations;

(f) it has been established by a final judgment or final administrative decision that the person or entity has committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95;
(g) it has been established by a final judgment or final administrative decision that the person or entity has created an entity in a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations in the jurisdiction of its registered office, central administration or principal place of business;
(h) it has been established by a final judgment or final administrative decision that an entity has been created with the intent referred to in point (g).

2. In the absence of a final judgment or, where applicable, a final administrative decision in the cases referred to in points (c), (d), (f), (g) and (h) of paragraph 1 of this Article, or in the case referred to in point (e) of paragraph 1 of this Article, the authorising officer responsible shall exclude a person or entity referred to in Article 135(2) on the basis of a preliminary classification in law of a conduct as referred to in those points, having regard to established facts or other findings contained in the recommendation of the panel referred to in Article 143.

The preliminary classification referred to in the first subparagraph of this paragraph does not prejudge the assessment of the conduct of the person or entity referred to in Article 135(2) concerned by the competent authorities of Member States under national law. The authorising officer responsible shall review his or her decision to exclude the person or en-

tity referred to in Article 135(2) and/or to impose a financial penalty on a recipient without delay following the notification of a final judgment or a final administrative decision. In cases where the final judgment or the final administrative decision does not set the duration of the exclusion, the authorising officer responsible shall set that duration on the basis of established facts and findings and having regard to the recommendation of the panel referred to in Article 143.

Where such final judgment or final administrative decision holds that the person or entity referred to in Article 135(2) is not guilty of the conduct subject to a preliminary classification in law, on the basis of which that person or entity has been excluded, the authorising officer responsible shall, without delay, bring an end to that exclusion and/or reimburse, as appropriate, any financial penalty imposed.

The facts and findings referred to in the first subparagraph shall include, in particular:

(a) facts established in the context of audits or investigations carried out by EPPO in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, the Court of Auditors, OLAF or the internal auditor, or any other check, audit or control performed under the responsibility of the authorising officer;

…

Title VI
Indirect Management

Article 154

Indirect management

…

4. The Commission shall, in accordance with the principle of proportionality and with due consideration for the nature of

the action and the financial risks involved, assess that persons and entities implementing Union funds pursuant to point (c) of the first subparagraph of Article 62(1):

(a) set up and ensure the functioning of an effective and efficient internal control system based on international best practices and allowing in particular to prevent, detect and correct irregularities and fraud;

…

Title XII
Other budget implementation instruments

…

Article 235
Implementation of Union trust funds for external actions

…

3. Funds shall be committed and paid by financial actors of the Commission, within the meaning of Chapter 4 of Title IV. The accounting officer of the Commission shall serve as the accounting officer of the Union trust funds. He or she shall be responsible for laying down accounting procedures and chart of accounts common to all Union trust funds. The Commission's internal auditor, OLAF and the Court of Auditors shall exercise the same powers over Union trust funds as they do in respect of other actions carried out by the Commission.

…

Title XIII
Annual Accounts and Other Financial Reporting

…

Chapter 2
Integrated financial and accountability reporting

Article 247
Integrated financial and accountability reporting

1. By 31 July of the following financial year the Commission shall communicate to the European Parliament and to the Council an integrated set of financial and accountability reports which includes:

(a) the final consolidated accounts as referred to in Article 246;

(b) the annual management and performance report providing for a clear and concise summary of the internal control and financial management achievements referred to in the annual activity reports of each authorising officer by delegation and including information on key governance arrangements in the Commission as well as:
   (i) an estimation of the level of error in Union expenditure based on a consistent methodology and an estimate of future corrections;
   (ii) information on the preventive and corrective actions covering the budget, which shall present the financial impact of the actions taken to protect the budget from expenditure in breach of law;
   (iii) information on the implementation of the Commission's anti-fraud strategy;

(c) a long-term forecast of future inflows and outflows covering the next five years, based on the applicable multiannual financial frameworks and Decision 2014/335/EU, Euratom;

(d) the annual internal audit report as referred to in Article 118(4);

(e) the evaluation on the Union's finances based on the results achieved, as referred to in Article 318 TFEU, assessing in

particular the progress towards the achievement of policy objectives taking into account the performance indicators referred to in Article 33 of this Regulation;

(f) the report on the follow-up to the discharge as referred to in Article 261(3).

…

Title XIV
External Audit and Discharge

Chapter I
External Audit

…

Article 257

Court of Auditors' right of access

1. Union institutions, the bodies administering revenue or expenditure on the Union's behalf and recipients shall afford the Court of Auditors all the facilities and give it all the information which it considers necessary for the performance of its task. They shall, at the request of the Court of Auditors, place at its disposal all documents concerning the award and performance of contracts financed by the budget and all accounts of cash or materials, all accounting records or supporting documents, and also administrative documents relating thereto, all documents relating to revenue and expenditure, all inventories, all organisation charts of departments, which the Court of Auditors considers necessary for auditing the annual accounts and budget implementation reports on the basis of records or on-the-spot auditing and, for the same purposes, all documents and data created or stored electronically. The Court of Auditors' right of access shall include access to the

IT system used for the management of revenue or expenditure subject to its audit, where such access is relevant for the audit.

The internal audit bodies and other services of the national administrations concerned shall afford the Court of Auditors all the facilities which it considers necessary for the performance of its task.

II. Provisions on External Control/Audit

A. EU Primary Law

Treaty on the Functioning of the European Union

Part Six
Institutional and Financial Provisions

Title I
Institutional provisions

Chapter 1
The Institutions

…

Section 7
The Court of Auditors

Article 285

The Court of Auditors shall carry out the Union's audit.

It shall consist of one national of each Member State. Its Members shall be completely independent in the performance of their duties, in the Union's general interest.

Article 286

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

2. The Members of the Court of Auditors shall be appointed for a term of six years. The Council, after consulting the European Parliament, shall adopt the list of Members drawn up

in accordance with the proposals made by each Member State. The term of office of the Members of the Court of Auditors shall be renewable.

They 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.

3. In the performance of these duties, the Members of the Court of Auditors shall neither seek nor take instructions from any government or from any other body. The Members of the Court of Auditors shall refrain from any action incompatible with their duties.

4. 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.

5. 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 6.

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.

6. A Member of the Court of Auditors may be deprived of his office or of his right to a pension or other benefits in its stead only if the Court of Justice, at the request of the Court of Au-

ditors, finds that he no longer fulfils the requisite conditions or meets the obligations arising from his office.

7. The Council 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 determine any payment to be made instead of remuneration.

8. The provisions of the Protocol on the privileges and immunities of the European Union applicable to the Judges of the Court of Justice of the European Union shall also apply to the Members of the Court of Auditors.

