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*Any authority in a human society originates with the people's will.*
Constitution of 3 May 1791[1]

Authority originates with the people… Therefore, the public has the right to know how its government operates, and it has the right to get complete, reliable and objective information on all aspects of government functioning, especially on the financial one. The public has this right since the money administered by the government originates with the taxpayers. Thus, the government does not administer its own money but the so called public money, and that is why the management of this money, especially its spending, must be under public control.

There are many ways for keeping public funds under control. One of them are audits carried out by Supreme Audit Institutions (SAIs), their ways and remits varying from country to country. The majority of national SAIs examine not only the regularity of spending, but also its economy, efficiency and effectiveness, as well as the scope and quality of tasks performance. The Polish Supreme Chamber of Control (NIK) applies its four traditional audit criteria: legality, sound management, efficacy and integrity. Audits conducted by SAIs are mostly addressed to national parliaments, however, they are meant to be carried out on behalf of and for the

[1] The **Constitution of 3 May 1791** is generally recognised as Europe's first modern codified national constitution, as well as the second oldest national constitution in the world. It was adopted on that date by the Sejm (parliament) of the Polish-Lithuanian Commonwealth.

benefit of the public. As the money spent by public authorities is the taxpayers' money, it should be used in the public interest.

A similar observation refers to the European Union: European institutions administer funds which are not theirs but which originate with the taxpayers in Member States. For this reason, audit bodies of the European Union and Member States conduct audits on behalf of and for the benefit of European citizens. National SAIs of Member States should therefore be entitled to, or even obliged to, audit also the funds administered by various EU institutions. Thus, the national SAIs can take better care of public money.

It is hard to imagine sound management of the EU budget (including budgets of all EU institutions), which is a priority frequently stressed by European leaders, without independent external audit. At the EU level, there is a body that could be referred to as an equivalent of national SAIs at the Member States level: the European Court of Auditors (ECA). However, the ECA's mandate and competence, as well as its practice, give rise to the question whether it can be really called an independent external auditor of EU finance. Does it operate on behalf of and for the benefit of the EU taxpayers, or, opposing the model proposed by Heinrich Aigner, has it rather become part of EU internal control systems? Especially that regulations regarding the ECA are weaker than those of the majority of national SAIs. Although subsequent European treaties (especially the Maastricht Treaty) gradually extended the ECA's competence, its real legal, financial and actual independence could be guaranteed only by detailed constitutional provisions. That is why the Heads of the EU SAIs were so worried to see that the draft Treaty establishing a Constitution for the European Union did not name the ECA among *the Union's Institutions*[2] in the so called *single institutional framework* (the ECA was mentioned later on among *Other Institutions and Bodies*[3]). At this point, I am recalling a resolution of the Contact Committee meeting in Prague of 2003 expressing this concern of ours. In the light of ongoing debates and disputes on improving transparency and openness of public finance, such downgrading of the ECA in the draft Constitution was inappropriate and hard to understand. It might weaken the position of the ECA, both as the external auditor of the EU budget, and also against national SAIs (the majority of which have their competence guaranteed in their respective national constitutions).

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[2] A draft Treaty establishing a Constitution for the European Union: Chapter I – The institutional framework, Article 18: The Union's Institutions.

[3] A draft Treaty establishing a Constitution for the European Union: Chapter II – Other institutions and bodies, Article 30: The Court of Auditors.

I fully agree with the observation that EU funds are not audited sufficiently. The most common opinion is that it is EU funds transferred to beneficiaries in Member States that are not properly audited. But the issue is much more complex. We should always remember that the flow of money is in two directions: from Member States to the EU budget, and from the EU budget to beneficiaries in Member States. As it has been already said, EU institutions, just like governments of Member States, do not administer their own money: all the EU resources, including those spent on European institutions, on implementation of joint projects and on common policies, originate with European taxpayers. So, one should never forget that all those resources need auditing: both those transferred to beneficiaries in Member States, and those spent by EU institutions. And without doubts that issue calls for relevant regulation.

At present the external audit of resources transferred to beneficiaries in Member States is done by the ECA with the assistance of the respective national SAI. The ECA's competence to a certain extent overlaps with that of internal control systems bodies (like OLAF[4]), and that of national SAIs of Member States. That certainly leads to the problem of double (multiple) auditing and that of mutual recognition of each other's audit results. And all this takes place in the very sensitive area where national and European finances meet.

Irregularities in spending European funds may lead to "losing" them. So any future procedures for EU funds auditing should provide for some kind of a "guarantee" for national SAIs, so that their work should never raise any doubts as to whether they act in the interest of their respective countries' taxpayers. Strengthening of cooperation between national and European institutions will force national SAIs to take up new commitments and develop unified standards for European funds auditing. One of the obstacles may be the argument that no additional costs on national budgets may be involved. However, if the efforts are successful, they could lead to a situation where audit results across all EU Member States are easily comparable.

Let us now have a look at the external audit of EU institutions' finance. At present only the ECA examines legality and regularity of their income and expenditure, as well as appropriate financial management. On the basis of the ECA's reports the European Parliament grants (or not) discharge to the European Commission, responsible for the budget implementation. Such a solution may seem appropriate: the EU finance is not part of Member States' national finance, so it should not be

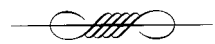
4 European Anti-Fraud Office.

audited by national SAIs. There is, however, an obvious argument against this statement: EU funds, just like national funds, originate with taxpayers in Member States. Those taxpayers, just like in the case of funds of their respective national budgets, have the right to know how EU funds are administered. Therefore, it is logical that national SAIs, established to act in the interest of the citizens of their respective countries, should have the right and duty to audit EU funds. For the benefit of European taxpayers, the debate around this question should as soon as possible lead to a constructive solution.

I would like to emphasize again that not only the ECA and other European institutions, but national SAIs as well should have the right to do financial and performance audit of EU funds. Giving that right to national SAIs should not, however, be understood as entrusting them with the task of doing audit work for or, by any means, at the request of any EU institution. This would be incompliant with the principle of independence of external audit or with the principle of the independence of Supreme Audit Institutions. And the above mentioned principles are not only widely accepted and in line with the INTOSAI standards, but in many Member States they are provided for in national constitutions. That is why national SAIs may not in any way become part of the EU internal control system. We have therefore to deal with the question of how to reconcile national SAIs' independence with giving them the right to audit funds transferred to the EU and spent by the EU. Let me stress again here that in my opinion audits by national SAIs should provide information on both how the EU uses the resources that are contributed by Member States, and how beneficiaries in Member States use the resources from the EU. All this calls for a detailed discussion between national SAIs, the ECA, EU institutions and Member States' authorities. Such debate should certainly not be replaced by the European Parliament or the European Commission calling Member States, or especially their Supreme Audit Institutions, to do audit work for the EU. Not only do such calls breach the principle of SAIs' independence, but they are frequently incompliant with national constitutions and have no basis in the treaties.

The taxpayers in contemporary societies are becoming more and more conscious of their rights, which leads to the necessity for close, transparent and partner collaboration between national SAIs and the ECA. This should also be an inspiration to the Contact Committee. This year we have agreed to dedicate our annual meeting to ways of auditing of funds contributed to the EU by Member States and to works on common auditing standards. I will be very happy if the meeting held in Warsaw starts also a serious discussion which may clearly define

the rights and tasks of national SAIs and the ECA in the control/audit process of EU funds. The questions arising from the discussion will be a real challenge to the Contact Committee, national SAIs, the ECA and other EU institutions. Yet, without finding an unambiguous solution, none of us can fully fulfill our mandate to act on behalf of and for the benefit of the taxpayers. And, after all, it is their interest that all our institutions have been established to guard.



**Szabolcs Fazakas**
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# IMPLEMENTATION OF THE EU BUDGET – RESPONSIBILITIES AND REALITY

## Abstract

Shared management is the management mode used for the implementation of about 80% of the Community budget. It means that implementation tasks are delegated to Member States, and Member States themselves are responsible for the control of funds as described and defined in the sector regulations. However, the European Commission bears final responsibility for the budgetary implementation as such and thus also for the correct functioning of the management and control systems within Member States.

In order to narrow the gap between the responsibilities as defined in the legal framework and the reality as experienced by the European Court of Auditors, the European Parliament proposed in its 2003 and 2004 discharge reports the introduction of an ex-ante disclosure statement and an ex-post statement of assurance.

In this article the author explains the reasoning behind these new transparency tools and he also indicates the role national audit institutions might play in respect of the proposed new instruments.

## Introduction

It has for many reasons been an exciting experience to be the chair of the European Parliament's Committee on Budgetary Control during the first part of the current legislature. One of the Committee's main tasks is the preparation of the discharge report by which Parliament formally closes the budget year and thereby releases the Commission from its responsibilities in the implementation of the budget according to Article 276 of the Treaty.

The discharge procedure for the financial year 2003 began in October 2004 and ended in April 2005 with Parliament's adoption of the "Terry Wynn discharge report". The discharge procedure for the financial year 2004 began in October 2005 and ended in April 2006 with Parliament's adoption of the "Jan Mulder discharge report". In euro-jargon these reports are also referred to as "the 2003 discharge report", adopted in 2005, and "the 2004 discharge report", adopted in 2006.

These two reports marked the beginning of a new era for the discharge procedure, both as regards procedure and content. Procedurally the Committee abandoned the very cumbersome and time-consuming written questions and answers with the Commission. Experience had proved that the outcome of the written procedure was rather minor in relation to the work it involved and it was thus replaced by an oral procedure which rendered the debates in the Committee much more lively and relevant. If Members were unhappy with a reply given by a Commissioner or a Member of the Court of Auditors during the hearing the Member could immediately request the floor again and put forward a supplementary question. The "ping pong" system, as it was called, proved to be very effective in creating a trialogue between the discharge authority (the European Parliament), the European Union's external auditor (the European Court of Auditors) and the auditee (the European Commission).

As regards content the Committee's alterations might best be described as a paradigm shift. The Committee had for several years been rather scandal-driven and lacking clearly defined strategic objectives to guide its actions and activities. The "unpredictability" of the Committee made it popular in the press, because it could generally be expected to provide a good story, but more *results* would possibly have been achieved earlier had the Committee focused its actions and activities on well defined priorities.

The Committee altered its previous *ad hoc* approach with the 2003 and 2004 discharge reports. Both reports focused on issues of fundamental importance in improving *accountability* within the European Union and thus issues which belong at the *core* of

the discharge procedure. The following concentrates on the arguments which the Committee and the European Parliament have put forward in favour of the introduction of national ex-ante disclosure statements and ex-post statements of assurance.

## Article 274 of the EC Treaty

According to Article 274, first subparagraph, of the EC Treaty it is the European Commission which has – exclusively – the responsibility for the implementation of the Community budget.

> *The Commission shall implement the budget, in accordance with the provisions of the regulations made pursuant to Article 279, 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* [1].

## Article 53 of the Financial Regulation

Although under Article 274 of the Treaty the Commission is responsible for the implementation of the budget, it is not itself implementing on a daily basis a substantial part of the budget. The fact that transactions are *financed* by the EU budget does not automatically imply that they are also *implemented* by EU bodies or EU staff.

Article 53 of the Financial Regulation prescribes different methods of implementation for different policy areas. In general terms "centralised management" (Article 53,2) is used for administrative expenditure and internal policies, "shared management" (Article 53,3) is used for the Common Agricultural Policy and actions under the Structural Funds, "decentralised management" (Article 53,4) is used for pre-accession aid and "joint management" (Article 53,7) is used for cooperation with international organisations.

The decision on which management mode to use is taken by the Member States in the Council. The decision is binding for the Commission[2].

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[1] The first part *The Commission .....appropriations*, is from the very beginning in 1957. In 1992 the Maastricht Treaty added *in accordance with the principles of sound financial management* and in 1997 the Amsterdam Treaty added the sentence *Member States shall cooperate ...sound financial management*.

[2] See Council Regulation no. 1258/1999 of 17.5.1999 concerning the financing of the Common Agricultural Policy and Council Regulation no. 1260/1999 of 21.6.1999 on general provisions on the Structural Funds.

**Shared management and delegation risk**

Shared management is the management mode used for the overwhelming part of the budget. All actions under the Common Agricultural Policy and all Structural measures (about 80 % of the budget) are implemented under shared management as a consequence of the principles of subsidiarity and proportionality.

This means that implementation tasks are delegated to Member States and that Member States are responsible for the controls on funds in shared management as described and defined in sector regulations.

It is important to note that Member States are free to organise these controls in the way each considers best, given their institutional and administrative structure.

In practice, responsibilities are allocated to a large number of different bodies reporting to Ministries of the national government or to regional governments.

The distinction between the financing of a Community policy and the implementation of the same Community policy and the Commission's delegation of implementation tasks to the Member States is a risky business for the Commission, which has – as we have seen – ultimate responsibility.

It is a risky business because the Commission has no guarantee that the Member States *de facto* fulfil their obligations and it is far from able to check fully the quality of the information from the Member States.

The risks faced by the Commission include, *inter alia*, the following:

– the risk that Member States and beneficiaries do not always pay the same degree of attention to the spending of EU money as to the spending of national money;

– the risk deriving from the heterogeneous quality of Member States' control standards;

– the risk stemming from the ex-post nature of recovery mechanisms, which diverts attention from the need for remedial action to be taken as early as possible and in many cases allows errors to be repeated over too long a period;

– the risk which derives from the lengthy chain of events leading from budget commitment to receipt by the final beneficiaries.

It matters to underline that the "object" of the delegation is specific implementation *tasks* and not the *responsibility* for the budgetary implementation as such. Tasks and work to be done is delegated to units in the national administrations, not the

final responsibility for the implementation of the budget which rests with the Commission – whatever the method of management decided by the Council. This means in practice that the Commission bears ultimate responsibility for the proper functioning of management and control systems w*ithin Member States.*

**Quality of Member States' control systems**

The fact that Member States are free to organise the controls in the way each considers best, given its institutional and administrative structure, results in a rather heterogeneous quality of Member States' control standards and for several years the European Court of Auditors has stated that *further efforts are needed, in varying degrees, to ensure that supervisory and control systems function effectively, particularly at the level of the Member States*[3].

A quick look into the Court's Annual Report concerning the financial year 2004 is illustrative.

As regards agriculture the Court concludes: *As in previous years, the Court found recurrent evidence that CAP expenditure, viewed as a whole, and drawing on all available sources of evidence, was still affected by significant errors*. (...). (Paragraph 4.55).

As regards Structural measures the Court concludes: *The Court found some weaknesses in the management and control systems across all the programmes in its sample for both the 1994 to 1999 and the 2000 to 2006 periods. Concerning the 2000 to 2006 period, as in last year's Annual Report, the Court's findings this year again show that most of the systems examined need varying degrees of improvement in order to fully comply with the fundamental regulatory requirements for effective day-to-day management checks and/or independent sample checks of operations. The Court also detected numerous errors of legality and regularity in the expenditure included in the declarations leading to payments by the Commission in 2004 (see paragraphs 5.19 to 5.27 and 5.35 to 5.36).* (Paragraph 5.48).

The Court's statement should not be underestimated. Weaknesses as regards "fundamental regulatory requirements for effective day-to-day management checks and/or independent sample checks of operations" would in other circumstances seem to be more than sufficient to ask the responsible managers to find another job. The fundamental problem is that nobody in the Member States is taking *overall*

[3] European Court of Auditors, Annual Report 2004 paragraph 1.50.

responsibility for the quality of the control and supervision at national level and that the information transmitted to the Commission and the Court of Auditors is not always good enough.

In order to improve Member States' implementation the Commission issues manuals and guides on best practice to the national bodies. These bodies are to be counted in hundreds if not thousands[4]. Can we imagine that all the people involved – even with the best will in the world – will ever come to a common understanding of such best practices? And what if the best will is not there? The people with responsibility for the implementation in the Member States do not belong to the Commission's staff but to the national administration. Which interests will they pursue? When there are difficult choices and decisions to be taken, will they be guided by a national or a European "spirit"?

**Negative Statement of Assurance**

The Committee on Budgetary Control has recently given considerable consideration to the "missing link" between the Treaty stipulation which gives the Commission full responsibility for the implementation of the budget and the Member States' executing responsibilities. The reason for this interest is that weaknesses in the Member States' control and supervisory systems are the main source of the Court of Auditors' so called «negative» Statement of Assurance.

The Statement of Assurance (Article 248 of the Treaty) is a central part of the Court's Annual Report which itself is an important element in Parliament's discharge decision. Since 1994, the first year in which the Court had to produce a Statement of Assurance, it has been negative. The press has been quick to equate the negative Statement of Assurance with fraud and corruption and this creates a difficult situation for European parliamentarians. The UK press in particular has given very problematic if not directly misleading headlines each year after the publication of the Court's Annual Report, and this was without doubt one of the reasons why the 2003 discharge rapporteur Mr Terry Wynn focused on the reasons for the negative statement of assurance and brought back onto the agenda an idea initially presented by the former Internal Auditor of the European Commission Mr Jules Muis.

4 Annual Report 2004 paragraph 5.10 and table 4.2.

## Responsibilities and reality

The 2003 discharge rapporteur had no difficulties in convincing the Members of the Committee on Budgetary Control and the whole House of the necessity of closing the gap between the responsibilities as defined in the legal framework and the insufficient fulfilment of these obligations on the ground. In April 2005 the plenary adopted with an overwhelming majority the 2003 discharge report in which the European Parliament proposed the introduction of an **ex-ante disclosure statement** and an **ex-post statement of assurance**.

**The ex-ante disclosure statement** should confirm that the organisational structures in place in the Member States comply with the requirements of Community legislation, and that they are expected to be effective in managing the risk of error in the underlying transactions. It was also foreseen that a remedial action plan, if necessary, could be included in the disclosure statement.

**The ex-post statement of assurance** should be an annual statement from the *national manager* in which he/she gives a declaration similar to that given by the *EU manager* (the responsible Director-General of the Commission)[5].

Parliament further proposed that both statements should be signed by each Member State's highest political and managing authority and found that as a general rule this role would normally be performed by the Finance Minister.

## Content of national management declarations

The scope of the declarations as well as the scope of responsibility of the signatories should be given further consideration than what was possible during the discharge procedures.

If they are to add value, declarations at national level should of course not duplicate the assurances given at operational level. The declarer should, as representative of the Member State, confirm that the processes have been put into place, and that they are operating effectively, in particular as regards the management of the risk of error in the underlying transactions.

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[5] The wording of the Director-General's declaration is: *I (...) state that I have reasonable assurance that the resources (...) have been used for their intended purposes and in accordance with the principles of sound financial management, and that the control procedures put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions*.

Ex-ante declarations should, among other things, include information on the services competent to implement the measures benefiting from EU funding and on those competent to undertake secondary and central level controls, on the adequacy of the resources available for controls at each level, and on the measures taken to ensure that each service is fully aware of EU requirements and guidance.

Ex-post declarations should, among other things, include confirmation that procedures were in place during the year concerned to ensure that EC rules were complied with, to ensure the reliability of the claims submitted to the Commission during that year, and to manage the risk of error in the underlying transactions.

**Member States' resistance**

Parliament's proposals caused a lot of concern in most Member States. Some of the more colourful arguments against the proposal can be summarised as follows:

"The proposal would imply that national Finance Ministers would be responsible to the European Parliament instead of their national parliaments, and that the next step would necessitate the national Finance Ministers coming to Plenary and defending themselves" (!)

The European Parliament has never said such a thing. It is in no text adopted by the European Parliament. It has never been mentioned nor discussed in the Committee on Budgetary Control and it can only be understood as an argument serving those who favour the present situation where it is very difficult if not impossible to properly audit the use of EU money.

"The proposal would change the balance between the Commission and the Member States and it would in fact be a transfer of responsibility from the Commission to the Member States."

The proposal does not take responsibility away from the Commission. It merely underlines Member States responsibility as stated in the second part of Article 274. It should also be mentioned that the European Parliament has no interest in transferring responsibility from the Commission to the Member States. If it comes to a situation where the Commission no longer has final responsibility for the implementation of the budget, the discharge procedure and thereby Parliament's powers would diminish.

”The signature by the Finance Minister would transfer responsibility from managers to politicians.”

It seems clear that no Finance Minister would ever sign anything like this *unless* he/she could do it *on the top* of declarations from managers on the administrative level. The signature from the Finance Minister should of course not be the *only* one. It should be the *final* one which guarantees and confirms the solidity of all other signatures lower down in the administrative chain. It would be the signature by which the *accountability* of the *State* would be recognised.

It is somewhat difficult to understand why it would be so terribly difficult for a Finance Minister to sign such declarations. Many arguments have been presented against the idea by Member States representatives: too bureaucratic, too difficult, too expensive, not necessary, we already do a lot, etc.

The most logical explanation for the resistance seems however to be that the bureaucracy in the Member States know, that they don't know; they know, that they have not full insight into the management and control of EU funds. That is probably why they inform the Finance Minister that such declarations are unnecessary.

**The role of national audit institutions in relation to the proposed instruments**

With a couple of noteworthy exceptions the role of the national audit institutions in controlling how EU funds are used has so far been barely visible. National audit institutions have very different audit cultures and different audit mandates. They are independent and they report to their national parliaments. It is also a fact that EU-funds are relatively small compared to the total national budget which national audit institutions have to audit. However, national audit institutions could play an important role in relations with the proposed instruments.

If the aforementioned national statements should come into being it is clear that the statements should be externally audited. In the first instance, the national manager should give his own representation of the financial and managerial situation, and then the external auditor, which could be the national audit institution or an auditor from the private sector, should perform an audit of the statements given by the national managing authority. The incentive for the Member States to invite their own national audit office to do this is that the Member State as such has a clear interest in knowing that the information it is sending to the European Commission and the European Court of Auditors is correct.

By performing this audit the national audit institutions could provide the national parliament, the European Commission and the European Court of Auditors with qualified information *needed for accountability, audit and control purposes at EU level*. Qualified information can probably only be provided if audits are carried out according to standards jointly developed by the Commission and the national audit institutions. At the same time common standards for the national audit institutions' audit of EU funds in their home country seems to be an unconditional prerequisite for the acceptance of the audit services of the national audit institutions by the European Court of Auditors.

This perspective is not to the liking of most national audit institutions which is understandable because it touches on established wisdom. There are however good reasons for national audit institutions to adapt their own ways of working to take account of the fact that the European Union exists, that it is managing a budget of more than 100 billion euros and that European taxpayers in Member State A have a right to know how Member State B is taking care of EU funds.

It seems clear that any future national management declaration sent to the Commission or to the Court of Auditors without an accompanying audit opinion from the national audit institution - or another external auditor - will be regarded with scepticism, if not suspicion. Therefore, both national governments and national parliaments - and ultimately, national citizens - will have an interest in seeing the national audit institution's counter-signature on the Finance Minister's declaration.

The overall objective of the administrative reform in the Commission was to give the people in the Commission who use the money the responsibility for how it was used. The European Parliament supported this sound objective and has taken the view that the same principle should apply when the money is used in the Member States.

The Parliament as well as the European Court of Auditors has expressed rather critical remarks about the EU manager's (the Director-General of the Commission) Annual Activity Report and its declaration. However, it would not be serious to continue criticising the EU manager without requesting the *national* manager to make further efforts. The national manager's Annual Activity Report and its appurtenant declaration could in fact be a valuable further source of information for the Court's Statement of Assurance.

## Internal and external audit

It has been argued that by proposing a role for national audit institutions in the audit of EU-funds the European Parliament would confuse the roles of internal and external audit.

Each Member State has a national audit institution which is responsible for the independent external audit of their respective state budgets. Even if the mandate of the national audit institutions is different it is a common characteristic that they are entitled to audit the performance of the government's various ministries. It follows that a national audit institution would be fully entitled to audit a declaration on the use of EU-funds issued at ministry level. Generally speaking it is the national auditor's job to audit how the ministries have used national taxpayers' money. Why should the same institution not be able to audit how the ministries have used EU-taxpayers' money based on a declaration from the national (Finance) Minister?

## Council's reaction

At its meeting on 8 November 2005 the Council (ECOFIN) categorically rejected the proposed measures on the grounds that existing measures should be sufficient[6].

Bearing in mind that since 1994 the Court of Auditors has delivered a negative statement of assurance the Council's statement caused some surprise among the Members of the Committee on Budgetary Control.

## The Inter-institutional Agreement

To prevent, or overcome the risks of conflict or the blocking of procedures in the budget sector, the Council, the Commission and the Parliament have often been prompted to conclude agreements on how to exercise the powers bestowed on them by the Treaties. Such agreements or joint declarations are now incorporated in the inter-institutional agreement on budgetary discipline and sound financial management.

The Court of Justice has not so far ruled on the legal value of the inter-institutional agreements. It has, however, recognised the usefulness of this instrument, and even the fact that it is necessary to allow the institutions to carry out the tasks they have been given.

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[6] See paragraph 12 in ECOFIN Council conclusions of 8 November 2005 on <http://www.fco.gov.uk/Files/kfile/EcofinConclusions_08nov.pdf>.

The new inter-institutional agreement will come into effect on 1 January 2007. During the negotiation Parliament's delegation made an enormous effort to include a text on ex-ante disclosure statement and ex-post statement of assurance. Given the resistance from almost all Member States the final text is more than encouraging although not as clear as would have been desirable:

"The institutions agree on the importance of strengthening internal control without adding to the administrative burden for which the simplification of the underlying legislation is a prerequisite. In this context, priority will be given to sound financial management aiming at a positive Statement of Assurance, for funds under shared management. Provisions to this end could be laid down, as appropriate, in the basic legislative acts concerned. As part of their enhanced responsibilities for structural funds and in accordance with national constitutional requirements, the relevant audit authorities in Member States will produce an assessment concerning the compliance of management and control systems with the regulations of the Community.

Member States therefore undertake to produce an annual summary at the appropriate national level of the available audits and declarations."

The positive side of this rather open text is that it allows for further action aiming at the introduction of national management declarations. Having regard to the strong support in both the Committee and the whole House from all political groups this objective could turn into a top priority for the Committee on Budgetary Control.

## The 2004 discharge

The Committee's rapporteur for the 2004 discharge report Mr Jan Mulder developed further the approach taken one year earlier. Taking into account the Council's refusal to discuss Parliament's proposal of having one overall declaration it was suggested that Member States as a first step should issue a separate declaration for each major sector. It was further proposed that instead of one signature from the Finance Minister Member States themselves should identify the relevant body at central Member State level which should be responsible and accountable for issuing the declarations. The rapporteur maintained however that "a declaration at political level covering all Community funds in shared management and signed by Finance Ministers (...) is still a necessity and would be a big step forward"[7].

[7] 2004 discharge report paragraph 37.

## Incorrect or incomplete declarations

The added value of any declaration of assurance depends upon its reliability in terms of correctness and completeness. It is therefore necessary to give some thoughts on what should be the effect of an incorrect or incomplete declaration.

The first step to assure correct and complete declarations would of course be to invite the national audit institution to audit the declarations. Most of the national audit institutions would probably be able to adapt their independence if the national parliamentary audit committee invited them to look at the Finance Minister's declarations. The second step would be to ensure public access to the declarations and the audit opinion. The third step would be to distinguish unintended errors and false declarations. Unintended errors could lead to the suspension of the affected part of Community funding until the control systems have been improved and accountability reinforced. A false declaration would cast doubt over that Member State's ability to manage EU money in general and should give rise not only to suspension of payments and financial corrections but also to strong penalties and extensive audits of the supervisory and control systems in that Member State.