Article 287

1. The Court of Auditors shall examine the accounts of all revenue and expenditure of the Union.

It shall also examine the accounts of all revenue and expenditure of all bodies, offices or agencies set up by the Union in so far as the relevant constituent instrument does not preclude such examination.

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 which shall be published in the *Official Journal of the European Union*. This statement may be supplemented by specific assessments for each major area of Union activity.

2. 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. In doing so, it shall report in particular on any cases of irregularity.

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 Union.

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.

3. The audit shall be based on records and, if necessary, performed on the spot in the other institutions of the Union, on the premises of any body, office or agency which manages revenue or expenditure on behalf of the Union and in the Member States, including on the premises of any natural or legal person in receipt of payments from the budget. In the Member States the audit shall be carried out in liaison with 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 cooperate 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.

The other institutions of the Union, any bodies, offices or agencies managing revenue or expenditure on behalf of the Union, any natural or legal person in receipt of payments from the budget, and the national audit bodies or, if these 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.

In respect of the European Investment Bank's activity in managing Union 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

Union expenditure and revenue managed by the Bank.

4. 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 Union and shall be published, together with the replies of these institutions to the observations of the Court of Auditors, in the *Official Journal of the European Union*.

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 Union.

It shall adopt its annual reports, special reports or opinions by a majority of its Members. However, it may establish internal chambers in order to adopt certain categories of reports or opinions under the conditions laid down by its Rules of Procedure.

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

The Court of Auditors shall draw up its Rules of Procedure. Those rules shall require the approval of the Council.

B. EU Secondary Law

Regulation 2018/1046 on the financial rules applicable to the general budget of the Union, OJ [2018], L 193/1. (The 2018 Financial Regulation)

Title IV
Budget implementation

…

Chapter 3
European Offices and Union Bodies

…

Article 70

Bodies set up under the TFEU and the Euratom Treaty

…

6. An independent external auditor shall verify that the annual accounts of each of the bodies referred to in paragraph 1 of this Article properly present the income, expenditure and financial position of the relevant body prior to the consolidation in the Commission's final accounts. Unless otherwise provided in the relevant basic act, the Court of Auditors shall prepare a specific annual report on each body in line with the requirements of Article 287(1) TFEU. In preparing that report, the Court of Auditors shall consider the audit work performed by the independent external auditor and the action taken in response to the auditor's findings.

7. All aspects of the independent external audits referred to in paragraph 6, including the reported findings, shall remain under the full responsibility of the Court of Auditors.

…

Title X
Financial instruments, budgetary guarantees and financial assistance

Chapter I
Common provisions

Article 208
Scope and implementation

…

5. The Court of Auditors shall have full access to any information related to the financial instruments, budgetary guarantees and financial assistance, including by means of on-the-spot checks.

The Court of Auditors shall be the external auditor responsible for the projects and programmes supported by a financial instrument, a budgetary guarantee or a financial assistance.

…

Title XII
Other budget implementation instruments

…

Article 235
Implementation of Union trust funds for external actions

…

5. The Commission shall be authorised to use a maximum of 5 % of the amounts pooled into the Union trust fund to cover its management costs from the years in which the contributions referred to in paragraph 4 have started to be used. Notwithstanding the first sentence and in order to avoid the double charging of costs, management costs arising from the Union contribution to the Union trust fund shall only be covered by

that contribution to the extent that those costs have not already been covered by other budget lines. For the duration of the Union trust fund, such management fees shall be assimilated to assigned revenue within the meaning of point (a)(ii) of Article 21(2).

In addition to the annual report referred to in Article 252, financial reporting on the operations carried out by each Union trust fund shall be established twice every year by the authorising officer.

The Commission shall also report monthly on the state of implementation of each Union trust fund.

The Union trust funds shall be subject to an independent external audit every year.

…

Title XIV
External audit and discharge

Chapter 1
External audit

Article 254
External audit by the Court of Auditors

The European Parliament, the Council and the Commission shall inform the Court of Auditors, as soon as possible, of all decisions and rules adopted pursuant to Articles 12, 16, 21, 29, 30, 32 and 43.

Article 255
Rules and procedure on the audit

1. The examination by the Court of Auditors of whether all revenue has been received and all expenditure incurred in a lawful and proper manner shall have regard to the Treaties, the

budget, this Regulation, the delegated acts adopted pursuant to this Regulation and all other relevant acts adopted pursuant to the Treaties. That examination may take account of the multiannual character of programmes and related supervisory and control systems.

2. In the performance of its task, the Court of Auditors shall be entitled to consult, in the manner provided for in Article 257, all documents and information relating to the financial management by departments or bodies with regard to operations financed or co-financed by the Union. It shall have the power to hear any official responsible for a revenue or expenditure operation and to use any of the auditing procedures appropriate to those departments or bodies. The audit in Member States shall be carried out in liaison with the national audit institutions or, where they do not have the necessary powers, with the competent national departments. The Court of Auditors and the national audit institutions of Member States shall cooperate in a spirit of trust while maintaining their independence.

In order to obtain all the necessary information for the performance of the task entrusted to it by the Treaties or by acts adopted pursuant to them, the Court of Auditors may be present, at its request, during the audit operations carried out within the framework of budget implementation by, or on behalf of, any Union institution.

At the request of the Court of Auditors, each Union institution shall authorise financial institutions holding Union deposits to enable the Court of Auditors to ensure that external data tally with the accounts.

3. In order to perform its task, the Court of Auditors shall notify Union institutions and the authorities to which this Regulation applies of the names of the members of its staff who are empowered to audit them.

Article 256

Checks on securities and cash

The Court of Auditors shall ensure that all securities and cash on deposit or in hand are checked against vouchers signed by the depositories or against official memoranda of cash and securities held. It may carry out such checks itself.

Article 257

Court of Auditors' right of access

1. Union institutions, the bodies administering revenue or expenditure on the Union's behalf and recipients shall afford the Court of Auditors all the facilities and give it all the information which it considers necessary for the performance of its task. They shall, at the request of the Court of Auditors, place at its disposal all documents concerning the award and performance of contracts financed by the budget and all accounts of cash or materials, all accounting records or supporting documents, and also administrative documents relating thereto, all documents relating to revenue and expenditure, all inventories, all organisation charts of departments, which the Court of Auditors considers necessary for auditing the annual accounts and budget implementation reports on the basis of records or on-the-spot auditing and, for the same purposes, all documents and data created or stored electronically. The Court of Auditors' right of access shall include access to the IT system used for the management of revenue or expenditure subject to its audit, where such access is relevant for the audit.

The internal audit bodies and other services of the national administrations concerned shall afford the Court of Auditors all the facilities which it considers necessary for the performance of its task.

2. The officials whose operations are checked by the Court of

Auditors shall:

(a) show their records of cash in hand, any other cash, securities and materials of all kinds, and also the supporting documents in respect of their stewardship of the funds with which they are entrusted, and also any books, registers and other documents relating thereto;

(b) present the correspondence and any other documents required for the full implementation of the audit referred to in Article 255.

The information supplied under point (b) of the first subparagraph may be requested only by the Court of Auditors.

3. The Court of Auditors shall be empowered to audit the documents in respect of the revenue and expenditure of the Union which are held by the departments of Union institutions and, in particular, by the departments responsible for decisions in respect of such revenue and expenditure, the bodies administering revenue or expenditure on the Union's behalf and the natural or legal persons receiving payments from the budget.

4. The task of establishing that the revenue has been received and the expenditure incurred in a lawful and proper manner and that the financial management has been sound shall extend to the use, by bodies outside Union institutions, of Union funds received by way of contributions.

5. Union financing paid to recipients outside Union institutions shall be subject to the agreement in writing by those recipients or, failing agreement on their part, by contractors or subcontractors, to an audit by the Court of Auditors into the use made of the financing granted.

6. The Commission shall, at the request of the Court of Auditors, provide it with any information on borrowing and lending operations.

7. Use of integrated computer systems shall not have the effect of reducing access by the Court of Auditors to supporting documents. Whenever technically possible, electronic access to data and documents necessary for the audit shall be given to the Court of Auditors in its own premises and in compliance with relevant security rules.

Article 258

Annual report of the Court of Auditors

1. The Court of Auditors shall transmit to the Commission and the other Union institutions concerned, by 30 June, any observations which are, in its opinion, such that they should appear in its annual report. Those observations shall remain confidential and shall be subject to an adversarial procedure. Each Union institution shall address its reply to the Court of Auditors by 15 October. The replies of Union institutions other than the Commission shall be sent to the Commission at the same time.

2. The annual report of the Court of Auditors shall contain an assessment of the soundness of financial management.

3. The annual report of the Court of Auditors shall contain a section for each Union institution and for the common provisioning fund. The Court of Auditors may add any summary report or general observations which it sees fit to make.

4. The Court of Auditors shall transmit to the authorities responsible for giving discharge and to the other Union institutions, by 15 November, its annual report accompanied by the replies of Union institutions and shall ensure publication thereof in the Official Journal of the European Union.

Article 259

Special reports of the Court of Auditors

1. The Court of Auditors shall transmit to the Union institution or the body concerned any observations which are, in its opinion, such that they should appear in a special report. Those observations shall remain confidential and shall be subject to an adversarial procedure.

The Union institution or the body concerned shall inform the Court of Auditors, in general, within six weeks of transmission of those observations, of any replies it wishes to make in relation to those observations. That period shall be suspended in duly justified cases, in particular where, during the adversarial procedure, it is necessary for the Union institution or body concerned to obtain feedback from Member States in order to finalise its reply.

The replies of the Union institution or the body concerned shall directly and exclusively address the observations of the Court of Auditors.

Upon request of the Court of Auditors or of the Union institution or body concerned, the replies may be examined by the European Parliament and by the Council after publication of the report.

The Court of Auditors shall ensure that special reports are drawn up and adopted within an appropriate period of time, which shall, in general, not exceed 13 months.

The special reports, together with the replies of the Union institutions or bodies concerned, shall be transmitted without delay to the European Parliament and to the Council, each of which shall decide, where appropriate in conjunction with the Commission, what action is to be taken in response.

The Court of Auditors shall take all necessary steps to ensure that the replies to its observations from each Union institution or body concerned as well as the timeline for the draw-

ing up of the special report are published together with the special report.

2. The opinions referred to in the second subparagraph of Article 287(4) TFEU which do not relate to proposals or drafts covered by the legislative consultation procedure may be published by the Court of Auditors in the *Official Journal of the European Union*. The Court of Auditors shall take its decision on publication after consulting the Union institution which requested the opinion or which is concerned by it. Opinions published shall be accompanied by any remarks by the Union institutions concerned.

III. Recommendations of the Committee of Independent Experts (on a chapter by chapter basis according to the structure of the Committee's Second Report in 1999 – the numbers in brackets refer to the corresponding paragraphs of the Report)

Chapter 2

A genuine contracting philosophy, a remodelled legislative, regulatory, and budgetary frame of reference, and greater responsibility entrusted to authorising officers should help to restore order to the Commission's management, in which the most disturbing anomalies have been brought to light by the Technical Assistance Offices (TAO) phenomenon.

Recommendation 1
The Commission should treat contracts as a whole as a priority in their own right in order to make for the utmost transparency. Instructions should be laid down and proper training provided. Community public procurement law is marred by a jumble of disparate source texts.

Its codification is a matter to be studied, without seeking to overregulate, but rather to achieve rationalisation to facilitate the work of practitioners (see 2.1.17).

Recommendation 2
Given that it is not suited to the requirements of modern management and effective supervision, the Financial Regulation is in need to fundamental revision. In any event, it should form part of a clear-cut hierarchy of Community acts and be confined to the essential principles which all institutions must observe. As regards the details, it should make reference to specific rules applying to each institution (see Chapter 2 as a whole).

Recommendation 3
Conclusion of a contract – following an invitation to tender or by a negotiated procedure – funding of a project under the heading of external aid, or award of a subsidy are different forms of disbursement of Community moneys. The Financial Regulation should accordingly lay down the basic rules to be observed by all institutions, namely transparent decision making, non-discrimination, and *ex post* assessment of use, and dispel the fundamental confusion as regards contracts. The concept of a contract and the different types of contracts should be spelled out (see 2.1.21 ff.).

Recommendation 4
The present budget nomenclature, based on the distinction necessitated by the Financial Regulation between Part A (administrative expenditure) and Part B (operating expenditure) is impracticable. It is frequently circumvented when appropriations are earmarked under the budget. A nomenclature based on policies whereby the aggregate cost of the latter would be specified and the various expenditure assigned for a given purpose would be identified according to its nature, must be established in order to facilitate assessment and enable the budgetary authority to exercise complete supervision (see 2.1.15 to 2.1.19).

Recommendation 5
Expenditure under the heading of cooperation with non-member countries is at present a self contained, chaotic area, given the numerous and diverse legal rules by which it is governed.

The principles deriving from Community Directives must apply not only to the public contracts awarded by the Commission itself, but also to those it awards as the agent of external recipients of Community funds (see 2.1.33 to 2.1.35).

Recommendation 6
Rules must be laid down to govern subsidies. Since they entail a quid pro quo, and are awarded for that reason, they should be treated in the same way as contracts as regards the award procedure (putting up for tender), supervision (consideration by the CCAM), and administration (monitoring by means of databases) (see 2.1.40).

Recommendation 7
The serious gap in terms of the membership of the assessment committee has to be remedied (see 2.1.28).