## Conclusion

It would not be correct to say that national management declarations have no drawbacks. They have. The first risk is obviously that national authorities will be unable to see any weaknesses in their own systems and therefore present clean assurance statements whatsoever. This risk could be a real one in the beginning to some extent. The risk would be significantly reduced if the consequences of producing – knowingly – incorrect statements killed any incentive to do so.

However, the benefits of the tool far outweigh any drawbacks:

The high number of individual certificates and audit reports within each area of the financial perspectives illustrates clearly the need for such declarations:

– for the 1994–1999 period the Commission approved 1 104 Structural Funds programmes and 920 Cohesion Fund projects;

– for the 2000–2006 period there are 606 Structural funds programmes, 1 163 Cohesion Fund projects and 72 ISPA projects;

– each programme may contain several thousand projects;

– under the CAP there are 91 Paying Agencies.

Neither the Commission nor the Court is in a position to scrutinize every individual certificate or audit report. Therefore, Member States – at central national level – have to *guarantee* the quality of the information in the high number of individual declarations issued at lower level.

National management declarations will also constitute the fundamental *starting point* for any serious audit of the implementation of the budget in as far as they would be a *baseline* for an efficient control strategy which would enable the Commission and the Court of Auditors to hold to account, to prioritize, to be selective in its control and to optimize the use of scarce audit resources.

The instrument will probably never be popular since the declarations are a sort of *Transparency Statements*. It is therefore obvious that the introduction of national management declarations will require political will.

In any case, it seems unwise to delay introducing this fundamental instrument until the next financial scandal has proven the cost of non-transparency.

**Siim Kallas**
**Vice President of the European Commission**

# WORKING TOGETHER TO GAIN GREATER ASSURANCE ON THE USE OF EU FUNDS

## 1. Opening paragraph

In a multi-national organisation such as the European Union, we must all seek to make the best use of the means at our collective disposal to ensure that we deliver the right results for taxpayers. This applies as much to audit and control activities as to the major spending programmes. I wish therefore to explore in this paper how SAIs (Supreme Audit Institutions) and other external auditors can contribute to strengthening the control of EU funds via an improved understanding of interaction between the Member States (MS) and the Commission, and how the Commission can facilitate this. Given the often high level nature of policy discussions in this area, I am grateful for the opportunity to go into further detail on the particular challenges faced by the EU in the context of public sector audit. I am also keen to give readers of Kontrola Państwowa an insight into the efforts the Commission is making to ensure European taxpayers' money is being effectively managed. The invitation I received from this important journal is an excellent example of the willingness of SAIs (as shown in the 2005 Contact Committee meeting[1]) to contribute to the debate and have a frank and open discussion of these issues. This can only lead to a better outcome for all concerned.

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[1] *The Role of Supreme Audit Institutions in Improving Accountability for the EU Funds (Relation on the Contact Committee Meeting in Stockholm)* Jacek Mazur (Kontrola Państwowa nr 1/2006).

I would like to discuss:

– how audit and similar control activities are fundamentally implicated in the way the EU conducts its work, and how these are essential to the Commission's internal controls;

– the various policy areas and how they differ practically in terms of internal control and audit;

– the initiatives we have taken in terms of improving transparency in the areas over which the Commission has the most direct control; and finally

– the likely positive effects of the various initiatives being made by different SAIs, and the possible positive outcomes we might be able to predict for the future[2] .

However, before going into further detail, it is worthwhile to explain a little what is at stake when it comes to EU financial control. The management and audit arrangements are often complex and the chains of control long, involving several different levels. In this situation, a very small percentage of irregularities can have a significant impact (including where financial errors occur, a measurable financial effect). It is an opinion shared by the European Court of Auditors (ECA) and the Commission that these irregularities are partly an inevitable feature of the policy landscape where beneficiaries are required to «self-assess» their eligibility against a background of often complex and detailed legislation. This means that zero risk and 100% accuracy can always be theoretical, but not practical goals. Thus the presence of irregularities will not always indicate that the principles of correct accounting or sound financial management have been jeopardised. This recognition of the impossibility of zero risk[3], and the idea that reasonable assurance means effective management of the «risk of error in the underlying transactions» (and the correction of errors detected) means the Commission's must prioritise irregularities likely to result in significant financial loss. The issues discussed below should therefore be seen in the light of this prioritisation.

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[2] *Directions of Potential Transformations In the System of the European Resources Auditing,* Jacek Mazur, Lech Marcinkowski (Kontrola Państwowa nr 4/2005).

[3] *The concept of «Tolerable risk» as used in the Commission's Action Plan* <http://www.europarl.europa.eu/comparl/cont/site/auditions/workshop/gray.pdf>.

## 2. Relationship between audit and internal control in the EU context

Due to the mismatch between the extent of its human resources and the size of the budget it is responsible for, the Commission is required to use highly delegated structures in order to manage its activities. Despite this delegation, Article 274[4] of the EC Treaty makes clear that the final responsibility rests with the Commission, although the Member States, who manage 80% of the budget, are required to cooperate in this management.

The practical result of this arrangement is that, at project level, the Commission is rarely able to perform direct document-based checks on the activities it funds, and even more rarely able to verify «on-the-spot» the reality underlying those documents. This has therefore resulted in a far greater recourse to audit-like assurance to reinforce its control structure.

Thus the Commission, like most private and public sector organisations, has an Internal Audit Service (IAS) and an External Auditor (the ECA). Also like most organisations, in order to direct its activities it uses *ex ante* internal controls (for example, verification of eligibility criteria before making a payment). In order to manage the risks of delegation outlined above the Commission is required to use auditors (who may be Commission staff or externally contracted) to perform on-spot-verification of beneficiaries and intermediaries which normally culminates in an audit opinion or an agreed-upon procedures report.

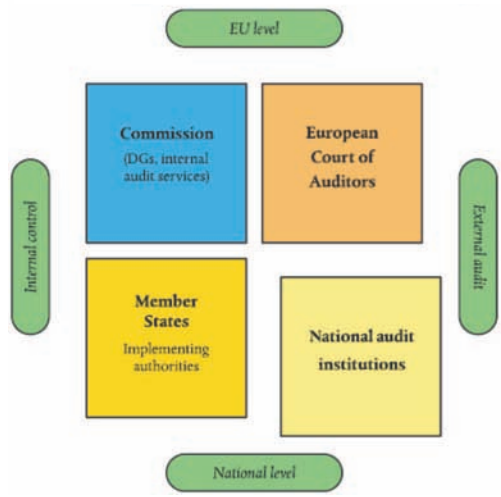
The ECA made suggestions to bring the work of all auditors together to improve assurance. The diagram above, from the ECA's «single audit» report 02/2004, gives an outline of the main actors. This situation is further complicated by the fact that audits are used extensively by the Commission as an integral part of internal control of the EU budget. These activities are neither external audits (the auditor is not reporting to an external stakeholder, and there is no statutory role involved) nor internal audits (the auditor reports to line management, not senior management, and there is more emphasis on systems verification and regularity checks than on issues of efficiency or effectiveness). However, these audits do share many typical characteristics: the auditors must be qualified or accredited, independent from the auditee and provide a final report on their work in the form

[4] *The Commission shall implement the budget, in accordance with the provisions of the regulations made pursuant to Article 279, 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.*

of an assurance opinion or a statement of agreed-upon procedures. Thus there is an extensive base of audit and verification activity which goes beyond what could normally be considered as «internal control» that is not explicitly reflected in the left hand side of the diagram.

*Diagram 1*

**Overview of internal control and external audit of the EU budget**




Misunderstanding is often encountered regarding the possible use of «single audit» and the idea of an integrated framework and what this means for other external audit actors such as SAIs. As has been clarified by many of the EU SAIs, their independence is paramount in planning, carrying out and reporting on their work. Each SAI has its own statutory obligations in its individual Member State. It is not feasible to envisage a direct relationship between the SAIs and the European Commission, any more than to claim that an external auditor of a private company has a duty of care in its audit opinion to anyone other than the addressee of the opinion, normally the shareholders of the company. Nevertheless, the absence of a direct duty of care or legal responsibility to other stakeholders of a company (e.g. suppliers, customers, strategic partners, employees) does not prevent the corporate governance process from having highly positive effects on these stakeholders.

A key factor which has made the corporate governance process increasingly useful for all stakeholders has been the improvements made in transparency in the last twenty years, and this insight has guided the Commission's strategic objectives in this area. The Commission recognises that it needs to better describe and put into context how an organisation with a variety of activities can achieve assurance by pragmatically seeking to maximise the various sources of assurance available. I consider that the more open we are with the SAIs about the issues we face in particular areas, the more opportunities for information sharing and cooperation may arise, while always respecting each others' statutory obligations and independence. It is in this spirit that I will outline below how the Commission builds its assurance in the different management modes.

## 3. Audit strategies and methodologies

### 3.1. Audit standards in use at the Commission

A frequent question which is posed as regards the Commission control process is the nature of the standards used for the various types of audits carried out by or on behalf of the Commission. For the Internal Audit Service, the clear point of reference is the International Standards for the Professional Practice of Internal Auditing. For the audit/ on-the-spot control of beneficiaries and intermediaries, the INTOSAI (International Organisation of Supreme Audit Institutions) Auditing Standards and the International Standards on Auditing issued by IFAC (International Federation of Accountants) are generally used as a starting point. However, for the Commission, international standards which are designed for use in auditing financial statements only take us part of the way to the specifications we need to make for contracts in highly specific policy areas with rather unique conditions. In addition, the level and types of delegation (as outlined below) also have consequences for the type of procedures which need to be applied. In areas of methodology, the Commission is however keen to base its approach on orthodox and formalised approaches where possible to enable consistent standards and to ensure approaches can be replicated in different areas.

### 3.2. Shared management

The balance of the Commission's and Member States' obligations under article 274 of the EC treaty find their fullest expression in the area of shared management (75-80% of the Community budget), where the Commission takes little or no part in the operational management of the programmes, and must therefore fulfil its

treaty obligations via a system of audit assurance. This, while bearing a strong resemblance to an external audit process (and is indeed carried out by SAIs in some Member States), nevertheless forms part of the internal control process which the Commission must put in place over EU funds.

Due to their different histories and the nature of their programmes (annual vs. multi-annual, 100% payments vs. co-financing), agriculture and structural measures have adopted slightly differing strategies for obtaining this assurance. The challenge is to ensure that placing operations at a national or regional level where this is most appropriate (subsidiarity[5]) does not conflict with the Commission's discharge of its control duties. Both policies use a model of an intermediary (a paying agency or managing authority) whose claims are verified by an independent body (certification body or certifying authority). In addition, for structural funds, technical parameters[6] are specified (in line with internationally accepted standards) for the audit authority to use in carrying out its checks of operations.

The approach now being adopted for the forthcoming programming period 2007-13 in shared management has taken a major step forward in adopting an integrated approach to control which uses, as suggested by the ECA in its opinion 02/2004, "control procedures based on common principles and standards". This is coupled in agriculture with a highly effective sharing of data to ensure a robust and reliable chain of control.

It is important to note that the key instruments of this control are tools which are very familiar to the auditor: risk-based and representative sampling (including a consideration of assurance and confidence levels), a consistent and technically well-defined approach to extrapolating results, and a reporting format which is transparent and unambiguous. It can thus be considered as a «proof of concept» in the way auditors with very heterogeneous roles and responsibilities can cooperate, while respecting their independence with regard to planning and executing their own work.

### 3.3. Direct management

For direct management (10-15% of the Community budget), while the delegation risk of shared management is not present, nevertheless two kinds of audit process

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5 Article 5 of the EC Treaty.

6 Annex IV of the proposed implementing rules of Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund.

are required to manage the risks connected with the «self-assessment» (which is required when making claims on an actual cost basis). The project manager at the Commission is not able to visit every project, and only limited assurance can be derived from documentary evidence. Thus 3rd party assurance in the form of an audit certificate (as required by the Financial Regulation above a certain threshold) provides the project manager with an independent justification for the costs which have been charged. Again this audit certificate requires independence and accreditation on behalf of the auditor, but is strictly within the internal control framework of the Commission.

Useful as this certification process is, due to the fact that it is highly distributed among many thousand audits, the Commission still faces risks of consistency and technical understanding by the auditor of the contractual requirements. The Commission is seeking to manage this in the 7th Research Framework Programme by more closely specifying «agreed upon procedures» which are to be carried out. It needs nevertheless a mechanism for verifying the work of certifying auditors and also information on detected errors in order to make an assessment of the level of error in the population as a whole. As a result of its resource constraints, the Commission often out-sources this work to an auditor who is required to be independent and represent the Commission in ensuring the contractual terms have been adhered to.

Despite the varieties of assurance provided, the Commission is never able to delegate or defer the obligation to decide on its own account on the acceptability of claims. But in a manner somewhat similar to shared management, the Commission can avail itself of a «chain of control» which consists of transparent audit and control activity. When combined, this can provide a global picture of the policy or programme concerned. In this respect, it can be seen that, despite radical differences in the legal and policy aspects, the resulting control environment in shared and direct management give rise to similar issues.

### 3.4. Other management modes

The other management modes used by the Commission (Joint management with international organisations, indirect centralised for education and some environment policies, and decentralised for 3rd countries) can be placed on the continuum between shared and direct centralised management, based on the level of delegation made by the Commission, and depending on the nature of the policy and relevant legislation. In most cases the Commission is required to rely on underlying levels of control provided via certification or provision of an audit opinion.

## 4. Information and transparency

On 12 April 2006 the Director General of the Budget Directorate General (DG) of the Commission sent letters to the European SAIs which I hope will come to be seen as the first step in a fruitful and regular dialogue with the SAIs. The Commission recognises that cooperation takes time to develop, and favours a gradual approach via consultation in order to achieve this. It is also fundamental to our increasing emphasis on transparency that the first initiative as regards sharing information should come from our side. It is our strong belief that an open approach can bring many benefits, some of which we will discover as our co-operation progresses.

The letters contained tables with the amount paid per budget line for the relevant Member State in 2005. We consider this to be a first modest step in exploiting the possibilities of financial and management reporting using the new systems at our disposal. In particular, the availability of a reliable central system for identifying legal entities via the ABAC system[7] will enhance our ability to track the usage of EU funds across our different activities, and provide greater focus on key beneficiaries under direct centralised management.

For transactions with Member States, the Commission is still currently lacking fully integrated reporting mechanisms at final beneficiary level, although these have been well developed in certain policy areas such as agriculture. Over the longer term, the Commission sees great potential for the automatic interfacing of different systems which could provide a richer and more relevant resource for identifying and managing risk and control issues.

As a first step towards this objective, in November 2006 DG Budget has developed an initial version of a module enabling the different audit activity within direct centralised management to be tracked. This will improve coordination and cost-benefit of the Commission's audit activity, and may also provide a model which can be extended into other management modes.

We have been very encouraged by the responses we have received from the SAIs in response to the Commission's initiative. While underlining their independent role, many SAIs are interested in exploring the potential for cooperation and making use of the information we can put at their disposal. The Commission hopes to build on this positive reception in the coming years for the benefit of all actors concerned.

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[7] ABAC (Accrual Based Accounting) is the acronym of the European Commission's project to switch from cash-based to accrual accounting, and of the new accounting system introduced.

## 5. The value of innovation by Member States

### 5.1. The Commission's perspective on the usefulness of experimentation

One of the aspects that makes the Commission's work in an international and inter-governmental environment so challenging and interesting is the creative tension which exists between the wide ranging variety of approaches in the different Member States and the need to provide added value at a European and wider level. In the area of financial control and audit, the Commission can reap the benefits of the considerable work done by international standards boards in establishing core approaches which are well-tested and, just as importantly, easily recognisable and understandable to the communities they serve. The Commission is also concerned, however, not to lose the benefits which can derive from a «bottom-up» approach where rapid progress can be made by individual Member States acting according to their own needs and incentives.

Such experimentation can enable new strategies to emerge and be tested, allowing a natural evolution towards effective approaches which can then be scrutinised, and eventually adopted by other Member States, via agreement rather than imposition.

### 5.2. The Dutch case

The Dutch Ministry of Finance's initiative to provide a country-level declaration covering agriculture from 2007 (for 2006) and structural funds from 2008 (for 2007) is an example of an approach driven by the statement of assurance. As is the case with the declarations made as part of the Commission's annual activity reports, the Commission continues to consider declarations to be a valuable way of focussing management priorities regarding matters related to financial control. The cascade approach shows it is possible to provide greater assurance without radically altering existing structures.

One benefit of a national government initiative means the SAI can respond fully within the scope of its normal activity. It is therefore appropriate that these declarations are also subject to scrutiny by the Dutch Court of Audit, and we are also interested to see how the SAI-level assurance will be built up from the underlying work of the audit authority and other bodies, and the form which the information and evidence sharing will take on a practical basis. As has already been shown via the annual Trends report, the Dutch Court of Audit provides

a valuable perspective on EU financial management from the perspective of the Member State.

### 5.3. The UK Case

This initiative led by the SAI (UK the National Audit Office) itself, again shows that innovative strategies can arise form different perceived needs in different Member States. Although at present only an outline has been presented verbally to the UK House of Lords, the Commission is very interested to see the idea of an EU account subject to SAI oversight being further developed at the Contact Committee meeting in Warsaw. The EU account idea may be problematic for direct centralised management (where beneficiaries are paid directly by the Commission), but for the shared and indirect management there is certainly scope for exploration. What this initiative shows is that choosing intuitive reporting mechanisms can add considerable assurance to an organisation's stakeholders, which is a principle the Commission is also trying to explore within the framework of its action plan[8].

### 5.4. The Danish Case

The Danish case is also a SAI-led initiative in the form of a pilot project by the National Audit Office of Denmark to provide a statement on the reliability of the accounts and the legality and regularity of the underlying transactions. In this case the chain of control is foreseen to operate via the relevant internal audit offices and controllers in the ministries responsible in order to provide an overview of the controls over EU funds. This cooperation between audit and other control activities provides another distinct and interesting model for how assurance can be obtained, and again the Commission is very interested to learn of further details as the pilot progresses.

### 5.5. How these different models can help the Commission and the European taxpayer

The value of external auditors to a typical stakeholder is twofold: they provide a general assurance that the underlying management of the auditee is working adequately, and they can also bring to light pertinent information and provide insight into the key elements of the system under audit. The Commission can gain assurance on the internal control framework by means of the external opinions

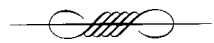
[8] Commission Action Plan towards an Integrated Internal Control Framework COM 2006 (9).

provided, whether they are directly or indirectly related to the management of EU funds. Most importantly, the end result and goal of improved control over funds can be pursued, while fully respecting the SAIs external role and independence.

## 6. Summary

While having our own well-defined roles and responsibilities, it is clear from this analysis that the Commission and the SAIs share certain objectives with regard to controlling and auditing EU funds. While improvements in effectiveness of assurance-related activities can be obtained through revised and simplified legislation, I remain convinced that increased co-operation between all parties concerned will provide the greatest benefits. To help achieve this, the Commission is ready to work with you in a transparent way to improve both the efficiency and effectiveness of audit and control work.

The Commission's hope is that the cooperation which is encouraged by the Contact Committee, will provoke debate among the SAIs, and result in initiatives which are adapted to the individual SAI and MS's circumstances. Fundamental to this is the duty of both the Commission and the SAIs to ensure and demonstrate to the citizens of the European Union that all Community funds are being properly managed.



**Hubert Weber**
**President of the European Court of Auditors**

# EXTERNAL AUDIT IN THE EUROPEAN UNION AND COOPERATION BETWEEN NATIONAL AUDIT INSTITUTIONS AND THE EUROPEAN COURT OF AUDITORS IN AUDITING EU FUNDS

## The EU external audit framework

The framework for management and control of the budget set out by the European Union (EU) Treaty can be summarised as follows:

– the European Commission is responsible for executing the budget; Member States shall cooperate with the Commission to ensure that budget appropriations are used in accordance with sound financial management principles;

– external audit is the responsibility of the European Court of Auditors (ECA);

– the European Parliament, following the Council's recommendation, and taking into account the Court's statement of assurance and reports, has the sole responsibility to grant discharge to the European Commission for the execution of the budget.

The different methods for implementation of the EU budget – on a centralised basis, by shared or decentralised management or by joint management – involving millions of beneficiaries across the 25 Member States and third countries all over the world imply a complex management involving a vast quantity of different systems.

Each Member State deals differently with the EU financial flows in their national budgets and their specific institutional and administrative structures therefore lead to heterogeneous models for management and control of those flows.

Funds under shared management between the European Commission and Member States (agriculture expenditure and structural measures) represent about 80% of the EU budget. While Member States are responsible for the management and control of these funds, it is the European Commission which bears the ultimate responsibility for their implementation. It does this by ensuring that supervisory and control systems across the EU have been set up in accordance with Community law and implemented in a manner which manages adequately the risks to the legality and regularity of the underlying transactions.

For the ECA external audit in such a framework, the Treaties foresee, in respect of National Audit Institutions, that:

– *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 other institutions of the Community, any bodies managing revenue or expenditure on behalf of the Community, any natural or legal person in receipt of payments from the budget, and the national audit bodies or, if 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;*

– *the Court of Auditors and the national audit bodies of the Member States shall cooperate in a spirit of trust while maintaining their independence.*

The proposed text for the European Constitution did not include any changes for these measures.

The independence of National Audit Institutions is rightly underlined as they are external audit bodies operating within a national context. They fulfil the mandates attributed to them by their respective constitutions – which generally do not require specific work in relation to Community finances – and their reports are presented to national institutions, namely the national parliaments.

**The Community Internal Control Framework**

In 2004, the European Court of Auditors published its opinion number 2/2004 on the "single audit" model that includes a proposal for a Community Internal Control Framework to cover all levels of Management. It was the reply to a request by the European Parliament in its decision concerning the discharge for the general budget 2000 to have an opinion on the feasibility of introducing a single audit model applicable to the European Union budget in which each level of control builds on the preceding one, with a view to reducing the burden on the auditee and enhancing the quality of audit activities, but without undermining the independence of the audit bodies concerned.

In the introduction of the document, the ECA underlined that it is the external auditor of the EU and therefore not an element of internal control.

Some of the key messages of the opinion were the following:

– 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 allow this effectiveness and efficiency, legislation underlying policy and processes should be clear and unambiguous;

– the overall cost of controls should be in proportion to the overall benefits they bring in both monetary and political terms;

– 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;

– the Commission should be responsible for promoting the improvement in internal control systems in partnership with Member States;

– clearly defined standards and objectives of internal control systems would provide an objective basis against which the Court could assess their design and operation when auditing them.

The Commission reacted by publishing first a "roadmap to an integrated internal control framework" and later an "action plan towards an integrated internal control framework".

The action plan includes 8 out of 16 proposed actions to be implemented by Member States. Of particular interest to the community of Supreme Audit Institutions (SAIs)

is however proposed action number 8, entitled "Facilitate additional assurance from SAIs", and for which a summary description is as follows: *Member States should invite their national and regional Parliaments to ask their SAIs for audit and assurance on EU funding at their level. The conclusions of these reports should also be made available to the Commission and the European Court of Auditors.*

**International auditing standards**

Just like the European Court of Auditors, the national SAIs are, as independent institutions, not part of the respective internal control systems. However, both the ECA and national SAIs have a professional interest in the effective functioning of these systems. Their audit tasks include providing an independent overview of financial management, including the operation of internal control systems. Through their recommendations, external auditors contribute to improving management and financial control at respectively national and European level.

The international auditing standards provide an essential reference on using the work of other auditors. This is in particular the case for the INTOSAI auditing standards according to which *when the SAI uses the work of another auditor(s), it must apply adequate procedures to provide assurance that the other auditor(s) has exercised due care and complied with relevant auditing standards, and may review the work of the other auditor(s) to satisfy itself as to the quality of that work* (see INTOSAI standard 2.2.45).

This is also the case for the International Standard on Auditing 600 "Using the work of another auditor", currently effective, and IFAC's Public Sector Committee Study 4 "Using the work of other auditors - A public sector perspective".This latter study specifies in its last part dedicated to "Using the work of another auditor across national borders", that *the relationship between a supranational body like the European Union and its member states is excluded from the scope of this section, though some helpful guidance may be found.*

Generally, international standards underline that the reliance on the work of other auditors is based on certain conditions: compliance with professional standards, availability of audit results within the timeframe required and access to the working papers.

IFAC is currently working on a proposed International Standard on Auditing 600 (revised and redrafted) with the title "The Audit of Group Financial Statements".

Several bodies have asked for guidance on the audit of group financial statements, including the European Commission. Accordingly, the International Auditing and Assurance Standards Board (IAASB) started a project, that has the objective to deal with special considerations in group audits and, in particular, the involvment of other auditors. The current ISA 600 "Using the Work of Another Auditor" will be revised to deal with these considerations and its title will be changed accordingly. Based on the comments received for a first "Exposure Draft" issued in March 2005, the IAASB processed changes and redrafted the text to reflect these. The new "Exposure draft" was made public in March 2006 with comments requested by July 31, 2006. The number of comments received, 51 in total, shows the high interest in this standard.

The INTOSAI financial audit guidelines subcommittee has considered that the exposure draft on ISA 600 has the potential to be applicable to public sector, while emphasising that the question of sharing responsabilities among auditors may pose great difficulties in certain complex contexts. The subcommittee has also considered that it may supplement this new ISA with a practice note to provide supplemental guidance on implementing new ISA 600 in the public sector.

**Cooperation between the ECA and national SAIs**

In a declaration annexed to the Nice Treaty the Intergovernmental Conference has invited *(...) the Court of Auditors and the national audit institutions to improve the framework and conditions for cooperation between them, while maintaining the autonomy of each. To that end, the President of the Court of Auditors may set up a contact committee with the chairmen of the national audit institutions*.

From its perspective, the ECA considers the existing cooperation with the SAIs of the Member States as fundamental. This involves a range of actions covering, inter alia, practical support to the Court's on-the-spot audits; exchange of professional information and knowledge; joint development of practical and technical support material; and some cases of joint audits.

In addition, the SAIs of the Member States may also take part in on-the-spot audits carried out by the Court. This helps the Court's efficiency by ensuring that there is sufficient detailed local knowledge and facilitates the sharing of best practices between auditors.

The Council Recommendation on the discharge in respect of the general budget for 2004, adopted in March 2006, invited the ECA and National Audit Institutions

to pursue their collaboration while respecting the independence and competences of each. The Council also considered that the work of independent National Audit Institutions should, where appropriate, be used by the Court.

Similarly, the European Parliament has called for a greater involvement of National Audit Institutions in its discharge resolutions for financial years 2003 and 2004, namely in relation to the external audit of the proposed ex-ante and ex-post national assurance statements.

Action item number 8 from the Commission's "action plan towards an integrated internal control framework", already referred to previously, goes in the same direction.

The ECA and the Member States SAIs have also jointly addressed this issue of an enhanced cooperation. The Stockholm Contact Committee did for instance adopt, in December 2005, a "Statement on the role of external audit within the framework of accountability for Community funds" in which it is foreseen to enhance cooperation among its members in order to improve external audit and accountability in the EU field. The December 2006 Contact Committee will further develop this thanks to its Acting Chair, the SAI of Poland, and its President, Mr Mirosław Sekuła.

The key question, already touched upon previously, is how within the references of the international auditing standards and the underlined difficulties, the Member States SAIs can add value to the audit of EU finances or be of greater value for the Court's work. Another element, as indicated during the Stockholm Contact Committee meeting, is that "The level and extent of this co-operation in each case is at the discretion of the independent partners".

Different forms of enhanced cooperation, in the common interest, can be envisaged within these constraints, such as:

– performing specific bilateral and multilateral parallel or joint audits on the utilization of EU funds and on the functioning of internal control systems; these should of course duly take into account the applicable national and community legislation, the various audit strategies as well as the availability of resources;

– the follow-up by Member States SAIs of the outcome of ECA audits;

– the information by SAIs of the Commission and the ECA of any audit results generated by their work in the EU area;

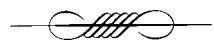
– the exchange of information on types of irregularities and on the reasons for their occurrence.

To the ECA, while respecting the Treaty framework, an important pre-condition to all initiatives for a more efficient audit by the ECA and SAIs is the agreement on common auditing standards, audit objectives and programmes. Then, the results reported at national level could be of major relevance within the accountability framework for Community funds as well as for the work of the ECA.

On common auditing standards, it is useful to recall that some groundwork was done with ”The European implementing guidelines for the INTOSAI auditing standards”, drawn up in 1998 by a working group consisting of representatives of the SAIs of six Member States and the ECA at the request of the Contact Committee of the Heads of the EU SAIs. It was then commented that these guidelines provide a common methodological basis for the SAIs in Europe for implementing audit activities of common interest and constitute a common methodological thread throughout the rich diversity of public auditing traditions of the EU Member States.

Equally relevant are the ”Guidelines on Audit Quality” dated October 2004 developed by the Contact Committee’s Expert Group on Audit Quality then comprise of representatives from four Member States as well as Sigma.

There are great expectations for an improved financial management of EU funds. While it is primarily the Commission and the Member States from whom action is required, an enhanced cooperation between the ECA and national SAIs has the potential to greatly contribute reaching this overall objective.



**Josef Moser**
**President of the Court of Audit of Austria**

# POSSIBILITIES, BARRIERS AND ADVANTAGES OF THE COOPERATION BETWEEN THE EUROPEAN COURT OF AUDITORS AND NATIONAL AUDIT INSTITUTIONS IN THE COURT'S AUDIT MISSIONS IN MEMBER STATES

## 1. Background

Despite discrepancies according to legal status, organisational structure, working methods and reporting requirements, national supreme audit institutions share a common responsibility: they perform the public auditing function in their respective states. In compliance with the Treaty establishing the European Community (EC Treaty), the European Court of Auditors shall examine the accounts of all revenue and expenditure of the Community. To perform this task, the Court of Auditors is also obliged to audits on the spot at the institutions of the Community as well as on the premises in the member states themselves.

According to Article 248 (3) of the EC Treaty the audit in the member states shall be carried out in liaison with national audit bodies in a spirit of mutual trust while maintaining their independence[1].

Declaration 18 annexed to the Treaty of Nice calls on the European Court of Auditors and the national audit institutions to improve the framework and conditions for cooperation between them, while maintaining the autonomy of each.

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[1] This provision was added by the Amsterdam Treaty.

To that end, the President of the European Court of Auditors may set up a contact committee with the heads of the national audit institutions.

Indeed, the heads of the supreme audit institutions of EU member states have been meeting since 1960 to discuss matters of common interest. The European Court of Auditors has participated in the work of the Contact Committee since its foundation in 1977, and took part in its first Contact Committee meeting in 1978. The Contact Committee aims to enhance cooperation among its members in order to improve external public audit and accountability in the field of the European Union. The members of the Contact Committee have committed themselves mutually to respecting each other's independence, working together and sharing information with each other. The strategic goals of the Contact Committee include initiating and co-ordinating the conduct of audit activities of common interest with regard to EU funds. While the Contact Committee in its first meetings dealt with fundamental questions of establishing cooperation, its emphasis has shifted over the years to focussing on more practical audit issues. The meetings are prepared by liaison officers, who meet twice a year. The Contact Committee sets up working groups on general and specific issues of common interest.

## 2. Audits of the European Court of Auditors in the member states

### 2.1. Statement of assurance

Since the 1994 financial year, the European Court of Auditors, according to Article 248 (1) of the EC Treaty, shall provide the European Parliament and the European Council with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions. This statement of assurance is a major input to the discharge procedure for the implementation of the budget of the European Union.

The statement of assurance of the European Court of Auditors results from specific evaluations of the main fields of activity of the European Union, which again are based on the following four pillars. The European Court of Auditors shall:

– firstly, assess the quality of the internal control systems of the EU institutions and member states;

– secondly, examine a sample of commitments and payments for each area of expenditure;

– thirdly, evaluate the annual activity reports and declarations of the Directors-General of the Commission; and

– fourthly, consider the work of other auditors in relation to the audit of EU funds.

Based on these evaluations, the European Court of Auditors assesses the reliability of the accounts and the legality and regularity of the underlying transactions.

### 2.2. Performance audits

In addition to the accounts (according to reliability, legality and regularity) the European Court of Auditors also examines the performance of financial operations. According to Article 248 (2) of the EC Treaty it has to assess the soundness of financial management. These examinations are based on the audit criteria economy, efficiency and effectiveness. The European Court of Auditors verifies whether the European Commission and the member states adhere to the principles of sound financial management (economy, efficiency, and effectiveness) in handling EU funds.

## 3. Co-operation between the European Court of Auditors and national supreme audit institutions

While Art 248 (3) of the EC Treaty suggests that the European Court of Auditors may perform its audits in the member states in liaison with national supreme audit institutions, the EC Treaty provides no framework for such co-operation, leaving it to the European Court of Auditors and the national supreme audit institutions to define the scope on their own account.

Diversities in legal status, organisational structure, functions, audit mandates and reporting requirements between supreme audit institutions have manifested themselves in different forms of co-operation. In any event, an agreement within the Contact Committee requires that the European Court of Auditors notifies national audit offices in member states well in advance of prospective audits. National audit offices shall on their part inform the European Court of Auditors whether they intend to participate in a particular audit.

## 4. Cooperation between the Austrian Court of Audit and the European Court of Auditors

In principle, the Austrian Court of Audit has exercised its right to take part in audits by the European Court of Auditors since the Austrian accession to the European Union in 1995. The audits of the European Court of Auditors carried out in Austria mainly concerned the statement of assurance. To safeguard its independence with regard to the subjects and timing of the audits, the Austrian Court of Audit performs its own audits of the audit fields in question independently from the European Court of Auditors, extending the audit fields determined by the latter if appropriate to include other audit subjects at its own discretion. Thereby the Austrian Court of Audit also meets its constitutional obligation to report on its audits to the National Council, the first Chamber of the Austrian national parliament.

## 5. Prospects, opportunities and possible obstacles for the co-operation between the European Court of Auditors and national supreme audit institutions from the perspective of the Austrian Court of Audit

After more than ten years co-operation in the audits with the European Court of Auditors, the Austrian Court of Audit carried out an internal project to evaluate the implementation of audits with the European Court of Auditors and identified the strengths and weaknesses of the present form of co-operation.

### 5.1. Prospects and opportunities of co-operation

In the ongoing development of the audit approach of the European Court of Auditors for the statement of assurance, the European Court of Auditors strongly emphasises the evaluation of sound supervisory systems and controls in member states. Efficient management and control systems may require a lesser degree of substantive transaction testing in the second round. Substantive transaction testing in the member states is based on risk analysis. National audit institutions can therefore concentrate their audit capacities on the inherent risks in the financial management of Community funds.

Participation in the audits of the European Court of Auditors gives national audit institutions insight in the audit approaches and methods of the European Court of Auditors. It also provides timely and equal information on lessons learned in the course of audits. As a result, national audit institutions are not limited to the

interpretation of written audit findings, which do not necessarily reflect the entire audit process. With their specific national skills and acquaintance with specific national features (e.g. the federal structure of government in Austria) national audit institutions are able to support their colleagues from the European Court of Auditors. The national supreme audit institution may gather more extensive hands-on experience in the application of community regulations, which may be quite complex in certain fields. Participation in the audits of the European Court of Auditors enables the Austrian Court of Audit to clarify on the spot possible ambiguities and misunderstandings between auditors and audit clients. The concomitant audits performed at the same time also enable the Austrian Court of Audit to present its own assessments of the audit findings in the course of the audit.

## 5.2. Potential obstacles and difficulties

The Austrian Court of Audit just as the European Court of Auditors carries out its audit programme according to a pre-established audit plan. The Austrian Court of Audit's annual audit plan is based on a medium-term audit plan of three years. The European Court of Auditors informs the national audit institutions periodically by presenting their audit plan for the member state in question four months in advance communicating the time schedules and subjects of prospective audits. Three to six weeks prior to the audit, the Court provides more detailed information on the audit in question. Only that notification specifies the names of audit clients or the respective underlying transactions and contains a more detailed audit schedule. If the Austrian Court of Audit resolves to take part in the audit, this entails an interruption of its ongoing audit activities according to its annual audit plan. If the Austrian Court of Audit considers it appropriate to perform an audit of the same audit field on its own accord, or to extend the audit scope beyond that announced by the European Court of Auditors, the administrative burden will be even greater.

There is also a risk that audit clients may get the impression of multiple audits at the same time and place. National audit institutions face the risk of unproportionally high costs in comparison with the expected benefits from the audit, especially in certain audits, as in particular for the statement of assurance, where the financial volume of the underlying transactions may be rather low. There are no restrictions in relation to audit competence: due to the federal structure of the Austrian government, the audit mandate of the Austrian Court of Audit extends to all territorial bodies at the federal, regional and municipal levels.

The audits conducted by the Austrian Court of audit are not limited to the correctness of the accounting and compliance with existing regulations but extend to the economy, efficiency and effectiveness of operations. The main focus of the Austrian Court of Audit is on performance auditing. When taking part in the audits of the European Court of Auditors with their main emphasis on verifying the reliability of the accounts and the legality and regularity of the underlying transactions the Austrian Court of Audit has to allocate resources for audits of a basically formal nature.

## 6. Developments and future perspectives of co-operation between the European Court of Auditors and national supreme audit institutions

### 6.1. Demands on external government auditing

From 1994, the financial year for which the statement of assurance was introduced, until financial year 2005, the European Court of Auditors has always issued a negative statement. The resulting discussion at European level to involve external government audit institutions in the audit of EU funds also necessitates closer co-operation between the European Court of Auditors and national supreme audit institutions. Recently the European Parliament specifically called upon supreme audit institutions to contribute to the evaluation of national supervisory and control systems as well as the audit of national declarations[2]. Supreme audit institutions would thereby contribute to the first pillar in the audit approach of the European Court of Auditors in relation to the statement of assurance and the audit of national declarations of member states – analogous to the third pillar of the audit approach – declarations of the Directors General of the Commission.

### 6.2. Problem analysis from the external government auditing perspective

The Austrian Court of Audit has given its opinions on these requirements in a position paper[3] published during the Austrian EU presidency in the first half 2006, arguing that national declarations in view of their inherent political character cannot be expected to yield much additional benefit. In its position paper, the Court of Audit also mentioned a number of further problems that need to be solved from the auditing point to improve financial management in the European Union, e.g. the

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[2] Report on the discharge for the implementation of the European general budget for financial year 2004, European Parliament.

[3] Der Rechnungshof, Positions, Austria's EU-Presidency 2006, Volume 2006/1 and Volume 2006/1a.

complex provisions for some expenditure areas in the European Union and the interrelated problem of impact cost assessments of legal provisions which have only just been initiated. Another point in question is the lack of uniform audit standards for all links of the audit chain.

Recent developments at the European level may drastically change the audit activities of the European Court of Auditors in the member states and consequently also affect co-operation with national supreme audit institutions. If member states applied the approach currently under discussion in the European Parliament it is bound to make an impact on the independence of supreme audit institutions in determining their own audit programmes, audit approaches and audit methods as well as the form and timing of their accountability and reporting.

This is inevitable because the European Court of Auditors determines its own audit approaches and methods for obtaining the declaration of assurance. Reports of supreme audit institutions in the member states of the European Union on the audit of management and control systems in the member states must be based on uniform criteria to ensure comparability. To ensure a common approach in the spirit of partnership safeguarding the mutual independence of the European Court of Auditors and the supreme audit institutions of the member states in the European Union according to Article 248 (3) of the EC Treaty it would be desirable to develop a uniform audit approach and methods.

Accountability to the European Commission and the European Court of Auditors would be contradictory to the spirit of Article 248 of the EC Treaty as well as be in conflict with national external government auditing provisions. Furthermore, the obligation under secondary law for the European Commission and the European Court of Auditors to ensure the reliability of audit reports of other auditors should also be scrutinized in the light of Article 248 (3) of the EC Treaty. Requiring the supreme audit institutions in the member states to perform the envisaged evaluations of supervisory systems and controls in the member states on an annual basis will tie up capacities of national audit institutions. From an audit efficiency point of view the ratio of the EU and national budget resources should be considered. Audit reports of national supreme audit institutions should have to be made available for the preparation of the Declaration of Assurance subject to a specific timetable that was imposed on the European Court of Auditors. General considerations should also take into account that the amount of payments in shared management[4] is set to increase and the new responsibilities concerning budget implementation that

[4] Shared management implies that the European Commission assigns budget implementation responsibilities to the member states.

have been conferred on member states by the new financial regulation[5] applicable to the general budget of the European Communities will be further extended.

The European Court of Auditors, provided it can rely on the work of national supreme audit institutions in the first pillar of its audit approach for the preparation of the declaration of assurance, may then be able to restrict its audit programme in the member states and reduce the volume of sampling accordingly.

### 6.3. Contribution of external government auditing to solve existing problems

At the Contact Committee meeting in December 2005, the heads of the supreme audit institutions of the European Union committed themselves in a statement[6] to further enhance their co-operation as a way of contributing towards the improvement of the financial management of Community funds.

To that end the heads of supreme audit institutions encourage:

– further optimization of bilateral and multilateral co-operation between supreme audit institutions, including the planning of activities, to ensure that Community funds are audited in all member states of the European Union in accordance with international auditing standards;

– identification of scope for further improvement in the systems of management and internal control to improve the efficient and effective use of Community funds; and

– enhancement of the existing network between the European Court of Auditors and the national supreme audit institutions in the member states of the European Union.

The Austrian Court of Audit considers the audit of the financial management of Community funds in the member states as an important step towards the improvement of financial management in the European Union. According to the Austrian Court of Audit, parallel and co-ordinated audits at bilateral and multilateral

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[5] Modified proposal for a Council regulation amending regulation (EC, EURATOM) No. 1605/2002 on the financial regulation applicable to the general budget of the European Communities, Council Document 2005/0090 (CNS) of 29 September 2006.

[6] Contact Committee of the heads of the supreme audit institutions of the European Union and the European Court of Auditors, Statement on the role of external audit within the framework of accountability for Community funds, Sweden, Stockholm December 2005.

level in any case yield additional benefits for the audit of the management of Community funds.

Another way of improving the audit of Community funds might be to encourage crosscutting audits of Community-relevant issues by supreme audit institutions in the member states (in agreement with the European Court of Auditors, if appropriate). National supreme audit institutions can furthermore contribute to enhancing performance auditing in the EU context.

The number of all audits of Community funds management[7] performed by national supreme audit institutions in 2005 und 2006 approximates 230. Audit coverage extends to the main fields of Community activities in all member states. Detailed analysis of the collected data offer vast resources of information, which may be exploited to rely on the work of other auditors. With supreme audit institutions focussing on their national accountability responsibilities, their respective contribution to the improvement of financial management at Community level remains largely unnoticed at the European level.

The endeavour of supreme audit institutions in the EU member states and the European Court of Auditors to strive for maximum effectiveness and efficiency in external government auditing can materialise only if based on uniform auditing standards. Application of these auditing standards could be reinforced in advanced training of external government auditors on a European level. The establishment of a high-quality European-based professional training institution at university level (such as a centre of competence for government auditing in Vienna) is a special concern for the Austrian Court of Audit. As a first step in this direction the Austrian Court of Audit in cooperation with the Executive Academy of the Vienna University of Economics and Business Administration therefore established the Professional MBA programme "Public Auditing" beginning with summer semester 2006. In addition to conveying uniform standards and methods and best practices (benchmarks), such an institution at university level would enable knowledge transfer, link hands-on experience and scientific know-how, and develop uniform professional skills to create a level playing field for the audit of EU financial management; furthermore, government auditing might eventually qualify as a subject of specific scientific research, in which case it may be of essential benefit for supreme audit institutions to meet the challenges they face in their strive to improve the financial management of Community resources.

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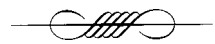
[7] The Contact Committee of the heads of the supreme audit institutions of the European Union and the European Court of Auditors, Supreme audit institution, The Netherlands.



**Henrik Otbo**
**Auditor General of the National Audit Office of Denmark**

# THE EUROPEAN COURT OF AUDITORS' AUDIT MISSIONS – AN OPPORTUNITY TO CO-OPERATE ON EU FINANCIAL MANAGEMENT IN EU MEMBER STATES

## The importance of co-operation within the European Union

I am pleased to be given this opportunity to address the readers of the "Kontrola Państwowa" and I would like to take this opportunity to share my thoughts on the importance of co-operation on EU financial management on a number of levels within the EU structure. It is evident to focus on co-operation when speaking of the European Union since co-operation is indeed the essence of the great European project. My point of departure is the co-operation which takes place in the EU Contact Committee which meets once a year – in 2006 the meeting takes place in Warsaw on December 11-12. The EU Contact Committee consists of the heads of the EU Member States' National Audit Institution (EU NAIs) and the President of the European Court of Auditors (the ECA). The co-operation within the context of the EU Contact Committee is encouraged in the declaration 18 of the Nice Treaty:

> "The Conference invites the Court of Auditors and the national audit institutions to improve the framework and conditions for cooperation between them, while maintaining the autonomy of each. To that end, the President of the Court of Auditors may set up a contact committee with the chairmen of the national audit institutions".

The EU Contact Committee has actually been established since 1960 and it has proven to be a well-functioning and stimulating body of co-operation on EU financial management. The framework of the EU Contact Committee provides me and my colleagues with an opportunity to exchange knowledge and experiences on the audit of EU funds and other EU related issues. The EU Contact Committee also initiates and co-ordinates the conduct of audit activities of common interest in the field of EU financial management. During the years, the EU Contact Committee has established different working groups with the purpose of examining subjects of mutual interest or developing new audit methods to be used in the EU field. At the moment the EU Contact Committee has 8 working groups. Each working group deals with a specific area:

– Task Force on Co-operation,
– Working Group on National SAI Reports on EU Financial Management,
– Working Group on Procurement,
– Working Group on Structural Funds,
– Working Group on Value Added Tax,
– Expert Group on Audit Quality,
– Joint Working Group on Audit Activities,
– Agricultural Network Working Group.

In addition to the co-operation within the EU Contact Committee, the individual members of the EU Contact Committee co-operate on a bilateral level. Both the co-operation within the framework of the EU Contact Committee as well as the individual relations between the members of the EU Contact Committee is valuable for the EU NAIs. The EU NAIs share the challenge of auditing EU funds in their respective EU countries. This common task underlines the importance of the co-operation between the EU NAIs. Given the fact that that there is only one National Audit Institution in each country there are no other institutions on national level to compare directly with. Basically, the EU NAIs and the ECA are bound together in a community, that offers a variety of challenges – challenges we can assist each other to comprehend and act upon. One of the challenges which we are facing at the moment is to navigate in a field of different expectations regarding the exact structure of responsibilities for the audit of the EU budget.

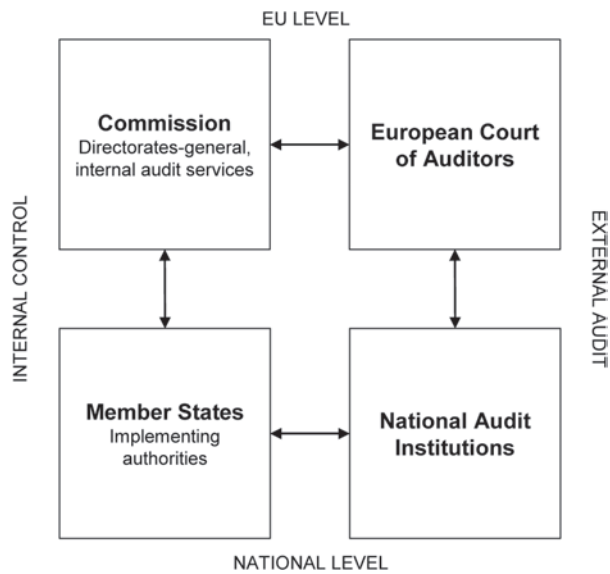
**Co-operation on the administration and audit of the EU-budget**

Auditing the EU budget implies quite another set of responsibilities than administering the EU budget. Both tasks however, involve institutions at both national and EU level and depend on well-functioning co-operative structures between these institutions.

The administration of the EU budget is itself a study into the art of co-operation. The EU annual budget for 2006 amounts to euros 112 billion. The budget enables the EU to fund its activities, the programmes and projects within the various policies through a yearly budgetary procedure. More than 80 % of the EU budget is managed by the Commission and the EU Member States' or acceding Member States' authorities in partnership. These areas are mainly: agriculture, structural means and pre-accession aid. The concept of "partnership" or "shared management" means that the Commission retains the overall responsibility for the budget, and that the Member States are responsible for the daily administration and control of the schemes following rules determined by the Commission. The shared management-system thus involves many administrative layers from the Commission to Member States' central, regional and local level all the way to the final beneficiary. The amount of money involved as well as the element of shared management brings a certain degree of complexity into the administration of the EU budget. The overall responsibility for the implementation of the budget however, lies with the Commission.

As far as auditing the EU budget there are a number of different players with different roles and responsibilities. Figure 1 gives an overview of the responsibility structure for the internal control and the external audit of the EU budget and is inspired of figure 1 in The European Court of Auditors' Opinion no. 2, 2004.

**Figure 1: Overview of internal control and external audit of the EU budget**



Taking into account the amount of money, the many levels of administration, the number of people and the 25 countries involved, it seems clear that co-operation is a must. In order for the complex system to work there must be 4 well-functioning co-operative structures among the bodies in figure 1:

Level 1. Co-operation between the Commission and the Member States' implementing authorities.

Level 2. Co-operation between the Commission and the ECA.

Level 3. Co-operation between the Member States' implementing authorities and the NAIs.

Level 4. Co-operation between the European Court of Auditors and the NAIs.

**The co-operation between the European Court of Auditors and the National Audit Institutions**

I would like to address the co-operation on level 4 between the EU NAIs and the ECA, more precisely – the co-operation in relation to the ECA audit missions in the EU Member States. Due to the decentralized structure of the management of the EU budget, the ECA has many audit missions in the EU Member States. The many audit missions give the ECA and the EU NAIs an opportunity to co-operate. The legal framework for ECA audit missions is laid down in the Nice Treaty article 248, paragraph 1 which determines that:

> "the Court of Auditors shall examine the accounts of all revenue and expenditure of the Community".

The role of the EU Member States in the audit process is defined in article 248, paragraph 3 which stipulates that:

> "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 Treaty does not require a NAI to audit the use of EU funds, or EU institutions to determine the nature, form or content of the reports that the NAI produces and submits under its national legislation. The Treaty may be interpreted in the sense that it is possible for the ECA to rely on work already carried out by the NAI and that it is possible for the NAIs to engage in closer co-operation with the ECA e.g. in relation to ECA audit missions in the EU Member States. It is important to note that both the NAIs and the ECA are independent institutions reporting under their respective legislative framework.

The National Audit Office of Denmark (NAOD) takes an interest in the ECA audits in Denmark. It is NAOD-policy to ask the ECA that all correspondence regarding the ECA audit missions in Denmark go through the NAOD. Furthermore, the NAOD always accepts the invitation to participate in the ECA audit missions. The NAOD has a number of internal guidelines regarding the ECA audit missions, which among other things implies that the NAOD takes part in the opening meetings as well as in the final meetings and usually also in the actual audit. In relation to the ECA audit missions, the role of the NAOD is not being the actual auditor. However, there are several other reasons why the NAOD finds it important to participate in the ECA audit missions. The keywords here are: to observe and to facilitate.

1. To observe the ECA audit missions: The participation of the NAOD in the ECA audit missions makes it possible for the NAOD to have its own viewpoints of the audit in question. This means that the NAOD is able to make its own assessment and conclusion of the audit, and that the NAOD is well-prepared when the ECA forwards the sector letter. Observing the ECA audit missions also gives the NAOD valuable input in relation to the NAOD's own audits of EU funds in Denmark.

2. To facilitate the ECA audit missions: It is the responsibility of the client to make sure that the audit can be carried out efficiently. In the NAOD, we believe that potential misunderstandings and cultural or language barriers between the ECA and the auditeé are more easily overcome with the intervention of a mediator.

From 2000 to 2006 (future audits in 2006 included), the ECA has announced 31 audit missions in Denmark. The NAOD has participated in all of them. These 31 experiences give a fairly good background for us to conclude that ECA audits in Denmark generally work well – right from the announcement of audit missions to the actual audits missions and finally to the remarks from the ECA.

Some of the ECA audits regard EU funds which are not administered by the Danish implementing authorities following the principle of shared management but by the Commission alone, i.e. funds for research and development. One might ask why the NAOD wants to know about EU funds that are not administered by the Danish implementing authorities – is that relevant for our work? The answer is: "yes, indeed it is very relevant". The NAOD takes an interest in all ECA audits taking place in Denmark, even if the EU funds in question are not related to the Danish state budget. We have to be able to inform the Danish Parliament on any kind of irregularities regarding EU funds taking place in Denmark. The ECA audit missions provide us with knowledge and insight and with that also responsibility. We accept this responsibility as we believe that it follows naturally from being the National Audit Institution in Denmark.

## Co-operation in a wider perspective – the political level

With this article it has been my aim to share some thoughts on the importance of co-operation on EU financial management between relevant institutions within the EU structure. I have pointed to the co-operation between the members of the EU Contact Committee, between the different administrative levels of the EU management system and between the responsible parties for the external audit of EU funds. I have pointed to the importance, which the Danish Office places on the co-operation with the ECA – especially in relation to ECA audit missions in Denmark.

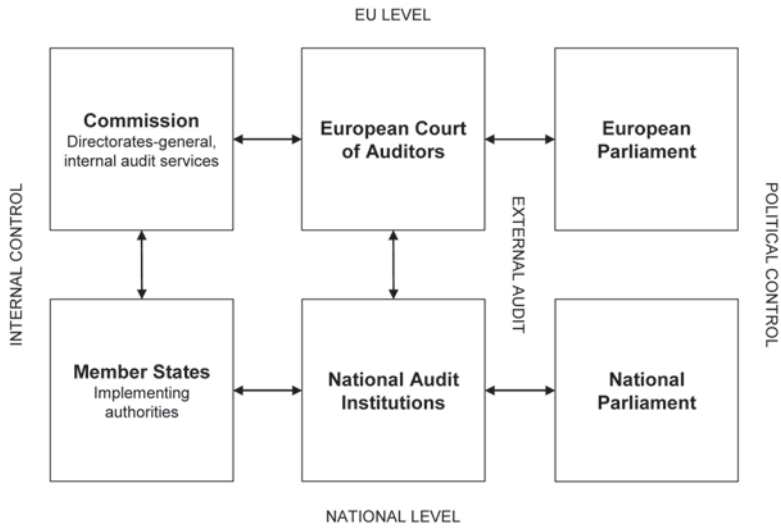
What I have not touched upon yet is the co-operation relating to the political level within the EU structure. Please find below an elaboration of figure 1, which presented 4 levels of co-operation regarding the control of the EU budget on page 4. 2 additional levels of co-operation have been added in figure 2.