Recommendation 8
Intellectual service contracts must be systematically planned. Human and financial resources should not be scattered over a myriad of contracts too small to be overseen, the different procedures must be properly understood, accurate definition of the subject of the contract should be treated as a matter of crucial importance, and the Commission must have the means to monitor the proper execution of contracts (see 2.2.17 to 2.2.48).

Recommendation 9
The Commission should ask its contractors and special interest groups, where applicable, to specify the membership of their board of directors and the identity of their shareholders. Both to educate them and to treat them absolutely equally, it must allow unsuccessful bidders to consult the documents relating to a tender procedure (see 2.2.36 to 2.2.38 and 2.2.60 to 2.2.63).

Recommendation 10
Authorising officers must be responsible, consider themselves responsible, and held responsible. Their role should be enhanced, for instance by offering them the necessary guarantees

of independence, or indeed certain career advantages, and all the requisite training and information. Their disciplinary and financial liability must not remain a purely theoretical possibility. The fact that a decision to commit expenditure is separate from the signing of the commitment proposal runs counter to a sense of responsibility. The authorising officer and the signatory to a contract (the only instrument legally binding on the Commission in relation to third parties, whereas commitment is merely an internal decision) must be, if not one and the same person, at any rate close associates (see 2.2.49 to 2.2.59).

Recommendation 11
The Commission, or a Member whom it has empowered to act, must be debarred from acting as authorising officers (see 2.2.58).

Recommendation 12
Authorising officers should be advised more extensively where contracts are concerned. The Central Contracts Unit, recently set up by the Commission, should accordingly be equipped with increased human resources in order to provide the necessary prior assistance to authorising officers to help them compile the requisite documents and thereafter monitor the execution of the main contracts and draw the appropriate conclusions to enable constant adjustments to be made to the rules. The unit thus needs to be acquainted, through the Advisory Committee on Procurements and Contracts (CCAM), with the most important or typical contracts. Its representatives should therefore serve on the committee and constitute the principal technical element (see 2.2.75 to 2.2.77).

Recommendation 13
The CCAM, which at present does no more than carry out near-routine implementation checks and is slowing down what

is already an excessively cumbersome procedure, has to be reformed. Very strict limits should be imposed on the number of matters considered. Draft contracts should be selected under the personal responsibility of the chairman of the CCAM, assisted by the secretariats of the committee and the Central Contracts Unit, working in synergy. Contracts not selected must be abandoned immediately, and, instead, those few matters deemed to serve as example should be studied in depth. In hierarchical terms, CCAM meetings should take place at a sufficiently high level, but not so high that full members would more often than not be prevented from attending. The CCAM must be constituted as a joint body in order to provide a forum for dialogue between administrative and operating DGs. Opinion thresholds should be raised substantially, broadly according to the types of contracts (see 2.2.78 to 2.2.98).

Recommendation 14
The Commission must finally equip itself with a central database for contracts and contractors. If this cannot be done under the SINCOM system, the central departments should consider the alternatives (expansion of the CCAM database) in collaboration with the authorising officers (see 2.2.64. to 2.2.73).

Recommendation 15
Since the Commission's management tasks are increasing in both number and range and the complement of officials cannot be expanded continuously to tackle them, a policy of outsourcing should be pursued. The use of private sector resources should be regulated so as to meet the requirements of public service. In addition, the committee believes that implementing agencies under the exclusive control of the Commission is an option deserving thorough consideration (see the entire section 2.3).

Chapter 3

The extreme complexity of the legislation renders the EAGGF Guarantee section vulnerable to fraud and makes its control very difficult. The control of EAGGF Guarantee expenditure remains an important current issue despite the gradual reduction in the EAGGF Guarantee section's percentage share of the total Community budget. Sensitive sectors such as export refunds and direct income support are also key sectors which merit the Commission's particular attention. The recent clarification of the respective responsibilities of the Commission and the Member States for payments and control may have a positive impact if given the correct follow-up. The clearance of the accounts with the Member States is the final, overall management act by the Commission in its exercise of control over expenditure by the Member States under the Commission's responsibility. The findings of the Court of Auditors' annual Statements of Assurance suggest that there should be an increase in the amounts recovered through the Clearance of Accounts.

Recommendation 16
All decisions taken by the Commission in the EAGGF Guarantee area, either as an administration or as a college, must be taken in conditions of complete independence. The Commission must ensure that the Clearance of Accounts unit can work independently and without being subject to any inappropriate external or internal pressure or influence (3.12.3.-4).

Recommendation 17
The Commission should ensure a more stringent application of the provisions of Regulations 1287/95 and 1663/95 which deal with the accreditation of paying agencies and the certification of their accounts (3.9.8.-3.9.10).

Recommendation 18
The Commission should make full use of its right of on-the-spot controls in the Member States for accounting and compliance clearance and exclude from the certified accounts those amounts relating to accounting errors and underlying transactions which are irregular (3.10.6.).

Recommendation 19
Where systematic weaknesses are found higher rates of flat rate correction for the amounts to be recovered should be applied (3.8.6., 3.12.2.)

Recommendation 20
There remains scope to recover greater amounts through a reinforced clearance effort. To this end the Clearance of Accounts unit needs a further increase in staff to allow a wider coverage each year and checks through to the level of the final beneficiary. It should set a target for amounts recovered linked to the error rates found by the Court of Auditors in its annual Statements of Assurance ((3.12.2.).

Recommendation 21
Interest should be charged by the Commission from the date of payment by the paying agency on those amounts recovered which have been subject to the conciliation procedure (3.11.1-3.11.5-6).

Recommendation 22
The threshold for amounts in dispute which can be presented to the Conciliation body should be increased if need be by expressing it as a fraction of the value of the average transaction in each Member State (3.11.3.).

Recommendation 23
The Commission should seek to reduce the length of time taken in the clearance procedure by reducing the number of

steps and in particular the number of distinct occasions which Member States have to comment on proposed recoveries and the Commission's observations leading to them (3.10.9.).

Recommendation 24
The Commission should ensure that the cycle of Clearance of Accounts' inspection of market and direct payment regimes is short enough to guarantee that all major areas are covered in a 24 month period in view of article 1 of Regulation 1663/95 (3.10.7.).

Recommendation 25
In the new system the compliance clearance decisions can refer to transactions in different years. The Commission should therefore ensure that in the interests of transparency its records and reporting show how much is recovered through compliance clearance for payments made for each accounting year (3.10.5.-8).

Recommendation 26
The Commission should pay particular attention to the area of export refunds differentiated by destination and ensure that guarantees are recovered in full when frauds are uncovered (3.13.2-5).

Recommendation 27
The Commission should give priority to ensuring the proper implementation and correct application of the Integrated administrative and control system (IACS) (3.13.6-7).

The size of the Structural Funds means that day-to-day control of expenditure must be exercised by the Member States. The fact that the division of responsibilities between the Commission and the Member States has recently been clarified in legislation does not mean that the right balance in the division of responsibilities has been struck. A certain number of factors tend to

divest the Member States of responsibility. The Commission must ensure that the Member States have put in place effective control systems.

Recommendation 28
There has to be a strengthening of control within the Commission through reinforced internal control units in the Directorates General. This is necessary to avoid the Commission being almost entirely dependent on the Member States for information on implementation and irregularities and the subsequent possibilities of pursuing these. This recommendation accords with proposals made in Chapter 4 of this report concerning decentralised financial control and modern internal and professional auditing (3.17.2-9).

Recommendation 29
Checks by the Commission in the Member States must be reinforced both in number and in quality, that is to say they should go beyond checks which lead simply to the provision of advice by the Commission and an exchange of views. Checks should be designed to result in the detection of irregularities and consequently in financial corrections. They should be most frequent in countries and regions with relatively weak administrative structures. This implies more Commission resources devoted to control in the Member States. This implies stronger and more effective control by the Commission of such structures in all the Member States (3.17.2-9).

Recommendation 30
The number of administrative units involved in the management of the Structural Funds should be decreased and not increased. To this end the EAGGF Guarantee Directorates in DG 6 should have no role in rural development measures which should be left to the Guidance Directorates. The Committee's view is that only one Directorate General should have responsibility for the new objectives 1 and 2 (3.21.1.-2).

Recommendation 31
The use of diverse national rules to determine project eligibility if compatible with the provisions of the Treaties, should be carefully monitored by the Commission to ensure equality of treatment in respect of Structural Fund assistance for all citizens of the Union. Where the national rules cannot ensure this then the Commission should come forward with one or more additional eligibility datasheets to function as guidance notes (3.18.5.).

Recommendation 32
The Commission should refuse to accept over-declarations for reimbursement from Member States and return them for proper presentation (over-declaration occurs where Member States in claiming submit more expenditure than their entitlement leaving to the Commission the task of selecting eligible expenditure from within this larger sum). It is the Member State's responsibility to present its claims for payment in a transparent and detailed way so that all parties can be satisfied that the expenditure concerned was eligible and its effects can be evaluated (3.18.1.-4).

Recommendation 33
Member States should inform the Commission of all project substitutions and their value. The Commission should systematically retain this information to form an overview of the integrity and coherence of the programmes. Member States should prepare for comparison the initial proposal without substitutions with the final outcome with substitutions. This would allow the Commission to intervene to assess certain instances of re-use and to ensure it may recover sums unduly paid from the Community budget (3.18.1-4).

Recommendation 34
If the reforms refered above at paragraphs 3.24.1. and 3.24.6. were not to be implemented, the Commission should take the initiative by preparing a distinct legislative proposal.

Chapter 4

The existence of a procedure whereby all transactions must receive the explicit prior approval of a separate financial control service has been a major factor in relieving Commission managers of a sense of personal responsibility for the operations they authorise while at the same time doing little or nothing to prevent serious irregularities of the sort analysed in the Committee's First Report. Moreover, the combination of this function with a (weak) internal audit function in a single directorate-general gives rise to potential conflicts of interest on the part of the Financial Controller. Thus a serious rethink of both internal control and internal audit is necessary.

Recommendation 35
A professional and independent Internal Audit Service, the competences and activities of which should be based upon the relevant international standards (Institute of Internal Auditors), should be established, reporting directly to the President of the Commission. The centralised pre-audit function in DG XX should be dispensed with and internal control - as an integrated part of line responsibility - decentralised to the directorates-general. One of the principal tasks of the proposed Internal Audit Service should be to audit the efficiency and effectiveness of these decentralised control systems. (c.f. Recommendation 49 below) (4.7.1-2, 4.9.8, 4.13.3, 7)

Recommendation 36
Chains of delegation should be made clear and explicit: every subordinate manager is responsible and accountable for internal control in his/her field of responsibility. It is for the director-general (and heads of independent services) to assume (overall) responsibility for all operational matters in her/his directorate-general or service, including for internal control. The chain of delegation begins at the level of the Commis-

sion through the commissioner. She or he thus holds ultimate managerial responsibility for all financial matters, including for financial control, and political responsibility as a member of the College. (4.9.5-9)

Recommendation 37
Each directorate-general should have at its disposal two basic prerequisites for effective financial management : (i) a specialised internal control function, exercised under the responsibility of a senior official reporting directly to the director-general; (ii) an accounting function, exercised under the responsibility of a delegated accounting officer. The latter would work under the functional supervision of the Commission's accounting officer, but be responsible for keeping the accounts and processing the financial operations exclusively of the directorate-general in which it is located.

Recommendation 38
Each directorate-general should produce its own annual financial report and accounts, audited by the Commission's internal auditor, including both financial information and a wider review of the directorate-general's activities. These reports should be examined first by the Commission, which should then submit them to the competent institutions as part of the discharge procedure. (4.9.13-17)

Recommendation 39
The Internal Audit Service should act under the responsibility and authority of the President of the Commission, independently of any other Commission service. It should above all be a diagnostic tool in the hands of the President, enabling him/her to identify structural and organisational weaknesses in the Commission. The competences, objectives, powers and status of this Service should be set out in a basic founding document (a "charter"). The work programme of the Internal

Audit Service should ensure periodic coverage of all Commission activities. It should however leave headroom for additional *ad hoc* audit tasks to be carried out at the request of the President and/or on the basis of needs arising. (4.13.3, 7, 9)

Recommendation 40
The Head of the Internal Audit Service should be a highly qualified and experienced member of the auditing profession, recruited specifically for this task. S/he should hold and administrative grade equivalent to that of a director general. The Head of the Internal Audit Service, though reporting to the President, should enjoy full independence as to the conduct of audits, the maintenance of professional standards, the contents of reports, etc. (4.13.8)

Recommendation 41
The internal contradictory procedure between the Internal Audit Service and its auditees should last at most one month, whereafter publication of the audit report should take place at the discretion of the Head of the Internal Audit Service. (4.13.11-12)

Recommendation 42
The President of the Commission should present to the Commission each year an annual report of the Internal Audit Service, outlining its activities, principal findings and the action taken, or to be taken, by the President as a result. This report should be made public. (4.13.13-14)

Recommendation 43
All audit reports of the Internal Audit Service should be sent to the Court of Auditors. Additionally, all data collected by the Service, all preparatory work and audit findings should be available to the Court and be of sufficient professional quality to be used by it. (4.13.15)

Recommendation 44
The present General Inspectorate of Services (IGS) should be integrated into the new Internal Audit Service.