Figure 2 gives an oversight of not only the internal control and the external audit, but the figure also points to the final control and discharge of the budget, which is performed by the political level – respectively by the European Parliament on the EU level and by the national Parliaments on the national level. With these additional levels I wish to underline the importance of well-functioning co-operative structures between the level of external audit and the level of political control:

Level 5. Co-operation between the ECA and the European Parliament on the EU level.

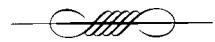
Level 6. Co-operation between the NAIs and the national Parliaments on the national level.

**Figure 2: Overview of internal control, external audit and final control and dischargeof the European Union budget**




One might also argue that there is or should be a co-operation on the level of political control between the national Parliaments and the European Parliament.

The main task for the NAOD is to ensure the representatives of the Danish taxpayers insight into and control with public expenditure – including EU-funds. In practice this means that the NAOD reports all significant results of the audits performed to the Danish Parliament's Public Accounts Committee (PAC). The Danish PAC is responsible for the final control and discharge of the Danish budget and for this reason, it is essential that the NAOD engages in the best possible co-operation with the Danish PAC and that we are attentive to their views and interests. I believe the same is relevant on the EU level where the final control and discharge of the EU budget is performed by the European Parliament – the only body to represent the EU taxpayers. For that reason it is essential that the ECA has the best possible co-operation with the European Parliament. All of us being members of this large and complex community there is no other way to make it work than to rely on the forces of co-operation.



**Philippe Séguin**
**President of the Court of Accounts of France**

# FOR A EUROPEAN GOVERNANCE, RESPECTFUL OF SAIs INDEPENDENCE

Public audit secures financial governance, and is therefore one of the most essential pillars of democracy. Every supreme audit institution in Europe contributed in its own country to strengthen a legitimate State based on common principles whilst designed according to national history and culture. A new type of cooperation between our SAIs and the European Court of Auditors has developed alongside the development of EU institutions, budget and audit. However, such cooperation, whilst fruitful and positive, should not lead to harmonisation or integration models not allowed by European treaties, national legal frameworks or international auditing standards.

## EU financial governance, a shared objective

### *Common principles for public audit*

European SAIs differ in their models and organisation, but have the same objective, which is to secure an efficient and effective use of public funds. The Lima declaration, adopted by INTOSAI in 1977, states that the objectives of auditing are "the proper and effective use of public funds, the development of sound financial management, the proper execution of administrative activities and the communication of information to public authorities and the general public through the publication of objective reports".

External audit in the EU adopted common organisation and working models respectful of the Lima principles. The first of these principles is that auditing must stay external and apart from management and administration. The second principle is independence: the SAI must be provided with sufficient human and financial means allowing an autonomous activity without interference of executive or administrative bodies.

EU development contributed to strengthen relations, resulting in further cooperation with the creation of the ECA.

*Cooperation within EU institutions*

Many things have changed since 1958, when the Heads of the SAIs of Belgium, Netherlands and France met for the first time in Brussels, on October 6th. The number of Member States increased repeatedly; the ECA was created in 1975. New rules of cooperation were set up between SAIs, and auditing of EU funds consequently developed.

The Contact Committee of the Heads of EU SAIs was founded, and began to meet on an annual basis after 1963, including later on the president of the European Court of Auditors. The CC has become a place for discussing EU audit matters and benefiting from others' views.

Developing common understanding and practice in professional issues must however be considered in the specific context of the EU financial framework. This framework cannot admit any integrated audit process.

## EU external control systems cannot unify

*The EU budgetary system*

The EU budget is implemented within the exclusive responsibility of the Commission, although a significant part of its management is shared with the MS, through their own administrative and institutional organisations. Improving effectiveness of EU funds spending must therefore be searched according to EU and national regulations, and to the respective duties of European and national institutions.

This sound principle was recently forgotten. More EU members, a growing complexity in EU regulations and management and audit systems, increased the risk of irregularities in European payments. The European Court has been unable

for eleven years to deliver a positive DAS statement because the Commission is unable to propose improvements in management and audit systems, though problems and their causes have been identified.

A more effective implementation of EU budget cannot be reached by asking national SAIs to participate to an annual statement delivered by the Commission general directions or by the ECA in its discharge work.

Not acknowledging clearly the responsibilities at stake leads to wrong answers, namely trying to harmonise internal and external control systems around Europe.

*The SAIs diversity is necessary*

The 25 Member States have their own institutions and organisations for public audit. These systems were set up through historical, political and legal evolutions, differing from one country to another, and should not be harmonised, provided that such harmonisation should bring positive outcomes.

The French Court of Accounts achieves this status of autonomy for SAIs. The Court is fully responsible for the planning of its audits, in total independence as the Constitutional Council stated in its opinion issued on 25 July 2001. After taking into account that the Court is an administrative jurisdiction, the Constitutional Council stated that "the Court's independence with regard to legislative and executive powers is guaranteed by the Constitution; if part of the Court's missions, in particular audit activities and management controls, do not bear a judicial nature, they may however reveal irregularities implying a judicial procedure; consequently, the obligation imposed to the Court by the Budget Law to communicate its draft audit program to the presidents and main speakers of the parliamentary finance committees as well as the opportunity given to the latter to give an opinion on this program were likely to affect the Court's independence".

An external position and a status of independence are the core principles of SAIs. Therefore, they forbid integrating them in internal control systems implemented by Member States: such confusion is strictly prohibited by internationally approved auditing standards. SAIs can neither report to EU institutions, since no legal provision allows it. The sole cooperation authorised by EU regulations is the cooperation « in a spirit of trust » between the ECA and national SAIs, defined by article 248-3 of the Treaty.

Public management and public audit are increasingly important to modernising administration and enhancing democracy. Better effectiveness of EU finance can

be reached through professional exchange, common standards and shared values. However, beyond this mutual capacity, financial governance involves more fundamental principles like independence, accountability or transparency. Such principles should not be questioned.

**Philippe Séguin**
**Premier Président de la Cour des comptes**

# POUR UNE BONNE GESTION DES FINANCES EUROPÉENNES, DANS LE RESPECT DU PRINCIPE D'INDÉPENDANCE DES CONTRÔLES EXTERNES*

Le contrôle des finances publiques, garantie de la bonne gestion des finances européennes, est un fondement essentiel de la démocratie. Chacune de nos institutions a ainsi participé dans son pays, à la consolidation d'un État de droit dont les principes fondamentaux se rejoignent, mais dont les formes s'inscrivent au plus profond de nos histoires et de nos cultures propres. La construction européenne et l'organisation du contrôle des fonds communautaires qu'elle induit, établissent de nouveaux types de coopération entre nos institutions, et avec la Cour des comptes européenne. Mais cette coopération, si elle se nourrit d'échanges positifs, ne saurait déboucher sur des formes d'harmonisation ou d'intégration dont ni les Traités européens, ni les cadres institutionnels de nos pays respectifs, ni les normes internationales d'audit, n'autorisent la mise en oeuvre.

## Un projet commun, la bonne gestion financière en Europe

### *La convergence des principes qui gouvernent le contrôle des finances publiques*

Sous leurs différences de statut et d'organisation, les institutions supérieures de contrôle des finances publiques de l'Union européenne poursuivent un objectif

* At the special request of the Author of the paper, its original version in French has been presented below.

commun, celui de garantir le bon emploi des fonds publics. La déclaration de Lima, adoptée par l'INTOSAI en 1977, a défini cet objectif comme « l'utilisation appropriée et efficace des fonds publics, la recherche d'une gestion financière plus rigoureuse, la régularité de l'action administrative et l'information des pouvoirs publics et de la population par la publication de rapports objectifs ».

La construction européenne à contribué a rapprocher les dispositifs de contrôle externe autour de modes d'organisation et de fonctionnement conformes aux principes fondamentaux définis par la Déclaration de Lima. Le premier de ces principes est l'extériorité du contrôle par rapport à l'organisation administrative chargée de la gestion. Le second principe est celui de l'indépendance: l'ISC doit avoir les moyens humains et financiers de travailler de manière autonome, sans interférence du gouvernement ou de l'administration.

L'histoire de la construction européenne est aussi celle du renforcement de nos liens, et d'une coopération à laquelle la création de la Cour des comptes européenne a donné une nouvelle dimension.

*Le développement de la coopération au sein de l'Union européenne*

Bien des choses ont changé depuis la première rencontre, le 6 octobre 1958 à Bruxelles, des présidents des Cours des comptes de Belgique, des Pays-Bas et de France. Le nombre d'États-membres s'est constamment élevé, la Cour des comptes européenne a été créée en 1975, la coopération des institutions de contrôles s'est organisée, le contrôle des finances communautaires s'est développé.

De cette première rencontre est née en tout cas l'idée de contacts réguliers, devenus annuels à partir de 1963. Le comité de contact des chefs des institutions de contrôle de l'Union européenne, auquel s'est adjoint plus tard le président de la Cour des comptes européenne, était fondé. Il est devenu un lieu d'échanges sur les problématiques communautaires dont les débats n'ont cessé de s'enrichir.

La convergence de nos modèles professionnels et l'intensification de nos échanges ne sauraient toutefois dissimuler le contexte particulier des finances publiques communautaires. Leur spécificité, de même que les particularités du modèle institutionnel et politique propre à l'Union européenne, s'opposent à tout processus d'intégration.

## L'impossible unification des systèmes de contrôle externe

*La spécificité des finances communautaires*

L'exécution du budget communautaire relève de la responsabilité exclusive de la Commission, même si une part essentielle des actions est mise en ouvre en gestion partagée avec les États membres, dans le cadre de systèmes conformes à leurs traditions administratives et institutionnelles. Dès lors, la recherche d'une meilleure efficacité des dépenses de l'Union ne peut être poursuivie que dans le cadre des compétences propres des institutions européennes et nationales, c'est-à-dire conformément au Traité et aux règles communautaires, ainsi qu'aux législations propres à chacun des États.

Ce principe a été perdu de vue récemment. En effet, les différents élargissements, ainsi que l'augmentation de la complexité de la législation et des systèmes de gestion et de contrôle communautaires, sont autant de facteurs propres a augmenter le risque d'irrégularités dans les paiements communautaires. Le fait que la Cour des comptes européenne n'ait pu établir une déclaration positive depuis onze ans résulte de l'incapacité de la Commission a proposer des améliorations des systèmes de gestion et de contrôle, alors même que les problèmes, ainsi que leurs causes, ont été identifiés.

La recherche d'une meilleure efficacité dans le contrôle de l'exécution du budget européen ne saurait en tout état de cause conduire les institutions nationales à participer à une déclaration d'assurance annuelle établie par les directions générales de la Commission, ou par la Cour des comptes européenne en vue de la procédure de décharge.

Faute de distinguer clairement les responsabilités, des solutions sont recherchées a tort dans une harmonisation des systemes de contrôle internes et externes mis en oeuvre au niveau des États-membres.

*La nécessaire diversité de nos institutions*

Les 25 pays de l'Union européenne se sont dotés d'institutions et de modes d'organisation propres en matière de contrôle des finances publiques. Ces dispositifs sont issus d'une évolution historique, politique et constitutionnelle particulière à chaque pays, qui interdit une modélisation dont l'efficacité n'est, du reste, pas avérée.

Le cas de la Cour des comptes française n'est qu'une illustration, certes parmi les plus achevées, de la nécessaire autonomie d'une institution supérieure de contrôle externe. La Cour détermine son programme de contrôle en toute indépendance, ainsi que l'a rappelé le Conseil constitutionnel dans une décision du 25 juillet 2001. Considérant qu'en vertu du code des juridictions financières, la Cour des comptes est une juridiction administrative, le Conseil établit que «la Constitution garantit son indépendance par rapport au pouvoir législatif et au pouvoir exécutif; que, si certaines de ses missions, notamment de vérification des comptes et de la gestion, ne revêtent pas un caractère juridictionnel, elles peuvent révéler des irrégularités appelant la mise en oeuvre d»une procédure juridictionnelle; que, par suite, l'obligation qui est faite à la Cour des comptes par le premier alinéa de l'article 58 de la loi organique de communiquer le projet de son programme de contrôles aux présidents et aux rapporteurs généraux des commissions de l'Assemblée nationale et du Sénat chargées des finances ainsi que la possibilité qui est offerte à ces derniers de présenter leurs avis sur ce projet sont de nature à porter atteinte à son indépendance.»

Les principes fondamentaux de l'extériorité et de l'indépendance qui régissent les institutions supérieures de contrôle interdisent donc d'assimiler celles-ci au dispositif de contrôle interne des États-membres, en violation de normes professionnelles reconnues au plan international. Ces institutions ne sauraient davantage, en l'absence de disposition légale le prévoyant, rendre compte a des instances européennes. Est seule prévue la coopération « empreinte de confiance » mentionnée par l'article 248-3 du Traité, entre la Cour des comptes européenne et les institutions de contrôle nationales.

La gestion publique, et son contrôle, sont devenus des enjeux de la modernisation des États et de la démocratie. La recherche d'une meilleure efficacité des finances européennes s'inscrit elle aussi dans la construction d'un espace professionnel partagé marqué par l'élaboration et la diffusion de normes communes, l'harmonisation des pratiques, le rapprochement des valeurs. Bien au-dela de ces convergences, la bonne gestion des finances publiques met cependant en jeu des principes fondamentaux d'indépendance, de responsabilité et de transparence qui ne sauraient se discuter.

**Dieter Engels**
**President of the Federal Court of Audit of Germany**

# ADOPTING COMMON AUDIT STANDARDS FOR EU AUDIT WORK BY NATIONAL AUDIT INSTITUTIONS AND THE ECA

## Introduction

During our December 2005 Contact Committee Meeting in Stockholm, we agreed to make a constructive contribution to the improvement of external audit and accountability at the EU level.

I would like to follow up on this resolution in this briefing paper, since it is clear that the development of common audit standards and comparable audit criteria for the audit of EU funds by the national SAIs and the ECA is such a constructive contribution.

The following aspects, which I would like to bring to your attention in the form of theses, need to be taken into account on the way towards common audit standards:

### Thesis 1

**Our goal is to ensure an effective external audit of the use of Community funds by the EU Member States. Like national budget funds, the EU funds are provided by the citizens in the Member States. This is why EU funds must be audited as thoroughly as national funds.**

Pursuant to Art. 248.1 sentence 1 of the EC-Treaty, the audit of all Community revenue and expenditure is incumbent on the ECA.

One of the ECA's responsibilities is to provide the European Parliament and the Council with a statement of assurance about the Commission's financial management (Art. 248.1 sentence 3 of the EC Treaty).

It is true that, in connection with the submission of its annual report in late October of this year, the ECA, as in every year, issued a statement of assurance as to the reliability of the accounts. However, the ECA again did not see its way clear to issue an unqualified statement of assurance. This was the case the12th time in succession. When taking into account that, on the whole, 76% of the Community funds are administered by the 25 Member States under the shared management system, our responsibility becomes obvious: namely, to make a contribution to the improvement of the management and control systems and especially of the effectiveness of the national use of Community funds. We adopted a resolution to this effect last year.

It follows that:

**Thesis 2**
**National SAIs also must commit substantial audit resources to the examination of the EU funds administered by the Member States under the shared management regime.**

**The approach to be adopted consists of two steps:**

1. **The national SAIs report to their national parliaments about the results they have obtained in auditing EU funds.**
2. **The ECA is enabled to access and use these audit results as "results of the work of other auditors".**

This approach would support the ECA's reporting to the EP without encroaching upon the independent status of the national SAIs.

We have to bear in mind that this approach also serves our own interest, that is the interests of the EU Member States: after all, the issues at stake include the efficient use of the EU budget resources provided by Member States in the form of contributions and co-financing with national budget funds.

In order to enable the ECA to use the reports of the various national SAIs, these reports have to be comparable. To ensure comparability, uniform standards need to be applied:

**Thesis 3**
**The key requirement for enabling the ECA to use our reports developed in accordance with thesis 2 is the use of uniform standards by all national SAIs and the ECA. This is our contribution to improving external audit and accountability at the European level.**

The Community funds need to be audited in all Member States in accordance with the same rules and methods and with the same degree of intensity. Only thus will the ECA be able to make effective use of our audit findings in connection with its statement of assurance.

Hence, it is imperative to develop common standards. Furthermore, we have to ask ourselves in what direction the common audit standards are to point:

**Thesis 4**
**In developing uniform standards, we should not fall behind international standards that we already have established. Therefore, the standards should address not only the criteria of regularity and legality but also the criteria of efficiency and effectiveness.**

By virtue of Art. 248.1 sentence 2 of the EC-Treaty, the ECA's statement of assurance focuses on the legality and regularity of accounting. However, when developing common audit standards, the efficiency and effectiveness of the underlying transactions also should be taken into account.

In Germany, the Basic Law (our national constitution), the constitutions of Germany's constituent states, the Länder, and the federal and Länder budget codes call for the audit of regularity and legality as much as for the audit of efficiency and effectiveness in the use of funds.

However, the growing importance of efficiency and effectiveness audits is not limited to Germany. Such audits are also carried out in other EU Member States and at the international level.

The EU also has been following this trend: the draft amendment of the EC's Financial Regulation as submitted by the Commission provides for inserting a new chapter 9 under the heading of "Principle of efficiency and effectiveness of internal control". While this proposed amendment addresses internal control, it nevertheless demonstrates that Brussels, too, attaches growing importance to the audit criterion of efficiency.

In this context, we should make reference to the Declaration of Lima, whose section 4.2 gives the audit of performance, economy, efficiency and effectiveness of public administration the same priority as the audit of legality and regularity.

Apart from the Declaration of Lima, there are a number of further guidelines and audit standards, and this brings me to my thesis 5:

**Thesis 5**
**Guidelines and audit standards that can serve as the basis for developing our common audit standards already exist. We should make reference to these existing guidelines.**

I have the following examples in mind:

– Firstly, the Declaration of Lima.

– Secondly, INTOSAI's Strategic Plan 2005–2010 provides for the further development of professional standards. To do so, a Professional Standards Committee was set up in March 2005 and is now developing standards in various fields including standards for compliance and performance auditing.

– Thirdly, at the European level, "Guidelines on audit quality" have been worked out by a group of experts with the involvement of SIGMA. We discussed these guidelines during our meeting in 2004.

– Fourthly, also in 2004, the VAT Working Group submitted to the Contact Committee a document under the title of "Guidance for Auditing the VAT Management Systems". We then agreed that all 25 national SAIs and the ECA are to use this guidance whenever appropriate.

– Finally, the European Commission's "Management and control system audit manual for the Structural Funds - financial controls in the Member States" also may be helpful on our way towards common audit standards.

**Thesis 6**
**Apart from the existing guidelines, the analysis of lessons learnt from specific audits with an international or European aspect is a suitable tool for achieving progress on our way to common audit standards.**

Lessons learnt from specific audit missions will provide a pool of already existing common features based on which we may make further progress in developing common standards. I would like to mention as an example the audit of the management and control systems of Structural Fund resources carried out under the auspices of the Structural Funds Working Group. This working group has developed a common coordinated audit plan. It defined a number of key areas to be audited and formulated specific audit questions. The audit plan then was used as a basis for the comparable evaluation of audit findings and thus for formulating joint recommendations.

Against this background, I would like to suggest that we resolve to set up a working group to be tasked with the development of common audit criteria and audit standards on the basis of the above theses. I think that this proposed working group will be able to submit an interim report to us in the coming year and to submit final proposals for our meeting in the subsequent year. The working group should be open for all SAIs.

Accordingly, I hereby submit my **proposal for a resolution**:

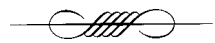
A working group will be set up and tasked with developing common audit standards and comparable audit criteria for the audit of EU funds by national SAIs and the European Court of Auditors.

To this effect, the working group shall:

– compile an inventory of existing audit standards,

– analyse the lessons learnt from audits already carried out,

– and submit a first interim report to the Contact Committee Meeting 2007.



**Árpád Kovács**
**President of the State Audit Office of Hungary**

# AUDIT EXPERIENCES RELATED TO THE UTILISATION OF EU FUNDS IN HUNGARY

European Union accession was considered as a political goal both in Hungary and other countries changing their political regime. Upon EU accession on 1 May 2004, the development of Hungary entered a phase of new quality, and Hungary's prospects of convergence have been transferred to a substantially different dimension with the EU membership of the country.

International competitiveness, the development of the economy, modernisation, the ability to absorb EU funds were clearly strengthened by the change in the geographical structure of external economic relations, economic structure, and the ownership structure. In parallel with this, however, Hungarian small- and medium-sized enterprises failed to gain ground, differences in property status have subsisted, regional disparities in development have hardly, or have not diminished, and the employment problems have been resolved neither on a general, nor on regional level.

Along with the process of EU accession, more and more emphasis was put on auditing the utilisation of EU funds. In parallel with this – as the accession process progressed and was later successfully completed – the number of audits regarding incoming funds increased proportionately to the growth in the available funds.

The experiences of audits conducted in the years 2000 through 2004 confirmed that the pre-accession programmes helped Hungary gradually build the regulatory and institutional system required for the utilisation of EU funds. The audits carried

out by the European Court of Auditors concluded that the supervisory and control systems generally functioned efficiently and effectively in the case of all pre-accession instruments. The audit experiences indicated that even after the EU accession it is necessary to finalise and complete the development of the regulatory and institutional system, to complete the development of the software application used for the clearance of EU funds, and to elaborate the practice of cooperation in order to strengthen regionalism.

The European Union demanded already in 2003 that the European Court of Auditors and the national Supreme Audit Institutions should prepare a comprehensive evaluation annually about audit experiences concerning the utilisation of EU funds. Therefore, a Working Group was set up in Prague in 2003 to coordinate these processes. Until 2006 such a comprehensive report was prepared by four countries (the Netherlands, Italy, the United Kingdom, and Denmark), however, the applied methodology was different.

In line with this, the State Audit Office of Hungary (SAO) summarised its audit experiences related to the utilisation of EU funds in a separate section already in the report on its 2004 activities. As a further development of the commenced process, in accordance with the EU requirements, and based on the decision of the National Assembly[1], the SAO informed the Parliament about its audit experiences related to the utilisation of EU funds in 2005 in the form of a separate Summary[2]. The findings included in the Summary were based on the opinions of the European Court of Auditors and the SAO, as external audit institutions, as well as on the reports prepared by institutions belonging to the internal control system of the utilisation of EU funds[3].

EU funds (Structural Funds, Cohesion Fund, Schengen Facility, National Rural Development Plan, SAPARD, PHARE/Transition Facility and other EU subsidies) and the related national co-financing element, as well as the amount of compensation totalled HUF 293,142.7 million in 2005. At the same time, Hungary paid a total of HUF 214,388.6 million to the European Union. The amount of

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[1] Paragraph 4 of Parliamentary Resolution No. 43/2005 (V.26.) on the acceptance of the Report of the SAO on its activities in 2004 stipulates that: "…the State Audit Office of Hungary shall give an overview on the practice of the complete utilisation of EU funds, within this framework it shall review the work of national institutions performing the audit of financial flows related to EU funds and present the audit findings".

[2] Summary of Audit Reports on the Financial Management and Control of EU Fund in Hungary in 2005 – August 2006.

[3] The conclusions laid down in the reports of such institutions were included without any change in content, and contributed to formulate the SAO's opinion.

various forms of out-of-budget financing (agricultural funds, direct payments to producers) exceeded HUF 307 billion in 2005.

The audits performed in 2005 aimed at assessing whether the development of the management and control systems of the institutions complied with the requirements, as well as at checking the regularity of the tendering activities launched in 2004. The low rate of payments effected did not make it possible for the audit organisations to audit the effectiveness and efficiency of the utilisation of funds. In line with this, the 2005 Summary can reflect the benefits of the utilisation of funds and provide a realistic picture on the absorption capacity of Hungary only to a limited extent. However, the Summary – planned to be issued on a yearly basis – will soon cover the entire scope of the utilisation of EU funds, and will be suitable to identify trends and changes.

**The institutional, legal, control, and registration system of the utilisation of EU funds**

In relation to the **institutional system** the audits revealed that in Hungary the system was developed in line with the EU requirements and the national legal regulations to receive and manage EU funds. The Managing Authorities were set up for the Operational Programmes of the Structural Funds, subsidies paid from the Community Initiatives and the Cohesion Fund, the Intermediate Bodies assisting the work of the Managing Authorities and (with regard to the Cohesion Fund) the Implementing Bodies were appointed. Under the supervision of the Minister without portfolio responsible for European affairs, the Government established the National Development Office (NDO) in 2004, which fulfilled the tasks related to the Community Support Framework of the Structural Funds and the Managing Authority for the Cohesion Fund, a well as secured the implementation of preparatory, organisational and coordination tasks related to the PHARE and ISPA programmes. The Office of the National Authorising Officer – which acted as the Paying Authority – was established within the Ministry of Finance.

For the effective utilisation of the EU funds, the **legal regulatory environment** was created in accordance with the EU requirements, although with considerable delays in certain cases. However, the frequent changes in the regulatory environment represented significant risk, which imposed a considerable amount of extra tasks on the institutional system, and caused delays in meeting deadlines. Many of the related legal regulations – with regard to the provisions relevant to EU funds – were amended on numerous occasions during the subject year with

the aim to make funds available as soon as possible for the beneficiaries under the most precisely defined terms and conditions.

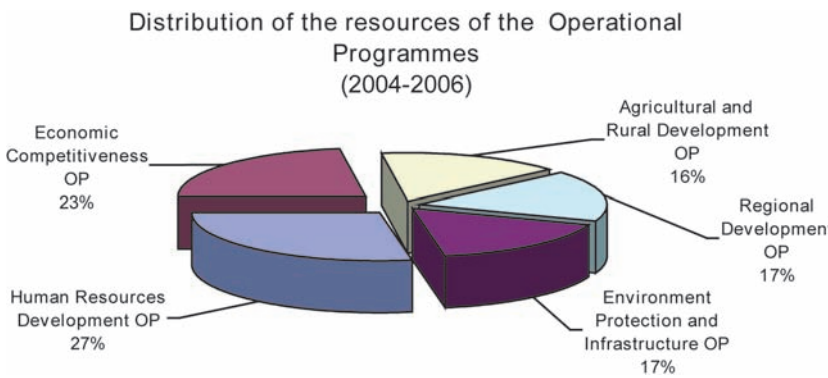
The **control system** of EU funds has been set up in accordance with the EU requirements and the national legal regulations. Based on the national and EU legal regulations, Government Control Office (GCO) carried out the sample checks of the Structural Funds and the Cohesion Fund of the European Union, the audit of the operation of the management and audit systems (systems audits), as well as checks necessary for issuing the declaration at winding-up of assistance. The Paying Authority conducted checks within the framework of fact-finding missions to ensure that the expenditures were properly justified. The systems audits examining how the various bodies accomplished their tasks were ensured by the internal audit units of the Ministries in charge of operating the various Managing Authorities.