Recommendation 45
A central specialised unit, responsible for the formulation and oversight of financial procedures and internal control mechanisms should be constituted within DG XIX. This body should have no role in individual transactions (though it could, in difficult cases, offer advice), but should establish Commission-wide procedures and ground rules for financial management and monitor their application. (4.9.1-3)

Recommendation 46
All officials involved in financial procedures should undergo compulsory and regular training in the rules and techniques applying to financial management as a precondition of being allocated such work. (4.9.1-2, 4, 11)

Recommendation 47
The formal aspects of financial transactions should be verified by the delegated accounting officer. Any objections should be referred back to the authorising officer, who should decide, on his/her own responsibility, whether to overrule the objections and proceed with the operation. (4.9.12)

Recommendation 48
A new and specific administrative procedure should be established, governed by (an amended) Title V of the Financial Regulation, designed formally to establish the individual responsibilities and/or liabilities of authorising officers in respect of financial errors and irregularities. To this end, a new Financial Irregularities Committee would deliberate on the basis of reports from the Commission's internal auditor. Disciplinary or other action could follow if necessary. (4.9.18-28)

Recommendation 49
In the light of the foregoing recommendations, the existing DG XX no longer has any reason to exist. DG XX staff qualified for audit work should be redeployed to the new Internal Audit Service, while other staff should be redeployed, as needed, to other Commission services, notably those requiring expertise in financial procedures. (4.15.1-2)

Recommendation 50
The Court of Auditors could seek to obtain a more constructive reaction on the part of the Commission to its audit observations through greater recourse to department-based auditing, presenting its observations in a more analytical style, giving an overview of the situation it encountered and placing greater emphasis on the management needs of the Commission. (4.16.4)

Recommendation 51
It would be helpful if the Court were able in its Statement of Assurance ("DAS") to indicate with greater precision which sectors, systems and procedures, and, in the case of shared management, which Member States, are mainly affected by errors, and the nature of the errors concerned. (4.16.5)

Recommendation 52
The duration of the contradictory procedure between the Court of Auditors and the Commission (and other auditees) should be considerably shortened. The process should not assume the nature of a negotiation on the severity or otherwise of the Court's observations but seek only to establish the facts. The underlying purpose of the Court's audits should be to identify the remedial management action required in the Commission to address the issues identified by the Court (4.16.7).

Chapter 5

The Committee found that the current legal framework for combating fraud against the financial interests of the European Communities is as yet incoherent and incomplete, largely because the Commission (i.e. UCLAF/OLAF) possesses only administrative law powers and competences, which however have important implications in the area of criminal law. Thus the existing framework (i) fails to recognise and accommodate the true nature of UCLAF/OLAF, (ii) leaves the legal instruments for the investigation, prosecution and punishment of fraud ineffective and (iii) fails to provide sufficient guarantees of individual liberties.

Recommendation 53
The independence of OLAF vis-à-vis the Commission in particular must be and remain a fundamental point of principle if the organisation is to play its role, which is substantially of criminal investigation, fairly and effectively. (5.11.4-8)

Recommendation 54
OLAF must earn the respect, and thus wholehearted cooperation, both of EU institutions and personnel and of Member States' investigative and judicial authorities through ensuring that its inquiries are – and are seen to be – independent, rigorous, objective, procedurally correct, reasonably rapid and ultimately productive of results. (5.9.4-7)

Recommendation 55
OLAF's activities must be subject to the supervision of a judicial authority in order to guarantee due legal process in the course of investigations and the protection of the civil rights of persons affected, directly or indirectly, by inquiries. In this context, the existing Supervisory Committee of OLAF, though fulfilling a useful transitional role, cannot be considered adequate and should be replaced by a special chamber of the Court

of First Instance created for this purpose (and, on appeal, also by a chamber of the Court of Justice). (5.12.5-5.12.9)

Recommendation 56
With a view to its role as a central data and criminal intelligence collation point, OLAF must take action to overcome the failings of UCLAF (identified by the Court of Auditors in particular) in the exploitation of information technology. While respecting the data protection requirements of Community and Member State legislation, it should also do the utmost to maximise the potential synergies with national authorities and with Europol in this area (5.9.5, 5.11.10)

Recommendation 57
OLAF must possess adequate human resources to deal with its case-load at least as effectively as an equivalent Member State service. It should also ensure that certain lacunae in the staffing of UCLAF are remedied, notably through the recruitment of adequate specialist expertise, beyond its core investigative personnel, in the fields of (a) auditing, especially "forensic accountancy", (b) information technology, (c) prosecution and (d) judicial procedures in Member States. All OLAF staff should moreover be selected strictly on the basis of their suitability for OLAF's purposes, which should preclude any "automatic" transfer of UCLAF staff to the new organisation. (5.11.9-13)

Recommendation 58
In preparation for the introduction of the new legal framework described hereafter, the Member States should (i) ratify the Convention on the protection of the financial interests of the European Communities (ii) further develop common definitions of relevant criminal offences and procedures, and (iii) formally agree common standards of criminal investigation within the context of the European Convention on Human Rights (5.13.2)

Recommendation 59

With the foregoing principles in mind, the Committee recommends a three-stage introduction of a new legal framework for the prosecution and punishment of criminal offences affecting the financial interests of the European Communities in accordance with the proposal set out in this report (section 5.13), summarised as follows:

Stage 1: Appointment of an independent *European Public Prosecutor* (EPP). The EPP would hold unrestricted jurisdiction (i.e. without the obstacle of official immunity or confidentiality) for offences committed by members and officials of EU institutions and bodies. S/he would work closely with the Director of OLAF and prepare prosecutions as appropriate. Prosecutions would be referred to the appropriate national court. The legality of OLAF investigations and of EPP decisions would be supervised by a special chamber of the Court of First Instance (5.13.4)

Stage 2: Creation in each Member State of a national *Prosecution Office for European Offences* (POEO) which would be competent for its entire territory. A POEO would be established within each national prosecution service specifically to deal with cases wholly or partially affecting the financial interests of the European Communities. POEOs would act through national police forces and before national criminal courts in conformity with national criminal procedure. The legality of the POEO's activities would be supervised in each Member State by a single court, the same court at which it is located. (5.13.5, 7) The EPP would receive from OLAF all information liable to give rise to criminal proceedings and be responsible for referring it, with appropriate advice, to the appropriate POEO. The EPP would moreover act as liaison between the POEOs of different Member States, notably advising them on possible conflicts of jurisdiction on cases involving more than one Member State and making recommendations

for their resolution. The EPP would report annually to the EU institutions on its activities and on the action taken by the POEOs as a result of its recommendations. (5.13.6)

Stage 3: Creation, on the basis of the EPP and POEOs, of a single, indivisible European Prosecution Office (EPO) with delegated public prosecutors in the Member States holding jurisdiction for all offences affecting the financial interests of the European Communities. The EPO would operate through OLAF and national investigation units. In terms of EU fraud, this stage of the reform would create the single "area of freedom, security and justice" foreseen by the Treaty (TEU Art. 29) (5.13.7)

Recommendation 60

Preparation of the three-stage introduction of a new legal framework should begin immediately and implementation achieved within the following timescale:

First stage: within one year

Second stage: as soon as possible thereafter,

Third stage: to be agreed at the next Intergovernmental Conference (IGC), or at an *ad hoc* IGC shortly thereafter. (5.13.9-10)

Chapter 6

An in-depth reform of Staff policy is required. Practices and procedures must be changed in order to ensure that the Commission can operate effectively and retain its traditional role as the driving force behind European integration. What is really required is not an overhaul of the Staff Regulations themselves, but simply correct application of the rules and principles set out therein.

The Commission should vigorously enforce the principle of the recognition of merit. This will improve standards throughout the organisation, which will in turn serve as an example to all and lead to a positive atmosphere at all levels of the hierarchy.

With this in mind the Commission should formulate a dynamic careers policy so as to foster greater commitment and ambition in its staf and head off all risk of stagnation.

Recommendation 61
Proper social and trade union relations within the Commission are essential The Adminsitration must recognise the role played by the trade unions, but the latter must in turn avoid any temptation to set up a kind of alternative hierarchy and must focus on the responsibilities they exercise which are crucial to the success of the plan to change and modernise the European civil services (62.34-38).

Recommendation 62
The significance of national balances within the Commission should be reduced by: designing professional training courses in such a way as to strengthen the "European" nature of the civil service in the institutions; encouraging the genuine 'multinationalisation' of Commissioners' cabinets; reconsidering the number of tasks and their distribution among the Directorates-General, according to real needs, rather than national balances; making 'national quotas' more flexible; and rotating staff more frequently (6.2.18-33).

Recommendation 63
Training a professional conversion should be seen as an ongoing process, starting with the probationary period and forming a regular, compulsory element throughout an official's career. The Commission should step up the financial resources allocated to training measures (6.3.6.-14).

Recommendation 64
Mobility should be encouraged and no exceptions should be made. It should be made compulsory to change posts at the end of a given period of time. This means that flexibility is a quality

which is valued and rewarded in terms of promotion. Furthermore, mobility should be an essential precondition for duties involving leadership or management of staff (6.3.15-18).

Recommendation 65
Empowerment of staff requires that everyone's duties should be clearly defined and that the efforts made and the results obtained by each official in carrying out the duties allocated to him are recognised, encouraged and rewarded (6.3.19-22)

Recommendation 66
Decentralisation plays an important role in enhancing the sense of responsibility felt by staff. However, the tasks that are decentralised must be clearly defined and effective. Thus the practice of creating or maintaining posts with no real responsibilities (or corresponding workload) should be regarded as contrary not only to the rationality and effectiveness of the system but also to the principle of empowerment. Decentralisation should not become synonymous with confusion. The process of decentralisation must be accompanied by a reinforcement of programming and internal coordination and genuine leadership must be exercised (6.3.23-25).

Recommendation 67
The practice under which "other servants" of the Commission – in particular, temporary staff – have 'permanent temporary status' should be brought to an end. Temporary staff should be appointed to permanent posts, which would oblige them under the Staff Regulations to leave within three years. At the same time, the list of temporary posts should be gradually reduced.(6.4.22-27).

Recommendation 68
The use of external help should be reduced so as to decrease the institution's dependence on external staff, who should be

used only in exceptional circumstances, on the basis of better regulated conditions and procedures.(6.428-41).

Recommendation 69
The system of open competitions for the recruitment of Commission staff should be thoroughly reviewed, since the number of candidates has increased considerably over time and the procedures followed have proved inadequate. One might consider decentralising preselection tests in each Member State, and extending the practice of holding specialist competitions with more precise job descriptions, and holding competitions for each language.

In order to eliminate the lack of transparency in practice which occurs between drawing up the reserve list and recruitment, a list of candidates who have passed a competition should be published in order of merit reflecting the results of the competition. Any divergence from the order on the list when the actual recruitment takes place should be justified and made public.

Internal competitions for the establishment of temporary staff should be abolished. On the other hand, internal competitions to enable officials to move from one category to another should be retained. (6.5.4-25)

Recommendation 70
A reform of the staff reports and promotions system is necessary in order to restore the credibility of the selection process and the career structure. To that end there is a need to strengthen the assessment culture, review the form of the reports and simplify their headings, draw more specific and balanced assessment criteria, award more clearly differentiated marks and provide more detailed comments with better justifications, and encourage more active and responsible participation by the officials concerned.

One might even consider a system of internal competitions

for a limited number of available posts, particularly for professional and managerial staff, whose appointments are decided upon by a flexible procedure which is thus open to dangers of favouritism. This competition, based on qualifications and examinations, and carried out by external selection boards or chaired by an external examiner, would the most ambitious and motivated officials an alternative means of trying their chances other than promotion under the Staff regulations. (6.5.28-42.)

Recommendation 71
Over the years rather serious shortcomings have been revealed in the appointment of senior officials (A1 and A2). It is essential to establish rules, or at least a code of conduct, for their recruitment. As for national balances, one might consider gradually increasing the flexibility of quotas, placing a time-limit on the term of office, or banning the appointment of a successor of the same nationality. As for the recruitment arrangements, more rigorous selection criteria and more transparent procedures should be introduced within these quotas. Although improvements will have to be made later, as regards the procedure to be followed, and the criteria and arrangements for selection, the Committee considers that the reforms envisaged by the new Commission are a step in the right direction (6.5.43-58).

Recommendation 72
Professional incompetence should be the subject of a more clear and precise system of rules. A procedure distinct from the one for disciplinary hearings should be introduced (6.5.61-66).

Recommendation 73
Practice in the field of disciplinary responsibility should be amended. It has shown severe limitations in terms of effectiveness and speed, with negative consequences for the European civil service and its image.
In particular:

the rules on the formal conditions and procedural arrangements, as well as the protection of individual rights, should be specified;

the membership of the disciplinary board should be much more stable and less internal to the Commission, particularly its chairman. An inter-institutional disciplinary board might also be a possibility. The idea of entrusting the part of the procedure which currently takes place before the disciplinary board to an external body should also be considered, particularly as regards the higher grades ;

a member of the Appointing Authority should be involved in the work of the disciplinary board, at least for all the stages of the procedure at which the official and/or his representative are present;

disciplinary scales setting out a relatively standard correspondence between errors and penalties should be set to prevent widely diverging penalties from being imposed for identical failings (6.6.11-34).

Chapter 7

The Committee considered that the codes of conduct elaborated by the Commission remain insufficient and are not yet backed up by the necessary legal framework. The attribution of responsibilities and chain of delegation between the Commission, single commissioners and the departments are ill-defined and ill-understood by those concerned. Finally, the concepts of political responsibility and accountability remain unclear and the mechanisms for their practical application inadequate.