The audits conducted in 2005 considered as priority the audits of **registration and monitoring systems** ensuring up-to-date and accurate data supply and that are essential for the clearance of accounts with the European Union and the efficient utilisation of resources. The audits of the **Unified Monitoring Information System** (UMIS), which supports the clearance of accounts of the Structural Funds and the Cohesion Fund, concluded that the UMIS should be further developed, and the skills of UMIS users should be improved, and the issuance and revocation of UMIS licences should be regulated in the rules of procedure. The audits pointed out that there was no development strategy in place, and the development and introduction of UMIS was protracted. Discrepancies were also detected with regard to the professional preparedness; the training of users was unsatisfactory and the National Development Office, in charge of operation, did not have the required staff of IT professionals.

## Structural Funds and Community Initiatives

Hungary could benefit from the so-called Objective 1 of the Structural Funds which aims at promoting the development and structural adjustment of regions whose development is lagging behind. In 2004, the European Union approved the strategic plan for the utilisation of subsidies granted from the Structural Funds, the National Development Plan (NDP) and the financial frameworks thereof, as well as the Community Support Framework (CSF). Within the National Development Plan, Hungary set the objective of improving the quality of life and reducing regional disparities within the country. For the implementation of these objectives the National Development Plan elaborated four sectoral and one regional

Operational Programme, for which a total of HUF 670,150.7 million was available in the years 2004–2006. As much as 66.6% of this amount was used to finance projects selected within the framework of public tendering procedures, and 29.4% was used to implement central measures (programmes or projects) of state organisations directly, selected without tendering procedure. The distribution of resources among the Operational Programmes is shown by the following figures:




In response to the invitations to tender, altogether 30,103 applications were submitted from January 2004 (date of publication of tender invitations) until the end of 2005. The amount of commitments reached HUF 562.1 billion (84% of the sum available for the three-year period). The amount of grants paid exceeded HUF 126 billion, 53% of which was paid related to actual payments based on invoices.

In relation to the Structural Funds the audit findings showed in connection with all the five Operative Programmes, as well as the EQUAL Community Initiative that certain system errors were detected that slowed down the process of tendering, evaluation and payment, however, the results of the audit activity did not find significant shortcomings in the actual operation of the management and control system.

According to the overall conclusion of the European Commission, the audited system descriptions, and the description of the management and control systems provided adequate assurance that the systems met the standards stipulated in Council Regulation 1260/1999/EC and Commission Regulation 438/2001/EC. Since in relation to the Operational Programmes of the Structural Funds only a limited number of payments – primarily advance payments – were effected in

the audited period, and due to certain other reservations, during the audits carried out by the European Commission, the auditors allocated the management and control system of the audited Hungarian Operative Programme the second level of assurance (considerable assurance)[4].

The checks performed during the system audits found that the level of regulation of the main processes of the system complied with the EU regulations, however, the detailed regulation of the activities did not always reflect the Hungarian legal requirements. The legal environment – internal regulations, rules of procedure, manuals – and the organisational structure continuously changed, the procedures in place were occasionally too complicated, and there was no consistency between the actual practice and the regulations.

Failure to meet the deadlines stipulated by legal regulations, the delays in sending out the notification about the award of the subsidies, as well as in contracting further aggravated the uncertainty of the applicants. The audit performed by the State Audit Office of Hungary pointed out that although the speed of processing increased compared to the previous year, it was still below the timeframe of 2.5-3 months as specified in the rules of procedure. On average, nine months passed from the submission of the application to the date when the contract had entered into force. This situation jeopardises the credibility of the support scheme even according to the organisations involved in the operation thereof, and creates uncertainty for the beneficiaries.

The existing shortage of staff – associated with the lack of positions – the level of staff fluctuation and the time-consuming nature of training were significant risk factors in meeting the deadlines during the completion of tendering related tasks. Insufficient capacity was observed in several institutions. Furthermore, the audits revealed that compliance with the Community policies and horizontal objectives were not integrated in the set of assessment criteria, as a result of which the implementation of the community objectives could be jeopardised.

All audits pointed out that there were deficiencies in the Operational Manuals and the internal rules of procedure of the Managing Authorities, Intermediate Bodies and the Paying Authority (incomplete regulation of procedures, delays in the approval of tenders, shortcomings in audit trails, etc.). Although the Operational Manuals were modified on several occasions, deficiencies were not completely eliminated.

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[4] Acceptable (second level) assurance: the management and control systems function as expected and in compliance with the provisions of Council Regulation 1260/1999/EC and with Commission Regulation 438/2001/EC, however a few elements of the systems do not function with the consistency, frequency or depth required by the regulations.

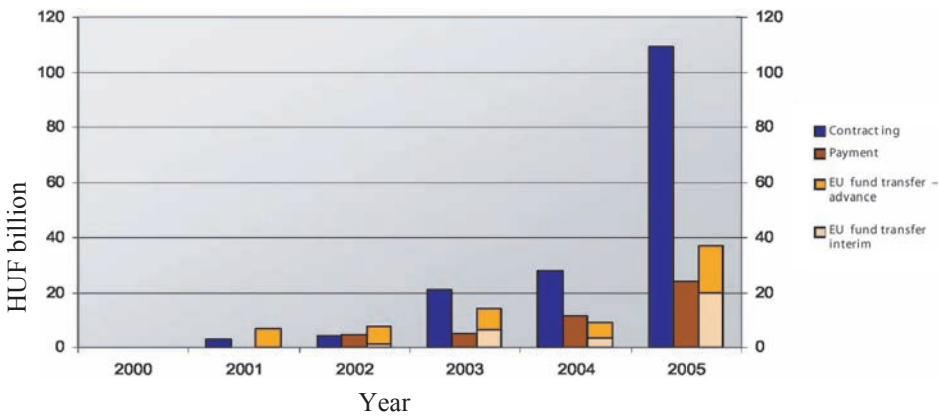
From among the so-called Community Initiatives for handling problems that affect the entire European Union, only the EQUAL and INTERREG programmes were launched individually in Hungary. The system audits conducted in 2005 in relation to INTERREG did not detect major deficiencies, in the actual operation of the management and control systems, however regulatory shortcomings were observed (lack of audit trails, need for updating the accounting policy and the system of accounts, as well as for establishing rules for documentation). In relation to the EQUAL programme, the considerable delays in the scheduled payments were caused by the tendering procedure and, as a result, the delays in contracting.

## Cohesion Fund

The objective of the Cohesion Fund, which supports the convergence of the real spheres of the least prosperous Member States of the Community – in the period of preparation for joining the Monetary Union – is to strengthen the economic and social cohesion, and reduce regional disparities through supporting the two selected target areas – transport and environment protection.

In 2005, the European Commission approved four projects, wherefore Hungary committed all the available funds. This dispelled the immediate threat that Hungary would lose part of the funds available as support. The Cohesion Fund altogether supported the implementation of 24 environmental and 9 transport projects. Payments executed in the 2000–2005 period are shown by the following figures.

**Utilisation of ISPA/Cohesion Found 2000-2005**



The measures taken and planned to be taken based on the content of the audit reports, as well as the audit findings and recommendations let us conclude that in 2005 the management system of the Cohesion Fund functioned in accordance with the objectives of the support, with minor administrative and procedural errors, although without material system errors. The number of works contracts signed pursuant to the invitation of tenders grew, and reached 52% of the total project costs by the year end. This growth was partly due to the fact that several legal regulations were simplified in 2005. Although this ratio represents a positive change compared to the previous year, at the same time it draws attention to the fact that the invitation of tenders, the conduct of the tendering procedures and the process of contracting must be accelerated. Changes in the actual expenditure appropriation first of all affected the increase in the advance payments drawn based on the signed contracts. On the other hand, however, the rate of payments effected on the basis of partial invoices indicating the actual implementation of the projects is low.

The Commission had reservations in relation to the eligibility of expenses, i.e. whether this field is adequately monitored in the invoice payment phase. Concerning public procurement, a general problem was the strict application of the selection criteria. In case of the audited projects, the selection criteria applied for the assessment of the financial stability of the applicants were not objective enough. The existing shortage of staff at the Intermediate Body and the Implementing Body, and the time-consuming nature of training were significant risk factors in meeting the deadlines during the completion of tendering related tasks.

**Schengen Facility**

The objective of the Schengen Facility, which was established as a temporary instrument based on Article 35 of the Accession Treaty, is to assist the beneficiary Member States in financing the implementation of the Schengen *acquis* and border control at the new external borders of the EU, between the date of accession and the end of 2006. The indicative programme earmarked a total of EUR 164.3 million (HUF 41.5 billion[5]) for the three-year objectives. The volume of payments made in 2005 was smaller than planned since the European Commission approved the Indicative Programme only in December 2004, and delays were caused by the protraction of the publication of implementation decrees related to the public procurement act.

[5] For the purposes of ensuring comparability, HUF value of sums available in EUR was calculated with the foreign exchange medium rate of the National Bank of Hungary valid on 30 December 2005 (HUF 252.73 = EUR 1).

The system audits and sample checks concluded that the operation of the system of the Schengen Facility was started with difficulties and significant delays, the Professional Intermediate Bodies did not have the experience required for the development of the institutional system, and the agreements regulating the implementation contained contradictions and were signed with delays.

**Pre-accession funds and Transition Facilities**

Hungary has been receiving non-refundable funds from the European Union since 1990 in the form of financial and technical assistance.

The initial purpose of **PHARE** (Poland Hungary Assistance for the Reconstruction of the Economy) funds was to facilitate the transition to market economy, the establishment of political democracy, and later the preparation for EU membership and the co-financing of the integration process (institutional capacity building and investment projects). Following EU accession, the management system of PHARE (EDIS) was restructured, as a result of which bodies of the Hungarian Government took over several functions from the European Commission. On the other hand, instead of the former special rules, the procurements carried out within the PHARE programme are now regulated by the provisions of the Hungarian Act on Public Procurement.

Upon joining the European Union, Hungary lost its eligibility for applying for further PHARE funds, however ongoing projects can be completed and the available funds can be utilised. The 2002 PHARE National Programme was completed on 31 May 2005. As much as 96.3% of the total allocation was committed, 3.4% could not be utilised due to the prices that were lower than planned and set during the public procurement procedures. In the course of 2005, (by 30 November), the last PHARE agreements in the framework of the 2003 National Programme were signed. The deadline for payment is scheduled for 30 November 2006. Parallel to the completion of the PHARE programme, the Commission has started to carry out winding-up audits on the implemented projects.

The major objectives of **SAPARD** (Special Accession Programme for Agriculture and Rural Development) were taken over by the Agricultural and Rural Development Operational Programme of the Structural Funds upon accession. Altogether HUF 65,340.0 million was available for the period of 2002–2006. By 31 December 2005, 2,192 projects were implemented, i.e. over 80% of all valid contracts. As many as 490 projects were under execution, which are expected to be completed by the end of 2006.

The European Union developed new support schemes for the acceding countries in order to resolve problems associated with the period immediately following their EU accession. The **Transition Facility** can be regarded as the continuation of the institution building chapter of the PHARE programme in terms of objectives, rules of procedure and institutional system alike.

## Agricultural Funds

In 2005, the Common Agricultural Policy was funded through EAGGF (European Agricultural Guidance and Guarantee Fund). As part of the Structural Funds, the Guidance Section finances the Agricultural and Rural Development Operational Programme. In the Guarantee Section the following normative measures were funded:

– direct (area based) subsidies;

– agricultural market subsidies (intervention, internal market, external market);

– rural development (programme based) subsidies (National Rural Development Plan).

In 2005, the Agricultural and Rural Development Agency was responsible for the disbursement of HUF 127.5 billion as normative support, approximately HUF 11.8 billion for financing measures accompanying the National Rural Development Plan (including the 2004 complements to direct payments) EUR 58 million (HUF 14.7 billion) as SAPARD subsidies, as well as EUR 36.7 million (HUF 9.2 billion) as support within the framework of the Agricultural and Rural Development Operational Programme.

Subsidies funded fully or partially from the Guarantee Section of EAGGF and other measures are managed by the IIER IT system, however, due to delays in the development of the accounting module, the system can neither always supply financial information, nor can it ensure that the data are always up-to-date and reliable.

The competent Directorates-General of the European Commission and the European Court of Auditors continuously monitored the utilisation of agricultural funds in the case of the acceding countries. During the audits special attention was given to the system of payments, as well as to the IT systems supporting the clearance of accounts.

In its audit performed in relation to the Single Area Payment Scheme (SAPS) and the Integrated Administration and Control System (IACS), the European Court of Auditors put forward recommendations for the further development of the Agricultural Plot Identification System (APIR), as well as for the elimination of deficiencies observed in the management of applications for EU funds.

The audits performed by the Directorate-General for Agriculture and Rural Development of the European Commission and the European Court of Auditors highlighted the efforts the Hungarian authorities made since the accession, the results achieved in the development of IT systems, and emphasized the need for eliminating the detected deficiencies.

The audit on the execution of the state budget pointed out that the advance payments made for intervention purchases, which is a type of agricultural subsidy, imposes an added financing burden on public finances year after year. In 2005, as much as HUF 142,215.4 million was spent on advancing purchases and sales related costs, while only HUF 11.275.2 million was realised as revenue from the sale of grain products. It is uncertain when the remaining amount of HUF 117,316.9 million will be compensated. This amount increased the resources required by the public finances, and the deficit of public finances due to the implied interest margin.

**Communication of the Summary**

The President of the SAO sent the Summary of Audit Reports on the Financial Management and Control of EU funds in Hungary in 2005 for information to all Members of Parliament, the Speaker of the Parliament and public dignities, as well as the Hungarian Members of the European Parliament. The English version of the document was forwarded to the Heads of the national Supreme Audit Institutions of the Member States of the European Union, the Commissioners and Directors-General of the European Commission, as well as to the Members of the European Court of Auditors. The President of the SAO informed the general public about the audit findings included in the Summary at a press conference. In addition, the Summary was published on the SAO's website (www.asz.hu).

**Conclusions**

The audits carried out in 2005 altogether concluded that the institutional system suitable for receiving and utilising EU funds – involving multiple stakeholders – has been set up in compliance with the EU requirements and the Hungarian national

legal regulations. The efficiency of the operation of the support intermediator institutional system was considerably influenced by the shortage of capacity of the organisations, the level of staff fluctuation and the time-consuming nature of training, which affected compliance with the deadlines during the performance of tendering tasks. The legal environment securing the effective utilisation of EU funds has been created, although with significant delay in a few cases. However, the changeability of the legal environment posed a major risk, imposed additional tasks on the institutional system, and thus delayed compliance with the deadlines.

The control system established by 2005 provided an appropriate basis for the regular and efficient utilisation of Community resources arriving from the European Union, as well as for the most favourable commitment of funds available to Hungary. However, during the further development of the control system it is necessary to reduce overlaps and conduct audits on the basis of standard professional requirements to achieve the full integrity of the system.

To ensure the transparency of the utilisation of EU funds, the IT system (Unified Monitoring Information System – UMIS) developed for managing and monitoring the tender applications, and for the clearance of accounts with the European Union, was introduced gradually in 2005. The audits pointed out that despite the considerable progress made during the year, the system could meet the requirements only to a limited extent. The audits indicated the need for the further development of UMIS, and for the broadening of skills of UMIS users.

In relation to the regular utilisation of EU funds, the audits did not detect major discrepancies. However, there were system errors that slowed down the process of tendering, evaluation and payments. The management systems functioned in line with the objective of the subsidies, without any major errors.

Based on the results of the 2005 audits, **few conclusions and recommendations** can be clearly formed for the more regular and efficient utilisation of EU funds:

– The frequently changing legal regulations make work more difficult both for the entities announcing the invitations to tender and those submitting the tender applications, and adaptation to the incessant changes imply extra costs. Without questioning the fact that the changes aimed to create a simpler and faster procedure, a predictable and permanent legal environment is a necessary precondition for more efficient work.

– The registration and monitoring systems must be further developed in order to ensure quick and reliable flow and control of data in the entire spectrum of their functions. If necessary, the availability of sufficient, well-qualified experts both

at the National Development Office and the organisations involved in the utilisation of the funds must be ensured through appropriate training.

– An important precondition for fully committing, and more rapidly and efficiently utilising EU funds, is to reduce the time span between submitting a tender application and contracting to the level specified by national legal regulations. The speed of processing improved compared to the previous year, however, despite all former efforts, the process of managing tender applications (the period from the submission of the application until contracting) in case of the programmes financed from the Structural Funds took around nine months on average.

– The control system of the utilisation of EU funds[6] is not free from overlapping and occasional simultaneous audits. On one hand, this indicates problems of cooperation, and on the other hand, it is due to the concurrent application of the mandatory international standards (COSO, IIA, ISA, INTOSAI[7]), since in the course of carrying out different types of audit they follow their own sets of professional requirements. This phenomenon first of all poses problems in relation to external and internal audits. The solution would be the development of audit rules based on standard professional requirements, e.g. the INTOSAI Auditing Standards.

Considering the above, the State Audit Office of Hungary has consistently prompted that the professional basis for public sector audits should be the INTOSAI Auditing Standards and the INTOSAI Guidelines for Internal Control Standards. (The European Union adopted the European Implementing Guidelines for the INTOSAI Auditing Standards in 1998).

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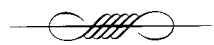
[6] Audits performed by the European Commission, system audits and sample checks, internal audit functions of the support intermediator institutional system, checks carried out by the Paying Authority/ Agency, audits performed by the European Court of Auditors and the national audit institutions of the Member States, and evaluations carried out on the basis of contracts.

[7] COSO: internal control standards, IIA: internal audit standards, ISA: accounting standards; INTOSAI: external audit standards.



**Francesco Staderini**
**President of the Italian Court of Audit**

# THE ITALIAN COURT OF AUDIT AND THE CO-OPERATION WITH THE EUROPEAN COURT OF AUDITORS

## Preface

When, at the time of its institution, the Treaty of Brussels[1] vested the European Court of Auditors (ECA) with the task of auditing the management of Community finances, at the same time required the Court to seek the cooperation of the existing SAIs of the nine member states of the European Community at that time.

While this cooperation was formally requested by the Court, it left the SAIs completely free in effect to decide whether or not to co-operate in the audit activity. This acknowledgement of their total decision-making autonomy, while not specifically spelled out in the Treaty, clearly took account of the different institutional, regulatory, organisational and functional situations and needs of the various SAIs.

But it also emphasised the fact that the cooperation required under the Treaty was essentially an empty box, with no substance.

But… how were they to cooperate? With what structures, with what procedures, by what means, within what constraints and limitations, and even with what

[1] The Treaty of 22 July 1975. The Court was officially installed on 25 October 1977, with nine members.

objectives, apart from the equally vague purpose of assessing the "sound financial management" of Community resources which, according to the Treaty, the auditing work of the European Court of Auditors was supposed to help safeguard.

The evident impossibility (also fuelled by scepticism) of responding immediately, coherently and effectively to the questions put, and hence of giving theoretical, and practical, substance to this kind of co-operation, made a major impact from the outset on the beginning and the continuation of a debate between the SAIs and the European Court of Auditors devoted specifically to identifying that substance.

The constant and continuous demand made, often as a precondition, for the SAIs' autonomy actually hampered the quest for practical operational solutions with that necessary spirit of mutual trust to which the Treaty of Amsterdam drew the attention of the SAIs and the European Court of Auditors to better protect the Community's financial interests.

Furthermore, this debate also had to come to reckon with standstills, reflections, adjustments, new proposals and changed policies caused by subsequent Community enlargements and by the related entry of new SAIs among the parties required to co-operate with the European Court.

Although painstaking and laborious, as already indicated, this 30-year period of cooperation between the SAIs and the European Court of Auditors has tried out its own operational procedures (from the mere provision of administrative assistance and/or technical assistance to carrying out co-ordinated and joint audits), defined the objectives (to safeguard the financial interests of the Community), clarified the areas of autonomy of the SAIs and of the European Court, attracted the attention of the European institutions (the Parliament, Council and Commission) fuelled by the ongoing debate on the so-called "single audit" and on the future commitment of the Commission to safeguard the financial interests of the Community set out in the documents known as the "Road Map" and the "Action Plan".

But the greatest achievement, the most important result, that has emerged from this 30-year-old debate on "co-operation" has certainly been the fact that the problem of auditing the management of Community funding and the correlated national funding has been brought to the fore in individual member states. Accordingly, in many States the law has given the SAIs the power to audit the Community funds. And most of the SAIs have incorporated community fund management into the planning of their audits of because of its increased importance and considerable political and economic impact, even in cases where the funds are quite small compared with the aggregate national public spend.

## The experience of the Italian Court of Audit

The Italian Court of Audit has always considered cooperation with the European Court of Auditors to be extremely profitable for more efficient control over the spending of Community funds in Italy.

This cooperation, in an initial phase between the end of the 1970s and the beginning of the 1980s, took the form of a series of bilateral meetings which made it possible to identify all the administrative organs and the offices involved in the internal and external auditing of Community expenditure, and their specific remits and powers.

This fundamentally important phase heralded in the second period in which the ECA considered it appropriate to establish a permanent channel to liaise with the Italian SAI; this collaborative relationship – initially restricted to the organisation of on-the-spot checks (access to documentation, the collection of national legislation, promoting meetings) – was rapidly extended to include participation by an Italian Court of Audit judge in inspection visits by the Community Court.

This type of participation not only considered the Community interest but also the national interest, because it is always the Italian government which guarantees, on the basis of subsidiarity, the legitimacy of the granting of Community funds.

This cooperation also included the task of monitoring and coordinating the replies of the national Institutions to the remarks following Community audits.

In 1981, the ECA submitted a request to the Italian Court of Audit to broaden its cooperation in order to acquire facts and documents from the competent national authorities of use for appraising the results achieved and the effectiveness of Community measures, and for ascertaining the level of efficiency of existing administrative structures and procedures.

This was, in effect, a request for cooperation for the purposes of controlling "sound management" for which the European Court of Auditors is responsible under the Treaty instituting it. It is in this context that we have to view the work of the Court of Audit to establish a permanent linkage with the competent offices of the various ministries in order to make the cooperation requested by the ECA fully operational.

Since the beginning of the 1980s, then, the interest shown by the Court of Audit in the management of Community funds has emerged in three different areas of activity: providing assistance during on-the-spot checks and inspections, responding to the questions of the European Court of Auditors, and acquiring information and

facts to be used to build up a general picture of the state of implementation of Community actions in order to appraise the effectiveness of the results.

All this activity by the Court of Audit has been publicised across the years in four reports produced by the Office for International and Community Relations.

The first report was published in 1980, dealing with the work of the European Social Fund in Italy; in 1982 the second report was published on Cooperation with the European Court of Auditors, and in 1983 and again in 1984 two reports were published on the Community Funds within the framework of this cooperation.

These reports on the management of community funds were submitted to the ECA, whose President Pierre Lelong, in a note issued in October 1984, said that the members of the ECA had taken note with great interest of all the information given in the report on financial year 1983, "which stood as an example to be followed by the majority of the other member states of the European Community".

The current debate on whether or not the SAIs of individual member states ought to examine and appraise the management of Community funds and draft national reports on them, is nothing new. It dates back to the cooperation activities and initiative to publish a report, of which the Italian Court of Audit claims the merit of having had the original idea.

After this first "pioneering" phase, in the latter half of the 1980s the United Chambers of the Court ruled that it would be appropriate – also because of the large volumes of Community funds in political and administrative terms – to incorporate the results of the Court's investigations and audits into a special section in the general report on government accounts which is approved and then laid before Parliament every year by 30 June.

At the end of the 1980s, cooperation between the ECA and the Italian Court of Audit was formalised under a bilateral agreement – once again the first of its kind – which provided for joint and coordinated audits to be conducted as a means of providing this cooperation.

For between 1991 and 1993, the ECA and the Italian Court of Audit conducted two coordinated audits of the subsidies provided to build trawlers and improve aquaculture.

Nationally, the well-proven cooperation and reporting work of the Italian Court of Audit based on the implementation of the provisions of the Treaty was also transposed into national law (law No. 20 of 1994) which clearly indicated the audit of Community funds as being among the main functions of the Court.

To this end, the Community and International Affairs Audit Chamber was instituted in 1997, and since 1999 it has been submitting an annual report to Parliament on the management of Community funds in Italy, and special reports too; and one of its particular tasks is to co-operate with the ECA under the terms of article 248 of the Treaty.

**The Audit Chamber for International and Community Affairs**

Apart from the formality, the audit Chamber concretely works like an "audit team", with its President responsible for the coordination of the audit activities and the members (who are magistrates) having the task to prepare the draft of the chapters of the annual audit report, according to the agreed division of the subjects.

At the moment, the Chamber is composed by six members: the President, who drafts the report's foreword that is a short summary of the most important observations and recommendations; the other five members who deal with the following subjects: a) Italy – EU financial relations, b) cohesion policy objective one, c) cohesion policy objective two and three, d) common agricultural policy, e) protection of the financial interest of the community.

Every year, accordingly to the Corte's overall planning, the Chamber approves its own audit plan and the main directives to be followed in implementing the audit activities during the following year and drafting the chapters of the report.

Once prepared, these drafts are presented by the responsible magistrate to the Chamber for the assessment and approval of the other colleagues.

On this occasion, drafts are co-ordinated among them with the aim of avoiding and correcting the avoidable mistakes or discrepancies, particularly the ones concerning data and assessments.

The Chamber is assisted and helped by a staff of eight auditors and four assistants co-ordinated by a Director.

Data and information necessary for defining each report's chapter come from various and traditional sources: first of all, the EU and national regulations, laws, decrees, circulars. And, as usual, from the bodies in charge with the management and control of the Community funds and related programmes/projects. For example, the national coordinating body, the paying agencies, the certification bodies, and so on.

Other sources of information are the products of the European Court: annual reports, special reports, sector letters. On this regard, also the participation to the European Court's audit visit in Italy constitutes a good means to have information/data on a particular issue. And last, but not least, good sources are the documents produced by the Commission: from the annual budget to the many reports prepared during the year.

Usually the Chamber follows the INTOSAI auditing standard, implemented to the EU audit activities, and, during the years, has drawn a format for its annual report based on lessons learned.

**Inguna Sudraba**
**Auditor General of the State Audit Office of the Republic of Latvia**

# THE ROLE OF THE SUPREME AUDIT INSTITUTION OF THE REPUBLIC OF LATVIA IN STRENGTHENING INTERNAL CONTROLS OF THE EUROPEAN UNION FUNDS AND INFORMING THE PUBLIC

Like any other Member State of the European Union, Republic of Latvia makes payments into the common budget of the European Union and receives a certain amount from it. During the programming period of 2004–2006 the most significant financial instruments from which Latvia receives financial assistance are the European Union Structural funds and the Cohesion fund. In this period Latvia is likely to receive 1.141 million euros from these funds. Additionally Latvia receives financial resources from the European Community Initiatives – EQUAL and INTERREG, as well as from various European Community programs. The above mentioned financial instruments form a significant part of the annual state budget, therefore effective and appropriate use of allocated resources is in the centre of attention both of the Saeima (Parliament) and the public.

Law on State Audit Office provides the State Audit Office of the Republic of Latvia with a comprehensive mandate to audit the resources of the European Union. The State Audit Office as an independent collegial supreme audit institution is a key element of the State's financial control system serving public interests by providing independent assurance on the effectiveness and usefulness of the utilization of the central and local government resources, as well as of the resources of the European Union and other international organizations or institutions,

which resources have been included in the State budget or local government budgets. According to the law also the commercial companies, societies, foundations and individuals who are users of the resources allocated by the European Union are subject to the audit of the State Audit Office, thus giving the State Audit Office the capability also to audit the final beneficiary of the European Union funding.

The main aim of the State Audit Office is by performing financial, performance and regularity audits to give feasible audit recommendations to promote effective and lawful utilization of public funds, including the European Union funds, and to improve financial management, as well as to facilitate decent and transparent decision-making process in the public sector.

Audit planning process established in the State Audit Office states that every year the State Audit Office based on the tax-payers interests and risks identified within the sectors as well as consulting with the Public Expenditure and Audit Committee of the Saeima proposes audit priorities. Since Latvia receives significant amount of the European Union resources in the overall audit planning process significant attention is paid to the audits of the European Union funds.

The experience of the State Audit Office in auditing the European Union financial instruments outlines different approaches and gradually strengthens capacity for the implementation of complex system audits to assess the compliance and effectiveness of the European Union funds administration, implementation and monitoring system.

First input in the audit capacity building of the European Union funded sectors was commenced during the annual audits of the financial statements of the ministries and central state institutions since all of the European Union resources are allocated through the annual State budget. Through these financial audits the State Audit Office obtained initial assurance on the utilization and accounting of the European Union resources. If any shortcomings related to non-financial matters are detected during the financial audits, the State Audit Office elaborates proposals for regularity or performance audits.

Secondly, the State Audit Office performed initial audits on the European Union funds focusing on narrow administrative issues of one fund or program. Using this approach since 2002 the State Audit Office has performed almost 20 individual audits on the administration issues of the European Union funds, and the most comprehensive ones have been carried out in the recent years.

For example, in 2005 and 2006 the State Audit Office has audited the following areas:

– legality of implementation and administration of the European Community Initiative INTERREG program;

– compliance of the administrative, technical and financial management of the European Union Cohesion Fund projects with the requirements of the legislation;

– management of the European Social Fund at the Ministry of Education and Science and Vocational Education and Development Agency;

– management of the European Union Social Fund at the Ministry of Welfare and the State Employment Agency;

– meanwhile an audit on Monitoring Schengen Facility implementation is currently under way.

During the program, fund or administrative unit based audits the State Audit Office inspects general compliance of the implementation and administration of the European Union funds and initiatives with the requirements of laws and regulations and makes recommendations for improvements in the management system and strengthening of internal control system in the audited entities.

By gaining experience in audits at program or fund level in the respective administrative unit, the State Audit Office rapidly increased its audit capacity and the audit topics and approach became more complex. Audits of a narrowed European Union fund administration systems allow identifying potential weaknesses common to the overall system and thus help to foresee possible risks of the complicated system more effectively already at the planning stage of the audits and to guide the audit work accordingly.

The most comprehensive audit performed by the State Audit Office was the audit on the assessment of the appraisal and approval system of the projects financed from the EU structural funds (ERDF, EAGGF and FIFG). It was an extensive system audit which covered three European Union structural funds, 10 audited entities and 17 auditors from different audit departments were involved in conducting this audit. The audit covered Ministry of Finance as the managing authority of the European Union structural funds, Ministry of Economics, Ministry of Transport and Communications, Ministry of Environment, Ministry of Regional Development and Local Government and Ministry of Health as the first level

intermediate bodies, Central Finance and Contracting Agency and Rural Support Service as the second level intermediate bodies, as well as aid scheme managers – Latvian Investment and Development Agency and State Regional Development Agency.

The audit revealed several shortcomings in the appraisal and approval system of the projects financed from the European Union structural funds – such as unapproved planning documents, incomplete information system, unclear assessment criteria, slow decision making process and weaknesses of legislation. Although in general Ministry of Finance as the managing authority has ensured management of the appraisal and approval system of the European Union structural funds projects in compliance with the requirements of the related regulatory acts, several weaknesses were found.

Main conclusions drawn by the State Audit Office in this audit are:

– *The European Union structural funds planning documents* – until January, 2006 the Programme Complement was available only in English. Thus the requirements of the Law on the Latvian Language and the rights of those persons who had to get acquainted with the planning documents when submitting project applications and who were therefore not able to get acquainted with the documents were not observed because of the language restrictions. The Programme Complement is not issued as the regulatory act, thus institutions involved in the management of the structural funds are not legally liable for the observation of requirements set in this document;

– *joint information system* – since the Ministry of Finance has not ensured development of an appropriate system, the second level intermediate bodies and aid scheme managers have developed their own information systems for accumulation of data on the EU structural funds projects, spending 112 thousand Lats by 1 January, 2006. In the situation when several information systems coexist and institutions involved in structural funds administration exchange information, and management committee supervises implementation of measures financed from the structural funds, activities performed are overlapping and budget resources are used ineffectively;

– *project competition* – in evaluation of aid scheme project applications and in separate activities of Rural Support Service a competition between the projects was not ensured, since in case of insufficient resources the decisive criterion for the receipt of project financing is the sequence of project application registration,

which causes a risk that financing is not received by the best project applications, which could ensure high added value and achievement of aims in the most effective way. Besides, a situation when the deadline for the submission of project applications is not strictly defined does not provide a possibility for all interested parties to submit project applications, which causes a risk of unfair competition. Thus it is important to approve specific criteria for assessment of the applications, which would facilitate mutual competition between project applications and achievement of the Single Programming Document aims in the most effective way;

– *development and approval of national programmes* – Management Committee of ERDF have exceeded its powers approving national programmes of five activities before approval of specific project evaluation criteria by the steering committee. It causes a risk that specific project evaluation criteria approved by the steering committee will differ from criteria included in the national programme harmonized by the management committee which could possibly cause necessity to perform additional project selection thus prolonging the process of national programme project implementation, causing additional expenses and hampering achievement of aims of the Single Programming Document;

– *project evaluation criteria* – Programme Complement defines several types of criteria: administrative, quality and specific evaluation criteria. The audit recognized that despite the lack of information on the correspondence of the project applications to the developed criteria, evaluators were able to decide that ”project application corresponds to the national, regional and local strategic development documents” although during the audit no appropriate documents were presented which the project application corresponds to;

– *project application evaluation* – Ministry of Transport and Communications, Ministry of Health and Ministry of Environment have not developed methodology for project evaluation according to the quality and specific criteria, that is why the auditor from the State Audit Office could not follow the evaluation of projects and gain sufficient and appropriate evidence to support the evaluation. There is a risk that evaluation was incomplete since it has no reference to covering documents and auditors could not repeat evaluation activities and give similar judgments to evaluators’ conclusions. There is a risk that not all evaluators understand evaluation principles in the same way and there is no single approach to project evaluation that could cause a risk of unfair competition between the projects;

– *open project competitions* – complex and multi-level decision making system significantly influences project implementation process, especially if the project is connected with building works which have seasonal character in Latvia. At the Ministry of Transport and Communications the evaluation of the open competition projects and decision making about the projects, as well as harmonisation and approval took eight months. There is a risk that budgets included in the project applications lose their topicality because of the long project appraisal and approval process since project implementation costs are influenced by the inflation;

– *national programme projects* – Ministry of Transport and Communications and Ministry of Health were not able to provide documentary evidence to prove that national programme project applications were evaluated according to the quality and specific criteria; there is a risk that financing has been received by projects not corresponding to the evaluation criteria. Such situation causes additional risk that costs could be recognized as not eligible and they will not be covered from the structural fund resources;

– *aid scheme projects* – within several activities in more than 90% of all cases the Latvian Investment and Development Agency has used the only possibility to send back the aid scheme project applications to the applicants for elimination of noncompliance, let the project applicants to define the submitted projects in compliance with administrative evaluation criteria. On average 15% of all cases in each audited activity already after the elimination of noncompliance the applicants were not able to ensure sufficient compliance of projects to administrative evaluation criteria. The fact that many project applicants were not able to prepare project applications in compliance with the administrative evaluation criteria causes a risk that project applicants were not given clear instructions how to prepare qualitative project applications;

– *decision appeal process* – at the Ministry of Economics within the scope of one activity one fifth or 15 decisions made by the Latvian Investment and Development Agency to refuse the state support because of incompliance with the administrative evaluation criteria were appealed. In all of these cases the Ministry of Economics has performed repeated evaluation of project applications according to the administrative criteria and in four of the audited cases the decision to approve project applications was made as a result of appeal. In the audit it was recognized that the State Administration Structure Law, which states that higher institutions and officers are entitled to check how lawful the decisions made by lower institutions or officials are and to repeal unlawful decisions,

competes with the Administrative Process Law, which states that administrative act could be appealed in the subordination order at the higher institution. Legal norms of the above mentioned Laws could be interpreted differently thus when evaluating project applications the decision made on the basis of legal norms of the State Administration Structure Law may differ from the decision made on the basis of legal norms of the Administrative Process Law. It causes a risk that project applications which are approved as corresponding to administrative evaluation criteria on the basis of the decision made by the Ministry of Economics could be recognized as not corresponding.

As a result of this audit the State Audit Office came up with the following recommendations:

– the managing authority should timely provide the society with the translation of the European Union Structural Funds programming documentation in the official language, thus not eliminating the legal rights of the citizens of the Republic of Latvia and providing the use of the official language in compliance with the Official Language Law;

– to minimise the risk that the process of implementation of the European Union Structural Funds could be misinterpreted, the managing authority, when developing the programming documentation, should approve it in compliance with the existing legislation;

– to provide the transparency of the process, the managing authority should evaluate the risk whether the use of funds (including the reception of the project applications, approval and implementation inception of projects) in the next programming period will be launched according to the established procedures, appropriately informing the public;

– it is necessary to anticipate reasonable time for implementation of requirements of regulations and elaboration of internal procedures at the authorities responsible for administration of the European Union Structural Funds after the adoption of the new regulations and normative acts;

– it is necessary to timely inform the public on the inception of the use of funds of the next programming period, thus providing the transparency of the process.

Considering that the current programming period is drawing to an end and the preparation for the next one is under way, lessons learned during the evaluation of the established European Union fund management system could be taken into

account and weaknesses eliminated when preparing for the 2007–2013 programming period. The State Audit Office is confident that successful cooperation between the State Audit Office and the audited entities and the recommendations made by the State Audit Office will have a significant impact on the next programming period.

Since the allocation and use of the European Union funds is in the centre of society's attention the State Audit Office works intently to provide comprehensive information to get the society acquainted with all audit results in the most multifarious ways.

In order to inform the society, all reports of the audits conducted and concluded by the State Audit Office and decisions of the audit departments on audits, including audit reports on the European Union resources, are published on the homepage of the State Audit Office after the decision on the particular audit has come into effect. Simultaneously information for mass media is prepared and released and press conferences on work results of the State Audit Office are also held. Reports of the State Audit Office to the Saeima and the Cabinet of Ministers on very important statements of the audits are also published on the homepage. The results of audits are sent to the audited entities, the minister of the particular sphere and to the Ministry of Finance, as well as to the Public Expenditure and Audit Committee of the Saeima, which reviews the audit findings together with the management of the audited entity. The State Audit Office prepares also an annual report in which the information about the audits conducted in particular year in the field of European Union resources is also included.

Thus the State Audit Office gives everybody a possibility to get acquainted with the results – detected imperfections and violations of institutions, as well as audit recommendations to prevent them – of the audits conducted by the State Audit Office.

External communication providing comprehensive, useful and clear information to the public on the work completed by the State Audit Office and its results facilitates the public loyalty to the State Audit Office and gives to the society necessary confidence that established financial management and control system works appropriately and that public resources, including the European Union funds, are used in accordance with ethical principles, and in compliance with the legislation.

**Rasa Budbergytė**
**Auditor General of the National Audit Office of the Republic of Lithuania**

# ADVANTAGES AND DISADVANTAGES FOR AN SAI TO BE A CERTIFYING AND WINDING-UP BODY FOR THE EU FUNDS
## Lithuanian experience

National Audit Office of Lithuania (hereinafter referred as NAOL) is one of very few member states SAIs, which undertook functions of a certifying and winding-up body for the EU funds. The situation is caused not because most SAIs are reluctant to assume responsibility for the EU funds auditing, but by reasons, which were implicitly supposed in the title of the article and will be discussed further.

## History

However it is worth starting with reasons, which were taken into consideration when the NAOL made its decision to agree to undertake functions of a certifying and winding-up body. The main factors that influenced the decision to assign to the NAOL mandatory certification and winding-up audits of the EU aid were as follows:

– During the EU pre-accession period Lithuania developed a centralised model of the EU financial aid administration system – both management and paying functions were concentrated at the Ministry of Finance.

– By that time internal audit lacked a clearly developed function, methodology, and experienced, well trained staff. At the same time, the NAOL had already a unit with experience of auditing pre-accession programmes such as SAPARD, ISPA, and PHARE.

– By choosing the SAI as a certifying and winding-up body Lithuania was seeking to demonstrate its commitment to the EU values and to raise its international profile.

– The importance of sound management of the EU funds was estimated rather highly. On the other hand, it was clearly understood how punishing may be sanctions for incorrect use of the European funds.

– The last, but not the least, there was a common understanding that financial aid from the EU through Structural Funds and Cohesion Fund is the only possible way to achieve the level of economic development and social wellbeing of more developed member states.

Currently the NAOL is assigned to carry out winding-up audits for structural funds SPD programme; Community initiatives (INTERREG IIIA, EQUAL) programmes; Cohesion fund (ISPA) measures (projects); as well as annual certification audits of EAGGF Guarantee Section, and SAPARD. These functions were assigned to the NAOL by the Lithuanian Parliament (Seimas) Resolution of July 1, 2003. Accordingly the Law on the State Control was amended. Of course, after such decision the legal environment regulating NAOL activities was extended to cover basic EU documents, such as Council Regulation (EC) No. 1260/1999 and Commission Regulation (EC) No. 438/2001 for structural funds; Council Regulation (EC) No. 1164/94 and Commission Regulation (EC) No. 1386/2002 for Cohesion Fund, Commission Regulation (EC) No. 1663/95 for EAGGF Guarantee Section, as well as Financial Memoranda for ISPA, and Multiannual Financial Agreement for SAPARD. Corresponding national legal acts were also adopted.

**Advantages**

As a result of such decision the NAOL has developed a high profile department with well trained and competent managers, auditors and civil servants, speaking foreign languages, able to communicate as equal with officers and experts from the European Commission and European Court of Auditors, understanding EU management and control systems, able to apply *acquis communautaire*, INTOSAI,

International, and National Auditing Standards, EC manuals and other documents. They participated in EC missions and ECA audits, they are able to explain to Lithuanian officials rules and requirements set forth by the European Union.

The profile of the organisation is also raised both internally and externally by its important role as a certifying and winding-up body and by the competence demonstrated by its management and staff. It might be said that at some stage of development even the state profits from such involvement of its SAI – being influential institution in auditing national finance it has a perfect opportunity to convince politicians and state officials that financial control of national budget execution shall be as rigid and unbiased as that of the use of European money. These are undeniable advantages for a developing SAI (and a developing country, which has just "joined the club").

**Disadvantages**

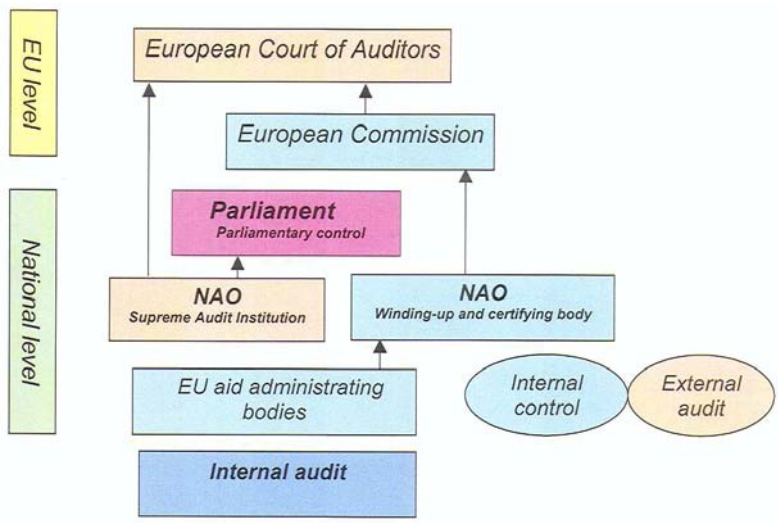
However, as it was mentioned above, there should be really serious reasons for the majority of member states SAIs not to undertake certification of the EU funds.

To start with minor ones, some of the above mentioned advantages may loose their importance for more developed organisations or even become disadvantages (for example the turnover of the most experienced staff that is leaving for private sector or EU bodies). In addition, untypical functions of one department confused its communication with other departments, was an obstacle for fluent dissemination of knowledge and good practice within the organisation and exchange of experience with other SAIs.

Nevertheless the main disadvantage of a SAI being a certifying and winding-up body is usually considered in the context of SAI independence.

The figure on the next page clearly shows the shift of SAI's accountability and reporting lines, and even its status when alongside with traditional SAI functions it undertakes those of a certifying body. The main problem is its reporting to the European Commission, which represents the Executive branch of power within the EU system. And it is not only a formal contradiction to SAI independence principles laid down in the Lima Declaration. This issue has rather solid practical consequences.

**Levels of internal control and external audit**




National SAI's relationship with a Parliament, as a rule, is sufficiently clearly laid down in the national law. It is usually based on principles of partnership and respect of the SAI's independence. This is not the case for the EC relationship with national SAIs that are involved in the mandatory certifying auditing of the EU funds. First of all, it has no explicit legal basis; second, by its essence it has to resemble the relationship between a supervising and subordinate (reporting) body. It may even lead to a paradox that while the Commission is entitled to require a good quality of winding-up and certification audits from member states national authorities, the latter have limited powers to influence SAIs work and to ensure the meeting of EC requirements.

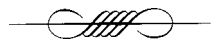
On the other hand, the drawing up of certifying and winding up declarations may become a politicized matter ("defending or betraying national interests") and in this way SAIs may be involved into additional political debates contradicting to the basic principles of objectivity and political neutrality that are vital to SAIs status, image, and performance. Any deviation from these principles may give way to public opinion that SAI can be treated as an instrument in hands of political or other interest groups.

"SAIs should be free from direction and interference by the Legislature and by the Executive in the selection of audit issues as well as in the programming, planning, conduct, reporting, and follow up of audits." This is one of the core principles of SAI independence developed by SIGMA following the Lima Declaration of Guidelines on Auditing Precepts (1977) and also covered in the INTOSAI Code of Ethics and Auditing Standards that are derived from the Declaration[1]. However it may be difficult to implement this principle in the situation when SAI is reporting to the EC and must act on its instructions.

Fulfilling functions of a certifying body may cause serious implications for resource management, programming and planning. For smaller (and usually understaffed) SAIs it is an unjustifiable luxury to delegate good or even the best auditors for implementing functions, which lay beyond the main mandate of the institution. Using its knowledge of local particularities, lessons learnt from auditing in a local environment, and adapting good international practice a SAI is capable to find better ways of using this experienced staff for improving public accountability, ensuring correct use of the EU funds, and protecting EU own interests. These could be high level performance or mixed system audits; management audits covering the whole national financial management system; comparison and good practice studies (for example within a framework of Trend Reports), etc. Now Lithuania seems to be ready to apply directly the principle that European money shall be managed, controlled, and audited in the same scrupulous and rigid manner as the funds of the National Budget. And this should be the main function and commitment of the NAOL.

Taking into consideration all pros and cons it is already decided that the NAOL will remain a certifying and winding-up body only until the end of the implementation of 2000–2006 financial perspective, and will finish this job by drawing up committed winding up declarations/certificates and reports.

[1] SIGMA Peer Assistance Review of the Lithuanian National Audit Office. Annex 5, 2006, p. 106.



**Saskia J. Stuiveling**
**President of the Netherlands Court of Audit**
**Katja Bongers**
**Audit specialist, Netherlands Court of Audit**

# EU MEMBER STATE ASSURANCE STATEMENTS
## A Dutch National Declaration on EU funds

## 1. Introduction

Article 274 of the EC Treaty states that the European Commission is responsible for the implementation of the EU budget. However, about 80% of the EU budget is spent in the Member States by a variety of organizations in the Member States in shared management with the European Commission.

Not surprisingly, article 274 also states that Member States shall cooperate with the Commission to ensure that the appropriations are used in accordance with the principles of sound financial management.

Each year, the European Court of Auditors examines the accounts of all revenue and expenditure by the Community the entire EU budget, primarily through the Commission's accounts (the Commission in fact being the auditee). The Commission themselves do not sign of these accounts. The Court then is required to issue a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions (Article 248). This statement is in fact intended to provide a basis for the annual discharge of the Commission, for the execution of the budget. Sadly, the Court has not yet been able to issue a positive statement.

## 2. The European level

In April 2005, during the discharge procedure for the 2003 budget, the European Parliament expressed its concerns that, as in previous years, the European Court of Auditors had not been able to provide reasonable assurance on the legality and regularity of the EU's expenditure. Parliament thought the problem could not be resolved solely by centrally imposed controls. The current situation clearly demonstrates, according to the European Parliament, the need for new instruments to enhance the Commission's insight into the member states' management and control systems. In a resolution, Parliament made proposals to improve the financial management of the EU as a whole and to arrive at a positive Statement of Assurance in particular.

Parliament was of the opinion that the highest political authority (the finance minister) in the Member States should i.a. issue an annual assurance statement in which the member states account for their EU expenditure and their contribution to the EU budget (own resources). Only that would enable the Commission to fulfil its obligations under article 274 of the Treaty.

On 15 June 2005 the European Commission adopted a communication on a roadmap to a Community internal control framework. Commissioner Siim Kallas (administrative affairs, audit and anti-fraud policy) presented the roadmap during the Ecofin council of 12 July 2005. The roadmap's ultimate objective is to have the European Court of Auditors issue a positive Statement of Assurance (Déclaration d'Assurance, DAS) on the annual accounts of the EU, mainly to show the EU's citizens that funds are being spent properly.

The Commission proposed that to facilitate the issue of assurance statements, the competent authority in the member states (authorised paying agency, paying authority, managing authority) should draw up a similar statement with a declaration by an independent auditor and that the supreme audit institutions or other independent audit institutions should check the annual assurance statements and report to their national parliaments.

The Commission was building on the European Parliament's proposals but envisaged a clearer task to the supreme audit institutions or other independent audit institutions. It also expanded on the concept of the single audit by introducing compulsory declarations at lower audit levels that are similar to the declarations required at national level.

The Ecofin council of 8 November 2005 did not adopt the proposal to introduce member state declarations. The Council said the existing statements at operational

level, such as those issued on the common agricultural policy and structural policy, should continue to be used. The comprehensive plans as described in the Roadmap were watered down to an Action Plan, in which Member States were invited (on a voluntary basis) to issue a national declaration at the operational level.

In the latest inter-institutional agreement on the 2007-2013 financial perspectives the European Parliament, the Commission and the Council agreed to give priority to sound financial management of those EU funds that are managed jointly by the member states and the Commission. In article 44 of their agreement they call on the member states to facilitate this process by issuing a national synthesis of all the nationally available audits and audit statements.

## 3. The involvement of the Netherlands Court of Audit

The Netherlands Court of Audit has always proclaimed that EU funds are in fact to be treated as national funds that funnel back to the member states through the Brussels bureaucracy. Therefore, there is no reason why these funds should be audited and/or controlled any way different from national funds.

Bearing in mind that the EU funds can only be spent because of the joint member states' contributions to the EU budget, it is fairly logical that these member states should be interested in whether or not these contributions are spent for their intended purposes in all the member states.

There is no hierarchy between the national Supreme Audit Institutions and the European Court of Auditors. The European Court of Auditors audits the EU (in fact the European Commission) not the Member States. Member States are audited by their own national Supreme Audit Institutions. National SAIs and the European Court of Auditors cooperate in the spirit of trust while maintaining their independence, as is required in article 248 of the EC treaty.

Hence, the Netherlands Court of Audit has done a number of EU related audits such as on the financial management of EU funds from the European Social Fund and legality and regularity of EU funds for the common agricultural policy[1].

In 2003 the first in a series of annual reports in which the Netherlands Court of Audit examines the financial management of European Union (EU) funds was published: the EU Trend Report. Each year, the report attempts to outline

[1] Available on our website: www.rekenkamer.nl , click on to our English website to access documents translated into English.

developments in the management of EU funds and in the monitoring and control of their use, and provide an insight into the regularity and value for money of spending programmes in both the Netherlands and the EU as a whole. It will thus be possible to identify trends as the years progress.

The Trend Reports are intended to provide an overview of the state of affairs in the EU as a whole (based on publicly available information) and in the Netherlands in specific (also based on additional audit work).

## 4. The Dutch Member State Assurance Statement: How, what & who

The Dutch cabinet has decided to issue a national assurance statement on the financial management of EU funds as of next year. The first year this statement will cover EU agricultural subsidies. Other EU subsidies will be covered in subsequent years, as will the contributions to the EU budget. This statement will not only cover the financial management setup per fund as a whole, but also the legality and regularity of underlying transactions (i.e. payments to final beneficiaries).

The minister of Finance will send his statement to our national parliament and to the European Commission.

He will base his statement on underlying statements provided by the ministers in charge of the management of a specific EU fund. Thus, the minister of Agriculture, Nature Management and Foodsafety will provide him with a statement on the regularity and legality of the expenditure of EU funds for the common agricultural policy. The ministerial Audit Department will issue an opinion on the true and fair nature of his statement, based on their audit work, such as the certification audits.

The cabinet has declared its intention of asking the Netherlands Court of Audit to provide additional assurance to the Dutch Parliament on the national statement. We are inclined to decide in favour.

## 5. Opinion to be issued by the Netherlands Court of Audit & goals

The Netherlands Court of Audit will be asked to issue an opinion or report with this statement. Our opinion or report will be addressed to our national parliament. We do not have reporting lines with European Institutions, nor do we wish for these.

Once our report or opinion reaches our national parliament, however, it is a publicly available document that our minister of Finance can send on to the European Commission, together with or following his statement adding extra assurance to his statement.

*Our audit object will be the national statement itself and will state to what extent the national statement is accurate and correct.* We are still in the phase of studying the exact wording of our opinion and the extent of our audit work. However, we intend to use all the audit information that is already available in our own member state, such as the certification reports issued by the paying agencies of agricultural subsidies and audit reports issued by ministerial audit departments. This is common practice in the Netherlands, where we rely on a single audit/single information system for the control of national funds and where we base our own opinions on the opinions of other auditors whenever possible, always aiming for reasonable assurance (95% reliability) and a materiality level of 1%. In order to determine whether or not this is justified, we review these other auditors and do reperformance and sample testing.