Recommendation 74
The code of conduct for commissioners should redefine the concept of collective responsibility to encompass not only a

prohibition on calling into question decisions adopted by the college, but also the right and the obligation of each commissioner to keep him/herself fully appraised of the activities of every other commissioner and to take action in this respect as necessary, for example by having frank and open discussions with other commissioners both inside and outside the college. (7.5.1-4, 7.10.1-2)

Recommendation 75
Commissioners' *cabinets* should be limited to a maximum of six category-A officials. The commissioner must ensure that the *cabinet* is multi-national in character and rules must be introduced to exclude any unduly favourable treatment of *cabinet* members at the end of their service. (7.5.7-8)

Recommendation 76
Clear rules should be established as to the applicable criteria to the appointment of individuals to commissioners' *cabinets*, with a particular view to eliminating the possibility of favouritism based on personal relationships. Full transparency as to any personal relationship between a commissioner and a member of his/her *cabinet* must be ensured. (7.5.9-10)

Recommendation 77
Commissioners who use undue influence to favour fellow nationals or wider national interests in any sector for which they are competent are in serious breach of their obligation of independence, and should be subject to an appropriate sanction. (7.5.9-10)

Recommendation 78
Commissioners must carry out their duties with complete political neutrality. They should not be permitted to hold office in any political organisation during their term of office. (7.5.11-12)

Recommendation 79
The Commission must establish clear internal guidelines – to be made public – designed to ensure maximum openness and transparency as to acts and decisions of the Commission once taken and the processes by which they were arrived at. (7.6.3-7)

Recommendation 80
The rights and obligations of officials to report instances of suspected criminal acts and other reprehensible behaviour to the appropriate authorities outside the Commission should be established in the Staff Regulations and the necessary mechanisms put in place. The Staff Regulations should also protect whistleblowers who respect their obligations in this regard from undue adverse consequences of their action. (7.6.8-11)

Recommendation 81
An independent standing "Committee on Standards in Public Life" should be created by interinstutional agreement to formulate, supervise and, where necessary, provide advice on ethics and standards of conduct in the European institutions. This Committee on Standards should approve the specific codes of conduct established by each institution. (7.7.1-5)

Recommendation 82
All Commission staff should undergo professional training aimed at raising awareness of ethical issues and providing guidance, from both a personal and management perspective, on how to deal with practical situations as they arise. (7.7.6-9)

The code of conduct on commissioners and their departments should establish that each commissioner is responsible both for policy formulation and the implementation of policy by his/her department(s). The commissioner shall therefore be answerable to the Commission as a whole for the actions of the department(s), and accountable to the European Parliament. Officials in departments shall answer to their director-gene-

rals, which shall in turn be accountable to the competent commissioner. (7.9.1-9)

Recommendation 83
The Secretary General should be considered as the prime interface between the political and administrative levels of the Commission. He/she should above all ensure that decisions of the Commission are effectively followed up by the administration. (7.11.1)

Recommendation 84
Members of *cabinets* should not be permitted to speak on behalf of their commissioners. The primary function of *cabinets* is to provide information and to facilitate communication vertically (between the commissioner and the services) and horizontally (between commissioners). In neither case should the *cabinet* prevent direct communication with the commissioner, but rather stimulate such communication. (7.12.1-6)

Recommendation 85
The Commission is accountable to the European Parliament. To this end, it is under a constitutional duty to be fully open with Parliament, providing it with the complete, accurate and truthful information and documentation necessary for Parliament to carry out its institutional role, notably in the context of the discharge procedure and in connection with committees of inquiry. Access to information and documentation should only be refused in exceptional, duly motivated circumstances and in accordance with procedures agreed between the institutions. (7.14.1-13)

Recommendation 86
The enforcement of the individual political responsibility of commissioners should be a matter for the President of the Commission. The President should be empowered to dismiss

individual commissioners, modify the attribution of responsibilities between them or take any other measure in respect of the composition or organisation of the Commission he/she deems necessary to enforce political responsibility. The President of the Commission shall be accountable to the European Parliament for any action (or inaction) in this context. These powers of the President should be made explicit in the Treaties, but, until this is possible, all commissioners should agree to abide by these principles. (7.14.16-22)

Recommendation 87
Any commissioner who knowingly misleads Parliament, or omits to correct at the earliest opportunity inadvertently erroneous information provided to Parliament should be expected to offer his/her resignation from the Commission. In the absence of an offer of resignation, the president of the Commission should take appropriate action. (7.14.14)

Recommendation 88
The Council should give greater political priority to the preparation of its annual recommendation to the European Parliament on discharge, as this would reinforce the political status of the prime institutional mechanism whereby the Commission is held accountable for financial management. (7.15.8-9)

Recommendation 89
Council and Parliament should be bound by the principle of budgetary discipline to take into account the resource requirements attached to any policy initiative they request from the Commission. The Commission should be able to refuse to assume any new tasks for which administrative resources are not available and cannot be provided through redeployment. (7.15.10)

Recommendation 90

The management of Community programmes, and in particular all questions of financial management are the sole responsibility of the Commission. Committees composed of Member State representatives should not therefore be empowered to take any decision relating to the ongoing financial management of programmes. Any risk that national considerations might affect financial management at the expense of sound financial management criteria should be excluded. (7.15.11-14)

This book aims to provide a point of reference on some very technical and specialised issues pertaining EU Budgetary Governance and Audit. It will entail a focused analysis of the institutional and legal framework of the audit function, within the overall system of EU Budgetary Governance. The 1999 developments and their subsequent political and institutional options on EU governance, as well as the Lisbon Treaty have established several schemes pertaining the management of EU funds, and the corresponding audit schemes. Furthermore, the EU£s response to the financial crisis lead to new schemes of providing financial support to Member States, establishing new lending mechanisms and using the EU budget as collateral. These new arrangements form significant challenges for the EU's control and audit system at all levels. The book will seek to establish that all these activities and the relevant transactions are being audited in an appropriate and efficient manner, and to examine whether these audit schemes are actually in a position to provide a substantive assurance on the soundness of the EU Budgetary Governance. The entire analysis will seek to establish the legitimacy of EU Budgetary Governance in the weberian perspective (traditional, charismatic and rational-legal legitimacy).

Given the extent of the EU£s control and audit schemes, the book will comprise three volumes.

The first volume will examine the schemes of internal and external control and audit within the system of EU Budgetary Governance, their advantages and disadvantages, especially vis-a-vis each other, and their potential to establish the EU Budgetary Governance£s soundness. These schemes are examined as an integrated system of control and audit.

ΕΚΔΟΣΕΙΣ
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