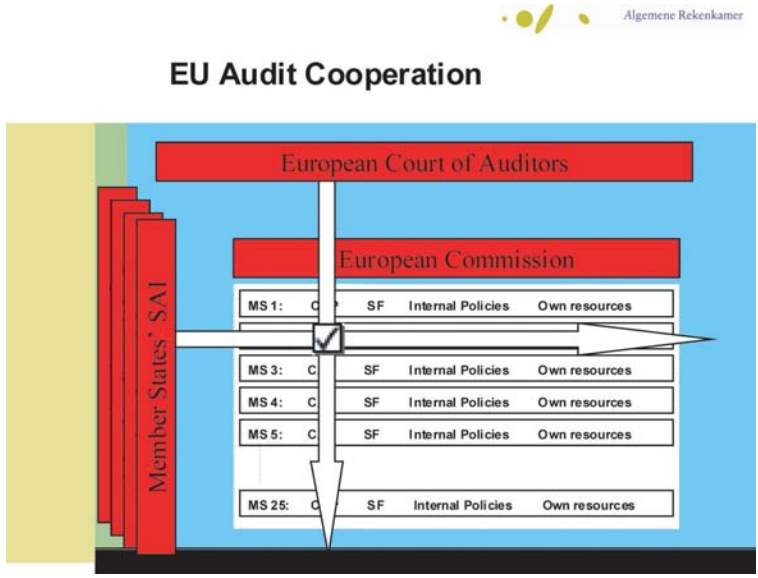
In future, our national parliament will have a complete overview of the financial management of all EU funds that were spent in the Netherlands and of all the Dutch contributions to the EU's budget (own resources).

In the past our Parliament kept asking us how the Netherlands were doing as compared to the other member states when they had studied the European Court of Auditors' annual reports. The new situation as of next year will enable our parliament take on an active role in the budgetary control of EU funds and will provide them with the relevant information on the situation in our own Member State.

The European Commission should be able to use this information for the benefit of its own accountability reports: the annual statements made by the Directors General. These could improve in quality and be reduced in the number of reservations made therein.

The European Court of Auditors' annual report gives a general picture of the EU as a whole. If more member states and SAIs join in and perform a similar exercise in their own countries, we shall finally have the ingredients for a European wide accountability report. Europe could end up with a positive statement of assurance from the European Court of Auditors. But even if, with the help of these country based reports, the Court should have to issue a qualified opinion for a couple of years, this should be seen as a positive outcome. This qualified opinion will point us in the right directions to implement the necessary improvements and result in a positive statement in later years.

Schematically:




## 6. Conclusion

It is my firm belief that publicly available EU member state assurance statements are the right step towards an integrated management and control system for EU funds that are spent in shared management with the the European Commisison. I am also convinced that national SAIs (*not* as part of the integrated *internal* control framework of the EU, but as external auditors at the *national* level), have an important role to play as regards these assurance statements in providing their national parliaments, the European Commission and ulitmately the European Court of Auditors with additional assurance about the correctness of these assurance statements. Let's hope more countries and their SAIs will make the effort and contribute to a more transparant Europe in the years to come.

**Guilherme d'Oliveira Martins**
**President of the Court of Auditors of Portugal**

# PRESENTATION OF THE AUDIT RESULTS OF THE PORTUGUESE *TRIBUNAL DE CONTAS* WITHIN THE FRAMEWORK OF COMMUNITY FUNDS TO THE NATIONAL PARLIAMENT AND PUBLIC OPINION

## The role of the *Tribunal de Contas* of Portugal in strengthening *accountability*

### 1. Introduction

Control of European Union funds by the Portuguese Court of Auditors has been stipulated within Portuguese legislation since 1989, together with significant reinforcement of the guarantees of the Court's independence and of the human and material resources available in order to pursue its duties.

The Court's guarantees of independence are based on three central pillars: the jurisdictional nature of its powers, the statute of its judges and its self-government. The human and material resources encompass a total of 580 public officials within its support services (2005) most of whom have university degrees, and the Court of Auditors has annual revenues (2005) of around 49 million euros.

These facts are interconnected in order to ensure effective guarantees of the Court's role as an independent and effective supreme audit institution. In this manner, and in accordance with INTOSAI's recommendations, the members of the Court of Auditors are granted a statute of independence and irremovability and a principle of self-government has been defined, capable of withdrawing from the executive power the capacity to interfere easily with the actions of the Court.

In addition to possessing general characteristics that are common to other courts, the Court has a specific constitutional statute based on the following characteristics: nature of the supreme audit institution responsible for inspecting the legality of public expenditure; judgement of accounts, drawing up of opinions on the accounts of the State and Autonomous Regions; enforcement of financial responsibilities.

### 1.1. Institutional mandate of the Court of Auditors in this field

Under the terms of the *Organisational and Procedural Law of the Portuguese Court of Auditors*, the Court is responsible for "inspecting, within the national framework, the collection of in-house resources and investment of financial resources derived from the European Union, in accordance with applicable legislation and may, in this field, act in cooperation with the competent community bodies".

Under the terms of the same law, the Court also holds a special right of collaboration with internal control services that ensure the functioning of the National Control System, created in order to guarantee internal control of community funds.

### 1.2. Privileged forms of intervention of the Court

The junction, within a single audit department, of control of both Programme of Investments and Development Expenses of Central Administration and Community Funds, reveals a clear option assumed by the Court to create teams with a special vocation to inspect large-scale investment expenditure, much of which is co-financed.

In complement to this process, an accounts provision model was defined for entities involved in the financial dimension of execution of community funds, and a significant proportion of contracts to be co-financed are also subject to prior inspection.

Finally, this department draws up one of the chapters of the Annual Opinion on the State General Account that is dedicated to financial flows with the European Union, as we refer to in point 2.3.

In the framework of audits, several initiatives have been included within the management plans of recent years, related to the Management Authorities of co-financed interventions. The audits have had a broad scope, with analyses covering aspects ranging from the building up of support structures to management and supervision, and also including legal and technical instruments that underlie the intervention and subsequently accompanying the life cycle of the projects presented

for co-financing within the intervention, from the initial application stage to final overview and closure.

Systems audits have also been carried out on an annual basis, guaranteeing that the information systems used by the interventions' support structures are duly co-ordinated by the national bodies responsible for each community fund and by the Payment Authorities. In relation to the latter bodies, analysis has also been made of their role within the National Control System which guarantees internal control of execution of community funds at the domestic level.

Another function that is foreseen within the Court's institutional powers in this field is cooperation with the European Court of Auditors (ECA) in audits pursued by the latter in Portugal. For this purpose, a technical support unit prepares and monitors all actions developed by the ECA, guaranteeing interlocution with national authorities and audited parties.

### 1.3. Duties of the Court and rights of audited bodies and stakeholders

In actions related to community funds, and also within the framework of all initiatives pursued by it, the Court listens to individual officials and services, organisations and other interested entities prior to formulating public judgements involving simple appraisal, censure or conviction.

The allegations, replies or observations by the audited parties, are then referred to and summarised or transcribed within the documents where comments are made thereof or in the acts that judge or sanction these officials, and are published in an annex, with the respective commentaries thereof, in the case of reports on the General State Account and are also, as a rule, published in an annex to reports produced by the Court.

## 2. Presentation of the conclusions of various initiatives of the Court to the Assembly of the Republic (AR)

Successive legislative amendments, since the Constitution of the Republic was set in 1976, have brought the Court closer to the Assembly of the Republic (AR). The control of community funds is no exception to this rule. Audit reports produced within this framework, together with chapter XI of the Annual Opinion on the General State Account, also dedicated to this topic, bring to the Assembly of the Republic the technical contribution of works produced by the Court, consecrating the basic idea expressed within the Constitution of the Republic that the Court's

jurisdictional control – with all its technical support – should be associated to the AR's political control over the actions of the Government.

The new law of budgetary framework also foresees new modalities of collaboration between the Court and the AR, in particular for implementation of audits aimed at entities of the Internal Control System that, as specified above, coincides to a great extent with the entities that take part in the National System of Control of Community Funds.

Over recent years, the AR has positively manifested its desire to guarantee political control over the Government, in particular within the field of budgetary execution. As a result, a specific committee was created in the last legislature – the Budgetary Execution Committee – whose express vocation was to monitor the actions of the Government in execution of the budget. This committee was transformed, in the current legislature, into the Budget and Finances Committee that is now the privileged interlocutor of the Court.

This measure was warmly embraced by the Court and it is important to state that the creation of parliamentary committees with an express vocation to control public finances, has been requested by the Court for several years, as a natural means of improving articulation between jurisdictional and political control of public finances.

### 2.1. Delivery of reports

As a rule, all the Court's audit reports are sent to the Assembly of the Republic, but this decision is always taken on a case-by-case basis, depending on the elements that are established in the final provisions of the respective audit report. The delivery is addressed to the President of the Assembly of the Republic and also to the Parliamentary Committees responsible for the subject matter addressed in the report.

After sending the various audit reports, the President of the Court and the Judges Rapporteurs who drew up the report, have been invited to make a presentation to the Parliamentary Committees in order to clarify any eventual doubts.

### 2.2. Invitation of members of the Court to a Plenary Session of the Parliament or parliamentary committee

It is expressly stipulated in the new Law of Budgetary Framework that the Assembly of the Republic may request from the Court:

a) Information related to the respective functions of financial control, to be provided, in particular, through the presence of the President of the Court or Judges Rapporteurs of the reports, in committee sessions, in particular during investigation sessions, or through technical collaboration of the staff of the Court's support services;

b) Interim reports on the results of control of execution of the State Budget over the course of the year;

c) Any clarifications required for appraisal of the State Budget and the Opinion on the General State Accounts.

The same law foresees, whenever this is justified, that the Court may communicate to the Assembly of the Republic, information obtained by the Court during pursuit of its competencies of control of budgetary execution.

In the context of this legal framework, the Court has intensely collaborated with parliamentary committees responsible for monitoring execution of the budget. Responses have been given following various information requests, firstly to the Parliamentary Committee of Budgetary Execution, and secondly to the current Parliamentary Committee of the Budget and Finances, and each year an Opinion has been given on the General State Account, presented in person by the President of the Court and by the Judges Rapporteurs. These presentations are normally broadcast live by the "Parliament Channel" available via cable television.

One of the areas addressed is precisely that of financial flows between Portugal and the European Union, for which a PowerPoint presentation has been prepared since 2005, summarising the key elements in the Opinion text.

### 2.3. The Opinion on the General State Accounts

The Court annually draws up a Report and Opinion on the General State Accounts produced by the Government, which includes an appraisal of financial flows between Portugal and the European Union, together with appraisal of the degree of observance of commitments assumed with the EU, in conformity with the concerned provisions of the Law or Organisation and Procedure of the Portuguese Court of Auditors. Specific analysis is carried out in this framework of "Transfers from Portugal to the European Union" and "Transfers from the European Union to Portugal", that in recent years has been included within Chapter XI of the Opinion.

This chapter of the Opinion on the General State Account constitutes the principal global analysis drawn up annually in Portugal on this topic. The various existing

reports, in particular the report on execution of the Community Support Framework, the report on the General State Accounts, the annual report of the ECA and other documents containing pertinent information in this field, always contain an "one-sided" vision, obeying the specific purposes pursued by each of the entities that draws up these documents.

Above all, attention should be drawn to the difficulties involved in conciliating the logic underlying two different groups of documents: on the one hand, reports that address the year from an economic perspective, including operations related thereof that were carried out in previous years and excluding financial operations undertaken in the year in question but which concern other years; on the other hand, reports that address the year from a financial perspective, only entering within the accounts operations carried out between January 1 and December 31. These two distinct approaches often lead to inextricable divergences between the amounts included in the accounts.

Chapter XI of the Opinion on the General State Account thus has the task of supplying the Assembly of the Republic with the correct numbers on financial flows with the European Union and also on execution of community funds in Portugal, including recommendations that the Court believes will contribute to greater accuracy and transparency in this field.

## 3. Disclosure to the general public

One of the fundamental principles of the Court is publicising of acts. As a result, the Opinion on the General State Accounts (in particular the chapter on "Financial Flows with the European Union") and the Reports drawn up within the framework of community funds, are published. The reports may be published in the Official Journals and also, in relation to reports, via any media outlet, in accordance with the terms defined in the respective report. The Court also has an INTERNET site where it broadcasts its activity and scientific and technical documents that may be of use for all people who may be interested (for instance, academic researchers) in the field of public finances.

### 3.1. Orientation of the Judge Rapporteur

Whereas certain of the Court's acts are subject to wide disclosure, under the terms of the law – as is the case with the Opinions on the General State Accounts, the Opinions on the Accounts of the Autonomous Regions and the Court's Annual Report – that are immediately subject to official publication, the Court is responsible

for determining the disclosure to be given to other acts, including audit reports on application of community funds, on a case-by-case basis.

As a rule, and in accordance with the logic that is explained in further detail below in relation to the media, the Court's reports have been subject to broad disclosure via the media and the Court's Internet site, in order to obtain the most positive effect from presentation of its reports.

### 3.2. Relations with the media

Stabilisation of democracy in Portugal, in particular the occurrence of firm parliamentary majorities, capable of supporting governments during the respective legislature, has created a major appetite for the Court's reports and opinions amongst political agents, the media and the general public.

In effect, in the absence of the constant stream of news and novelty items that are created by political instability, and sensing a shortage of moments of intervention, that abound during period of major parliamentary activity but which are far rarer during periods of government of the legislature, political agents of the Opposition parties and the media, view the Court's interventions, which are normally critical, as a good opportunity to break a dull period of stable parliamentary majorities.

The Court is therefore placed in a spotlight that it does not seek and is often used for purposes that make no contribution whatsoever to the recommendations issued by it. In such situations the Court tries to obtain the possible benefits to its task, from the exposure given to its reports.

The existence of a staff member that guarantees connection with the media has proved to be highly useful in this regard. This function commenced in the Court with the invitation to a distinguished professional from this area who structured the press office that reports to the office of the President of the Court.

Since then, all contacts with the media have been centralised in this office, thus guaranteeing coherence of such contacts and reserving for the Court, as an institution, choice concerning the ideal moment for disclosure of its reports and opinions.

This concern with the Court's connection with public opinion is a further guarantee of its independence. A sympathetic response from public opinion and the media may be vital, since the reverse aspect of greater approximation between SAIs and the respective Parliaments may be illegitimate pressures and attempts to restrict the powers of external control.

In a general manner, European SAIs have clear procedures in relation to the media, given the need to guarantee a necessary degree of confidentiality during audit works, imposed by the indispensable requirement to protect the audited parties until the SAI has formulated its judgment on the matter subject to verification.

## 4. Conclusions and perspectives

Citizen's participation in public life, and the clarifications provided to them in relation to the assignment and application of public funds is a priority within the Court 's actions. The application of community funds, given their scale and the investment amount that they signify, with the concomitant effort in terms of national funding, in order to guarantee the national component of the financial effort, is an essential aspect of this effort to inform and provide clarifications to the general public.

In this field, the Court is entrusted with the demanding task to understand and ensure compatibility between the different numbers produced by the national and community information systems, that often have different framework principles (economic vision vs. financial vision, accounting periods that do not rigorously coincide, eCourt).

Once this compatibility has been guaranteed, the Court is responsible for presenting its numerical findings and conclusions to Parliament and public opinion. Communication to Parliament is achieved essentially via sending reports and opinions and presentation of these elements to the competent Parliamentary Committees, carried out by the President of the Court and the Judges Rapporteurs.

The media has demonstrated a keen appetite for the Court's reports and opinions. The Court, in turn, recognises the important role played by the media in terms of public disclosure of the Court's activities, and has therefore developed effective forms of relationship, in order to guarantee the truth and quality of the information provided and the necessary degree of confidentiality when this is legally imposed.

The technical competency of the Court's auditors and the quality of the conclusions and recommendations produced in their reports and opinions, is broadly recognised.

In any circumstances, the Court must continue to extend its technical rigour, providing a succinct framework for the conclusions that it reaches and guaranteeing attractive texts that may easily be understood by the citizen – which is the core objective of all reports presented.

As a result, even the form and presentation of the Court 's documents is currently being reviewed, and collaboration with Universities is foreseen in order to obtain contributions on this effort to achieve greater clarity and accuracy, in order to progressively widen its respective audience and in an attempt to reach the ordinary citizen, even in the most detailed reports.

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**Igor Ciho, Mária Kysucká**
**Supreme Audit Office of the Slovak Republic**

# ADVANTAGES AND DISADVANTAGES FOR THE SUPREME AUDIT OFFICE OF THE SLOVAK REPUBLIC AS A CERTIFYING BODY AND A WINDING-UP BODY FOR THE EU FUNDS

**Summary**

The article deals with experience of the Supreme Audit Office of the Slovak Republic (referred to as "the SAO SR") acquired by fulfilling its special tasks in a position of the Certifying Body and the Winding-up Body for the EU funds in the programming period 2004–2006. During this period the SAO SR has gained valuable knowledge and skills that will be applied in a new audit approach to the EU funds. The SAO SR does not intend to fulfill special tasks of the Certifying Body and the Winding-up Body during the new programming period 2007–2013. However, the SAO SR as the independent audit body will verify implementation and financing processes of the EU funds by means of its independent external audits.

## 1. Position and Tasks of the SAO SR in the field of the EU funds audit in the programming period 2004–2006

Before starting the programming period 2004–2006 the SAO SR based on the request of the Slovak Government decided to contribute its independent audit activity to legal, regular and transparent using the EU funds and took over the special responsibilities.

The SAO SR has fulfilled its special tasks and duties in position of:

– Certifying Body for the SAPARD Programme,

– Certifying Body for the European Agriculture Guidance and Guarantee Fund (EAGGF),

– Winding up Body for the Structural Funds,

– Winding up Body for the Cohesion Fund.

Amendment to the Act on the SAO SR enabled the SAO SR to carry out listed duties covering by audits. Fulfillment of these tasks means for the SAO SR comprehensive audits the structural funds, the ISPA projects /Cohesion fund, the SAPARD Programme and auditing of the EAGGF guarantee section.

Audit work of the SAO SR was the final element of implementation and audit processes of the EU funds. Opinions given in certificates and declarations on winding-up of the assistance issued by the SAO SR formed the basis for the decisions of the European Commission on clearance of the SAPARD accounts, the EAGGF guarantee section accounts and the decisions on payment of final balance of the ISPA projects/Cohesion fund.

## 2. Outcomes

The SAO SR activities in the programming period 2004–2006 brought about many positive measures that were carried out by audited entities based on recommendations of the SAO SR to eliminate irregularities, shortcomings and weaknesses.

Since January 2004 to August 2006 the SAO SR has reviewed 172 auditees. There were 1 276 findings identified and 1 026 recommendations adopted for remedial actions. Up to now the SAO SR has issued 3 winding-up declarations on the ISPA project/Cohesion fund as well as 6 certificates on annual SAPARD accounts for years 2002–2005 and EAGGF guarantee section accounts for years 2004 and 2005.

The European Commission has issued:

– 4 decisions on clearance of SAPARD accounts for years 2002–2005,

– 2 decisions on clearance of EAGGF guarantee section accounts for years 2004 and 2005,

– 3 winding up decisions on payment of final balances of the ISPA project/Cohesion fund on the basis of the audit results of the SAO SR audit activity.

Activity of the SAO SR in this field did not represent only its commitment to the European Commission as a provider of funds but it was also its commitment to the National Council of the Slovak Republic and in particular to the citizens because the EU funds are public finance resources.

### 3. Independence versus special tasks – limitations or not?

Fulfillment the special tasks of the Certifying Body and the Winding-up Body for the EU funds is defined by relevant EU legislation.

***Carrying out the special tasks is closely connected with adoption the special responsibilities:***

– audit work has to be done in required quality, sufficient scale and on timely basis;

– audit results of SAI have direct impact on annual clearance of accounts of the EU funds;

– SAI is obliged to provide reasonable assurance to the European Commission that expenditures declared in statements of accounts are legal, regular and accurate;

– SAI is responsible to auditees for true and fair opinion on audited matters and for the monitoring of fulfillment of the remedial actions;

– SAI is responsible to beneficiaries for true and fair opinion on accounting procedures that shall be complete, accurate and timely;

– SAI is responsible to tax payers for accurate and effective spending of the EU funds.

Some SAIs can perceive these special responsibilities as limitations on their independence and their free activities that are declared in their own national legislations. Relations between EU authorities and the SAO SR were highly correct, professional, respecting the SAO SR's independence and responsibility within the valid Slovak legislation only to the National Council of the Slovak Republic. Requirements of the EU authorities to audit results of the SAO SR were without any positive or negative influence to the activity of the SAO SR. The SAO SR has performed its special tasks related to the EU legislation and international agreements on basis of voluntariness in compliance with audit competency defined in national

legislation. Documents issued by the SAO SR were fully accepted by EU authorities.

***Why the SAO SR has taken responsibilities for fulfillment of special tasks:***

– at time of decision-making only the SAO SR was immediately ready to perform all demanding tasks and desired requirements within the Slovak Republic;

– the SAO SR had developed the system of independent audit, had established desired quality of audit activities and audit procedures in line with internationally accepted auditing standards;

– the SAO SR was involved to all preparatory education and training activities both on national and EU level. The SAO SR had access rights to the information-technology monitoring system, to all information sources and to all relevant documents;

– due to its participation in the activities of relevant working groups and monitoring committees concerning the EU funds the SAO SR has gained required expertise and skills within a short time period.

***Advantages for the SAO SR following from fulfillment of special tasks:***

– fulfilling the special tasks was for the SAO SR a good way to obtain professional skills that will be exploited in the new programming period 2007–2013 of the EU funds. The SAO SR will apply its acquired experience as the independent state external audit authority, however not in the special position as the final element of management and control system of the EU funds. The SAO SR will perform audits of implementation and effective spending of the EU funds by the independent audit with "a view from above" in complex and horizontal way. The subject of the audits will be the process of implementation of the EU funds and reliability of the internal control system. Indispensable part of the audits will be audit of fulfillment of special tasks related to the decisions on annual EAGGF guarantee section accounts and closure statement declarations on structural funds programs and the Cohesion fund programs issued by Audit Authority within the Slovak Republic;

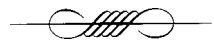
– added value was recognized as well – there were positive results acquired through reviews testing the work done by the SAO SR audits comparing with its quality work with the other 24 EU member states bodies in this field (the special audit tasks related to the EU funds were performed by BIG FOUR audit companies in

several member states). That confirmed rightness of audit strategy of the SAO SR in the area of the EU funds.

## 4. Objectives and goals of the SAO SR in the new programming period 2007–2013

The SAO SR has ambition to implement new audit strategy and goals in the new programming period 2007–2013 and to contribute to higher efficiency and effectiveness of the EU funds audit and to improvement of the EU funds management as well. The SAO SR does not intend to fulfill special tasks of the Certifying Body and the Audit Authority in the new programming period 2007–2013 to keep the compliance of the SAO SR strategy with the Lima Declaration of Guidelines on Auditing Precepts.

However, the SAO SR will thoroughly verify the implementation and financing processes of the EU funds by independent external audits and will be at the same time an independent partner of the European Court of Auditors. The new audit approach will be applied in several areas of the SAO SR audit work. The audit activities, previously concentrated on routine reviews of documents, will now focus to a greater extent on reviewing the management and audit systems of the EU funds at all levels, adopting systemic measures, legislative initiatives and preventative actions against irregularities to strengthen the protection of the Community's financial interests.



**Igor Šoltes**
**President of the Court of Audit of the Republic of Slovenia**

# HOW CAN SAI CONTRIBUTE TO THE IMPROVEMENT OF INTERNAL CONTROL IN PUBLIC SECTOR

## 1.1. Introduction

The Court of Audit of the Republic of Slovenia operates in the environment where internal control system in the public sector is not given the necessary attention. This is mainly a consequence of the absence of awareness that the effective public internal financial control is vital for the achievement of entity's goals. One of the evident facts that support the above statement is the establishment of the internal audit service at the budget users. Even though every budget user should have organised an internal audit service in line with the legislation, currently there is less than half of the budget users who organised this service. The management of the budget users carry the responsibility for the situation, since they do not consider the internal audit, which is one of the most important internal controls, as a tool for achieving the objectives of their organisation.

The effective operation of the internal controls system is one of the ways for assuring the regularity, effectiveness and efficiency of the operations of the budget users and other entities of the public sector. The objective of the Court of Audit is to assist in the regularity, effectiveness and efficiency of the use of public funds, therefore it promotes the operation of the internal control system at the users of public funds.

The Court of Audit is authorised by the act to implement external audits and to advise the users of public funds. In carrying out both of the obligations the

Court of Audit endeavours towards the improvement of the internal control system of the users of public funds.

### 1.2. Audit implementation

The key task of the Court of Audit is to implement audits. Irregularities and under-performance disclosed in our audit reports are linked to the weaknesses of the operation of the internal control system. The auditees, where irregularities or under-performance were found and were not remedied during the audit process, must submit to the Court of Audit the response report on the remedial measures. The response report of the auditee must include the measures that remedied found irregularities and under-performance or remedial measures that assure that irregularities will not occur in the future or that they will be detected and amended in due time. Such remedial measures are mainly referred to the improvements of the internal control system. The Court of Audit demands the response report in approximately 40 per cents of the issued audit reports a year. 98 per cents of them (i.e. remedial measures) are assessed as satisfactory. It can be concluded that the auditees consider the demands of the Court of Audit seriously and that the findings of the Court of Audit provide for the improvements of the internal control system at the auditees.

During the audit implementation the auditors of the Court of Audit try to emphasize the role of the internal auditors by proposing to the auditee that an internal auditor carries the task of the contact person while the audit is in progress, due to the fact that the internal auditor is qualified for the task because he knows the audit work. One of the possibilities for co-operation between internal and external auditors can represent audit work, namely the external auditors can use the audit work that has been carried out by the internal auditors, after the auditors are convinced that the work is of high quality. Never the less, the Court of Audit has not used the work carried out by the internal auditors. The reason was that the internal audit is relatively new service in the public sector, there is lack of internal auditors (on average there are 1 or 2 internal auditors in the internal audit department), the management expect them to give advise on many areas. Therefore the internal auditors cover relatively small part of the business operation and their results cannot be efficiently used when the Court of Audit implements its audits.

Relatively efficient way of impacting on the internal control system is the implementation of the cross-sectional audits where the auditors review the effectiveness of the internal control system on a certain level (i.e. public

procurement) of the business operation of a group of the users of public funds. The findings of such audits show possible joint weaknesses on certain area and can be useful also for those users of public funds who were not included in the audit. The Court of Audit has carried out one cross-sectional audit up to now, i.e. within the audit of the State budget. When the internal audit service was being established at the ministries the Court of Audit assessed the implementation of the internal auditing standards by those services in order to support the internal auditors and to give useful advice in establishing and operation of the internal audit services.

Special emphasis is given to the internal control on the area of acquisition and drawing of the European funds. At the Court of Audit there is a department that carries out the audits of the use of EU funds and it continuously reviews the internal controls. Moreover, the Court of Audit plans for the following year the implementation of the cross-sectional audit of the internal controls on the area of drawing of the EU funds.

The Court of Audit is aware that the impacts on the improvement of the internal control system only by implementing the audits are not enough. Capacities of the Court of Audit are not big enough to influence the necessary improvements of the internal control system in the public sector through the audits. Therefore the Court of Audit tries, within the limits of its authority and the key principle of independence, to participate in all other areas where it could assist in the improvement of the internal control system.

### 1.3. Advising to the users of the public funds

Compared to the Court of Audit's role in auditing, it can impact on the larger number of the users of public funds when advising. Various activities can be used to this purpose, but the fact is that they are not so binding to the addressee as the audit is.

The Court of Audit Act gives the authority to advise in the following manner:

- to give recommendations during the audit implementation and in the audit reports,
- to co-operate at the seminars and conferences on the public funds issues,
- to give comments on the working drafts of the legal acts and regulations,
- to give proposals in the annual reports of the Court of Audit,
- to give opinions on public finance issues.

The activities of the Court of Audit on the area of the improvement of the functioning of internal control systems can be described in the following points:

1. Awareness rise of the management on the establishment of the effective internal control system;
2. Organising the seminars and active participation at seminars organised by others;
3. Co-operation with the Governmental Office for the Control over the State Budget;
4. Role of the Court of Audit in the Statement on the assessment of the public internal financial control;
5. Analysis of the irregularities found by implemented audits.

*Awareness rise of the management on the establishment of the effective internal control system*

All the activities of the Court of Audit are impacting the awareness of the management on their responsibilities to establish the system that will provide for the regularity, effectiveness and efficiency of the operations of the users of public funds.

*Organising the seminars and active participation at seminars organised by others*

The Court of Audit every year organises a seminar where it presents the topics from its area of work. The seminar is well attended and it always covers the area of internal controls. At the current seminar the President of the Court of Audit presented the paper «The importance and role of the internal auditors» that stressed the function of the internal audit which should be equal to the leading management roles. Namely, the internal auditing represents the added value for the budget users, since the benefits are greater than the costs of the service's operation. Those budget users, where the internal auditors have the appropriate working conditions, can contribute to the realisation of the objectives of efficient operations.

In addition, the representatives of the Court of Audit attend the seminars on the public finance that are organised by other institutions and they present the perspective of the Supreme Audit Institution on the public sector issues – among other on the public internal financial control.

*Co-operation with the Budget Supervision Office*

The Budget Supervision Office within the Ministry of finance implements the role of the Central Harmonisation Unit on the area of public internal financial control in Slovenia. The Court of Audit supports the operations of the Budget Supervision Office (BSO) in many ways: by co-operating in developing public internal financial control and by organising training for internal and external auditors.

The representatives of the Court of Audit attend the regular meetings of the internal auditors that are organised by the BSO. They usually actively participate with their papers on the public internal financial control. The Court of Audit comments and approves the professional material that is developed by the BSO (i.e. Guidelines for the internal State audit that includes the internal audit standards and best practice). At the meetings they discuss the problems referred to the internal control. The BSO must report to the Court of Audit on the findings and recommendations of the internal audit services on how to improve the financial management and internal controls.

The Court of Audit issues the certificates for the titles of state auditor and certified state auditor, the Ministry of Finance or the BSO issues the certificates for the titles of internal state auditor and certified internal state auditor. The training for the titles was organised in such a way that the candidates participated to joint lectures on common topics. It was foreseen that the titles are mutually recognised under certain conditions, therefore the rotation between the professions of state auditor and internal state auditor is enabled.

*Role of the Court of Audit in the Statement on the assessment of the public internal financial control*

The BSO developed unified form «Statement on the assessment of the public internal financial control» and detailed methodology for completing the form. The Statement was not obligatory for the year 2005, for 2006 it must be completed by all budget users. Otherwise, the assessment of the internal financial control has been obligatory element of the annual report on the achieved objectives and results since 2001. But the assessments differed in methodology, quality and were not comparable between the users of public funds and between years. Therefore the objective to rise the awareness of the management on their responsibility for public internal financial control resulted in the «Statement on the assessment of the public internal financial control». The Court of Audit co-operated in preparation of the form and methodology. Furthermore, the questionnaire was developed, that will be used by the auditors of

the Court of Audit in order to review whether the management has used appropriate basis for their assessments. Nevertheless, it is a statement that is based on a self-assessment, and it will be a bit subjective, but the methodology for completing it requires certain minimal basis or evidence that must exist for the assessment. The estimations of the credibility of the assessments represent the basis for the assessment of the internal control environment at the budget user since they express the attitude of the management towards the internal control.

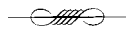
*Analysis of the irregularities found by implemented audits*

The Court of Audit analyses the irregularities that were found by audits and presents the results of them to the Parliament on the request by the Commission for the Budget and Public Finances Supervision or presents them in its annual reports. The found irregularities show weaknesses in internal controls. A special issue in the analysis of the irregularities is whether they are the consequences of the poor controls and their weak operation; or whether the management overrides them. The answer to the issue is not simple but it has key impact on the possible remedial measures or possible improvements.

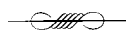
## 1.4. Conclusion

The Court of Audit is aware of the importance of the public internal financial control in providing for the regularity, effectiveness and efficiency of the operations of the users of public funds. The purpose and the objectives of the creation and operation of the public internal financial control are quite similar to the purpose and the objectives of the Court of Audit. Therefore, Court of Audit endeavours towards the development and improvement of the public internal financial control at the users of public funds within the limits of its authority.

**WOJCIECH BOGUMIŁ JASTRZĘBOWSKI'S**
**CONSTITUTION FOR EUROPE**



**UNE CONSTITUTION POUR L'EUROPE**
**PAR WOJCIECH BOGUMIŁ JASTRZĘBOWSKI**



**VERFASSUNG FÜR EUROPA**
**VON WOJCIECH BOGUMIŁ JASTRZĘBOWSKI**

**Prof. Dr Edward A. Mierzwa**
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# WOJCIECH BOGUMIŁ JASTRZĘBOWSKI'S CONSTITUTION FOR EUROPE

Poland's membership in the European Union has increased my countrymen's interest in the problem of the history of European unification, in which we, the Poles, also tried to participate in the past in our own way. This article is not intended as an expression of Polish megalomania or a claim to the co-authorship of the patent for the united Europe. Its sole intention is to show that this most far-sighted idea of creating appropriate conditions for the peaceful coexistence of different societies, nations, cultures and religions under one European roof was not entirely alien to our ancestors, either. While the unification attempts of the emperors Otto I and III, of pope Innocent III or of the Bohemian monarch George of Podebrady are more or less known, Polish endeavours in this area are known to just a narrow circle of specialists, although their significance should not be underestimated, which I intend to prove.

The idea of creating a universal kingdom, first in opposition to the German Reich, then to the Ottoman Empire, in alliance with the papacy and other European countries, frequently reappeared in the Polish history. In the Middle Ages, following king Boleslaus the Brave's (c.967-1025) attempts at peaceful settlement of Polish-German disputes, such as the Congress of Gniezno with Otto III in 1000, Poland held back the expansion of the Roman Empire of the German Nation to the east. This meant that Poland accepted a part of the responsibility for organizing eastern Europe, the most significant result of which was first, the Polish-Lithuanian union, and then, the position of a bastion of Christendom against the Turkish invasion. This in turn entailed the death of a young Polish-Hungarian king, Ladislaus III, in the battle of Varna in 1444, single-handed unsuccessful endeavours of Stephen Báthory, the prince of Transylvania and the king of Poland (1576-1586), to form an anti-Turkish league, and most importantly, the magnificent, victorious relief of Vienna by the Polish monarch, John III Sobieski in 1683. The above-mentioned

facts not only justify Poland's claims to having played a role in the historic process of European unification, but also demonstrate its solitude in this matter at that time. It cannot be denied, however, that they demonstrate Poland's commitment to the idea, which has now taken on an even more than European dimension (NATO), but to which Poland has remained committed, if only because of its geographical situation.

The first international alliance, the basis for uniting two countries into one state, was formed by the Poles and Lithuanians in 1385. At that time, the grand duke of Lithuania, Ladislaus Jagiello, pledged that having ascended to the Polish throne, he would incorporate Lithuania into Poland to create one common state of Poles and Lithuanians in eastern Europe, a state powerful enough to resist aggressive incursions of the Teutonic Knights, fiercely invading both countries. On 14 of August 1385, in the document issued in the Lithuanian town of Kreva, he announced:

"We Jagiello, of God's will the Grand Duke of Lithuania, Russia's rightful liege and heir, hereby declare to whom it may concern, and who shall see this document…that the Grand Duke Jagiello pledges and vouches at his own expense and effort to restore to the Kingdom of Poland all the countries ever torn and taken and resettled, as is. The said Grand Duke vows to return the original freedom to all Christians, especially to the people of both sexes from Polish land taken and resettled as is customary in time of war, so that every man or woman can go wherever they want. Finally, the same Grand Duke, swears to incorporate his Lithuanian and Russian lands for all times into the Crown of the Kingdom of Poland."

And so Ladislaus Jagiello, who was later to become king of Poland, introduced as early as in 1385 in the then eastern Europe what was to become in 1950, obviously in different circumstances and in another form, a plan of the unification of Europe presented by Robert Schuman. Jagiello, together with Lithuanian and Polish noblemen, who, although unwittingly, were also outstanding politicians, brought into effect the first in Europe, voluntary, international union, encompassing vast areas of eastern and central Europe, extending from the Baltic Sea to the Lower Dnepr, from the borders of Silesia to those of the Great Moscow Duchy, 1,200,000 square km altogether. This act, after many changes and amendments (Vilnius-Radom in 1410, Horodlo in 1413, Grodno in 1432, Mielno in 1501, and Lublin in 1569) united two countries and three nations into one political entity. It should be emphasized that, apart from all sorts of unions and alliances formed in antiquity, such as the Peloponnesian or Delian League, the Act of Kreva and the following Act of Lublin had no precedent in contemporary Europe. Though until 1385 Europe had never heard of any agreement that would connect two countries in any other way than through a personal union, the Act of Kreva brought about fundamental

changes in the history and culture of Lithuania due to the widespread and voluntary conversion of Lithuanians to Christianity, regardless of how widespread and voluntary this was. Never before in the history of contemporary Europe had there been an undertaking embarked on under similar circumstances, that would have such profound consequences and that would last 410 years, that is, from 1385 to 1795.

The Polish-Lithuanian union remained a personal union until 1569, when, during a joint parliamentary session in Lublin, the last member of the Jagiello dynasty on the Polish throne, Sigismund II August, combined the two countries into one entity known as the Republic of Both Nations. The commonwealth of the Poles and Lithuanians functioned without any major tensions or disagreements until it was partitioned in 1772-1795 by the neighbouring countries – Austria, Prussia and Russia.

There is no doubt that the official records of the Polish-Lithuanian union were studied by the Parliament of England and the Privy Council shortly before the death of Elizabeth I Tudor (24.03.1603) and the 1603 English-Scottish Union of Crowns. During my numerous archival surveys of the holdings of the Public Record Office in London, I came across documents confirming this fact.

While searching through the *Calendar of State Papers. Domestic*[1] and the minutes of the Privy Council sessions, I found records that the acts of Polish-Lithuanian unions of 1385, 1411 and 1569 were studied and debated by the English parliament and the Privy Council several times in the last years of the reign of Elizabeth I[2]. Actually, as is evident from parliamentary *Proceedings,* the Elizabethan parliament studied the texts of Polish-Lithuanian unions on five occasions, while the Privy Council dealt with them at four consecutive sessions, considering the possibility of uniting the two independent states of England and Scotland through a personal union. This fact justifies the claim that while the acts of Polish-Lithuanian unions may have played a part in the shaping of the 1603 Union of Crowns, they definitely did so over one hundred years later, in the 1707 Anglo-Scottish Union, the fact which until recently has been unknown to both Polish and British historians[3].

[1] Excerpts of these documents were published in *Calendar of State Papers. Domestic, 1603-1610*, London 1857, p.46, 90 et al.

[2] PRO, *CSP. Domestic,1601-1603* and *CSP. Domestic, 1603-1610.* Their excerpts were published by M.A Everett: *CSP. Dom, 1602-1603*, London 1870 (passim), and *CSP. Domestic, 1603-1606*, London 1857 (p.46, 90) ; *Acts of Privy Council, 1602-1603*, London 1864. Altogether in *CSP. Dom.* there are five records referring to the Polish-Lithuanian union acts, while in *APC* – four.

[3] In 1994 I suggested to B. Krysztopa-Czupryńska, currently employed with the Institute of History of the Warmian-Masurian University of Olsztyn, that she raise this issue in her Master's thesis, the result of which was an extremely interesting work *Unia polsko-litewska z 1569 r. i angielsko-szkocka z 1707 r. Studium porównawcze,* "Zeszyty naukowe WSP w Olsztynie. Prace Historyczne," (I), 1997, pp. 7-20.

Just like the Polish-Lithuanian Union of Kreva, the 1603 Union of Crowns was not formally signed, but merely proclaimed by the monarch, and was a classic case of a personal union, where two countries share only the head of state, in this case James I (VI). Contrary to the promises of James, who, while speaking of "a perfect union," meant something more than just the "union of crowns", both countries remained fully separate and independent states in all other respects.

In the light of the fact that the bases of the 1603 Union of Crowns were almost identical with the 1385 Polish-Lithuanian union's regulations and their following amendments, it can be taken for granted that the Polish-Lithuanian arrangements served as a model for the English and Scots in 1603.

The second undertaking that united two states, this time Poland and Sweden, by a personal union, that is a common monarch, took place when the Polish king Sigismund III (the prince of Sweden from the house of Vasa, related to the Jagiello dynasty, elected the king of Poland in 1587) succeeded his father as king of Sweden in 1592. This union was doomed to failure for many reasons, the most obvious of which was, in my opinion, the political ineptitude of Sigismund III as well as the economic, cultural and religious differences between the two countries. The latter were becoming more and more noticeable in the 17th century until finally, in the second half of it, they reduced Poland, so far a country of tolerance, to narrow-minded, short-sighted bigotry that until recently was still fought against by Pope John Paul II, who exhorted all faiths, not only Christian, to ecumenism and a life of peaceful coexistence of different religions.

The union of Poland and Sweden was dissolved after a few years, when the Protestant Swedes dethroned the Catholic bigot, and handed over the Swedish throne to Charles IX, duke of Södermanland, the father of the future king of Sweden, Gustavus II Adolphus, and a great soldier, known as the "Lion of the North". This gave rise to a long-lasting Polish-Swedish feud over *Dominium Maris Baltici* and the Swedish crown, claimed not only by the dethroned Sigismund III, but also his two sons on the Polish throne, Ladislaus IV (1632-1648) and John II Casimir (1648-1668). This feud was not settled until the Northern War of 1721, in which Poland got embroiled by the king of Poland and Saxony, Augustus II.

Since then we have not had any disputes with the Swedes, except for the one over Baltic sprat, when Polish fishermen harboured a grudge against Swedes for fishing in Polish territorial waters.

Another undertaking, unfortunately unsuccessful, and nowadays, at the time of European unification, completely forgotten, was the idea of creating a federation of Poland, Lithuania and Muscovy devised by a Polish grand Crown hetman, Stanisław Żółkiewski (1547-1620).

In his diary entitled *Beginning and Progress of the Muscovite War* (published in 1833), while describing his victory in the 1610 battle of Klushino, where he defeated the superior strength of the enemy, Żółkiewski disclosed many factors determining the policy of Sigismund III Vasa towards Muscovy. Opposed to the war against Muscovy, yet engaged in its maelstrom against his own will, he developed his own political programme, different from that of the king or of the court political clique of the magnate families of Potocki, Mniszech and others interested in the Polish expansion to the east. Being an opponent of the policy of expansion, he regarded a dynastic union with the eastern neighbour and federating Muscovy, Poland and Lithuania into one enormous state as a modus vivendi with Muscovy. Bringing to the fore assurances of respect for Muscovite political, governmental and religious traditions, his idea attracted a lot of support from Russian boyars. Żółkiewski's diary stood out from all the anti-Muscovite doggedness of other contemporary writers. Instead of hurling insults, his account presented a sober, matter-of-fact political analysis and pointed out the necessity to treat Muscovy humanely. Hence his instructions to his commanders, treating discipline and courtesy towards the Russian population with the utmost importance. The grand hetman proved to be not only an outstanding strategist but also a distinguished politician and writer, as his diary ranks high among Old Polish literary classics.

There were many reasons why Żółkiewski's idea never received any serious treatment. The first of these was the reluctance on Sigismund's III part to any plans that did not take into consideration his candidacy for Monomakh's Cap – the Muscovite crown. The second was the insurmountable gulf between Russian Orthodox faith and Polish Catholicism. And finally, the Russians themselves, who reached even London, instead of Warsaw, in search of alliances[4].

[4] This fact has had an amusing repercussion in my own life. Although I based my doctoral dissertation (on the English-Polish relationships in the first half of the 17th century) on the documents discovered in London Public Record Office, among which was a letter of the Lord Chamberlain to Carleton, dated 29.02.1613, in which he wrote: "A few Muscovite magnates submitted an offer of coming under the protection of HM, who considers sending the army to Moscow and wielding power through a viceroy and is sure of success", and a dispatch of a Venetian ambassador, who informed the Doge of the arrival to London on 5 November 1612 of a group of Muscovite boyar envoys with the proposal of James' I ascent to the tsar's throne (CSP Ven., Vol. 12, no. 137 and 808), the reviewer of my dissertation, one of the most outstanding historians of the second half of the last century, accused me of confabulation and fantasizing. Obviously, he regarded it as improbable and previously unconfirmed by historians. When I showed him the photocopies of the source materials and informed him that during World War I Nina Ljubimienko published in "English Historical Review" three articles on that subject, he was flabbergasted. At the end of the consultation, he remarked: "You know, I met Nina Ljubimienko in Paris in 1927," and added a bit embarrassed, "My God, she was an interesting, nimble blonde at that time." In his review of my dissertation, he had no reservations whatsoever.

But Polish unifying attempts were not limited to the 17th century. Among less feasible ideas, which were not followed by any specific actions or even broader political justification, as in the case of Żółkiewski's undertaking, was a proposal of an international alliance between Poland, Lithuania and Ukraine, a counterbalance to Bolshevik Russia, put forward in 1918 by an outstanding Polish politician, Chief of State, Józef Piłsudski (1867-1935). A post-war Polish-Czech alliance was pondered over during the Second World War by general Władysław Sikorski (1881-1943), Prime Minister of the Polish Government in Exile, who died on 4 July 1943 in a heretofore unexplained plane crash in Gibraltar. An adviser to Sikorski and a friend of Aristide Briand, a Polish politician Józef Retinger (1888-1960), worked on similar ideas, though on a larger scale; while Adam Rapacki (1909-1970), a politician and the Minister of Foreign Affairs, put forward yet another plan of, only or perhaps no less than, creating a non-nuclear zone.

To crown the list of Polish unifying attempts, the aim of which was to unite eastern or north-eastern Europe a few hundred years before the "fathers" of the united Europe, Jean Monet, Robert Schuman, Alcide De Gasperi and Konrad Adenauer, I should mention *The Constitution for Europe* by a participant of the November Uprising (1830-1831), Wojciech Bogumił Jastrzębowski. What is really fascinating about *The Constitution for Europe* is not the very idea of the unification of Europe, but the fact that its author included and named therein many concepts later repeated in the structure and nomenclature of the European Union, despite the fact that its creators had never heard of W. B. Jastrzębowski, much less of his constitution, which had lain in manuscript form for over 160 years. It was none other than W. B. Jastrzębowski who devised "presidencies" of the united Europe, although he planned them as lasting a full calendar year rather than six months, as is the case now. His was also the idea of the Tribunal and many other rules, which are nowadays a legally binding component of the law and structure of the united Europe.

Wojciech Bogumił Jastrzębowski, an insurrectionist and artilleryman of the National Guard, who fought, among others, in the battle of Olszynka Grochowska, was born in 1799 in Gierwaty near Maków Mazowiecki. Despite being orphaned by both parents early on in his life and in spite of financial difficulties, he studied at Warsaw University, initially at the Department of Construction and Surveying, and after two years and a change of interests at the Faculty of Philosophy, which he graduated from in 1825. For the first four years following his graduation, he worked in the physics room of the University, where he interpreted the meteorological observations made by Warsaw meteorologists over a five-year period and worked on surveying projects with the use of a compass. He presented a paper on both of these issues at the meetings of Warsaw Society of Friends of Sciences (WSFS),

which enabled him in 1829 to receive the so-called adopted membership of WSFS. His interest in botany, which became his life's passion and his profession, dated back to his university years. As a result, under the guidance of Professor Marian Szubert, he published a herbal of plants of the Podlachia, Masovia, Lublin, Sandomierz and Cracow area, many of which were unknown to the naturalists of the time.

As I have mentioned before, he took part in the November Uprising and the Polish-Russian War of 1831 and, although he had never been promoted to officer rank, on behalf of the insurrectionary government, he addressed the soldiers going to war in 1831 at Warsaw Saxon Square. That year he wrote *Spare Moments of the Polish Soldier or Some Thoughts on an Everlasting Alliance between Civilized Nations*, which contained *The Constitution for Europe.* It was published as a whole in May 1831. His *Constitution* comprised a bill of the European Congress, the forerunner of the League of Nations, the unattained goal of which was, as we all know, securing lasting peace. Wojciech B. Jastrzębowski elaborated on the subject in *Treatise on an Everlasting Alliance between Nations Civilized*. As a result, he faced tsarist persecution and an employment ban, and was forced to live off giving private lessons for almost 5 years. It was only in 1836 that he got a job in the Agronomical Institute in Marymont, where he displayed his teaching talent, and where, in collaboration with another outstanding naturalist, M. Oczapowski, he designed botanical gardens. Within the next 22 years, the author of *The Constitution for Europe* trained many brilliant agronomists and agriculturalists, published a few treatises on mineralogy, meteorology, etc., while his student, K. Majewski, wrote *The Principles of Agriculture* (1875) on the basis of W. B. Jastrzębowski's notes and lectures. The ability to interact with the students in his charge and to get his knowledge across to them made him the most popular among teachers, which finally led to a conflict with the head of the institute, S. Zdzitowiecki in 1858. The latter, though he could not boast similar pedagogical successes, seemed to know better how to deal with young people. The result of the conflict was a foregone conclusion – nec Hercules contra plures …

Afterwards W. B. Jastrzębowski was for a while the superintendent of a Warsaw county school, only to become a forest inspector in the Red Woods, south of Łomża in 1860. His task was to convert a vast area of sandy wasteland into a forest. He set up an arboretum in Brok on the river Bug and trained a generation of young apprentice foresters. He retired in 1874 and settled in Warsaw, where he died in 1882 and was buried at Powązki cemetery. To pay a tribute to him, his pupils set a commemorative plaque in the Holy Cross Church in Warsaw. It was chiselled by Andrzej Pruszyński, the same man who sculpted the cross in front of the church.

I do hope that *Spare Moments of the Polish soldier*, an eighteen-page booklet published in Warsaw in 1831, which I found in the Jagiellonian Library (catalogue

number 222707 I) will finally arouse among historians and political scientists the interest it is worthy of. I also do hope that it will be acknowledged by the successors of "the fathers of Europe", who claim to have the sole agency for the idea of the unification of Europe, the best example of which are the overweeningly arrogant speeches of some western politicians. As for Wojciech B. Jastrzębowski, he did not enjoy popularity even in his home country. He was obviously better-known as a naturalist, while his *Constitution* was brought to light for the first time in 1926 by a journalist Janusz Iwaszkiewicz, who discovered it in the Warsaw archives of the Society of Friends of Sciences and published its re-edition under the changed title of *The Unknown Polish Bill of Everlasting Peace* ("The Policy of Nations", 9 (4), 1937, pp. 385-395), and tried to disseminate it in the press. *Today, when Poland has finally taken its place in the council of the League of Nations*, J. Iwaszkiewicz wrote in Warsaw Herald, *when pacifist slogans reverberate through all of Europe, let me remind you that Poland adhered to these slogans even when there was still no mention of them in Europe.*

Almost 30 years later, W. B. Jastrzębowski was rediscovered by M. Muszkat, who in his "Studies and Materials for the History of the Art of War" (1954, pp. 293-301) discussed the views of the November Uprising soldier. A few years ago the idea of the Polish naturalist and political scientist inspired Dr Barbara Kubicka-Czekaj, from the Pedagogical College of Częstochowa (currently: the Academy), to publish at her own expense a small booklet entitled *W.B. Jastrzębowski's Constitution for Europe*, whom I hereby would like to thank for a copy of it. She tried to promulgate in Paris the information about the Polish originator of the European union, which met with as much interest as disbelief. Was some unknown *petit Polonais* to be a better prophet and visionary than their J. Monet, R. Schuman, or Aristide Briand before them? Then, in the years 2002-2003, Benon Dymek published two treatises: *Wojciech Bogumił Jastrzębowski. Botanist and the Visionary of the United Europe.* (2002) and *The 1831 Vision of Alliance between the Nations of Europe according to Wojciech Bogumił Jastrzębowski* (2003). Also Zbigniew Święch, an adventurer, sensation hunter, guardian of the Wawel stone and my bosom friend, wrote about W. B. Jastrzębowski.

*The Constitution for Europe,* the full version of which can be found below, consisted of 77 articles. Wojciech B. Jastrzębowski was somewhat of a visionary and a mystic, which probably explains why he encapsulated the constitution in such a magic number. It advocated the establishment of an all-European congress, "made up of plenipotentiaries elected by all the nations." Its main purpose was to ensure perpetual peace, abolish national borders, in the existence of which he saw "the main cause of European bloodshed", wipe any mention of the battles of

yore off textbooks and consign military history to oblivion. That history has been if not the basis, then at least a major part of the world historiographic legacy since the beginning of humanity, ranging in time from Early Chinese *shui* to Greek epics sang or recited by *aoidós* to the modern history of war and military science.

Europe, as conceived by W. B. Jastrzębowski, devoid of internal borders, was to respect the national identity of its citizens, who were to enjoy considerable autonomy: *A nation shall be made up of people speaking one language, regardless of their place of abode in Europe. Each nation shall be subject to national laws enacted by the seym. The dispersed nations, such as Gypsy or Jewish, shall be subject not only to their own laws but also to the laws of the nations they are mingled with.* The main theme of *The Constitution* was pacifism, which was reflected in art. 35: *All military weapons, that is, intended for shedding blood, and found on European soil, shall become the property of the whole Europe. One part of them will be stored in places indicated by the European Congress to be used if necessary to defend the rights and security of Europe. The other part, the superfluous one, will be assembled in the centre of this part of the world, where it shall be used to erect a temple to God, the guardian of laws and peace.*

Europe was supposed to be a federation of nations, not states, as art. 11 states: *A nation shall be made up of people speaking one language, regardless of their place of abode in Europe.* In this case W. B. Jastrzębowski was far ahead of his time – nowhere and never before, or after, has any treaty, signed or passed by acclamation (in other words extorted), pledging the signatories to amity proved itself effective. It is obvious that amity between states – institutional creations – is impossible. We can speak of national and social unions as well as unions between individuals or genders but not between countries. W. B. Jastrzębowski understood that 176 years ago, whereas we were still striking up a Polish-Soviet, Polish-GDR or Polish-Mongolian friendship not so long ago.

Wojciech B. Jastrzębowski developed the idea of Europe of nations in art.13 and 14:

*13. As has been the case so far, one region can be populated by one separate or a few intermingled, yet independent, nations. A nation, separate as well as intermingled, shall be subject only to its national laws. A dispersed nation, for example Gypsy- or Jewish-like, must be subject not only to its own laws but also to the laws of the nations it is mingled with. Yet this shall apply only until such nation makes its education its goal, as indicated under number 27.*

*14. All the nations belonging to an everlasting alliance in Europe owe equal submissiveness to European laws.*

W. B. Jastrzębowski regarded as civilized those nations that were going to ally themselves in the European Congress, and as barbarian those that refused to renounce greed and wars; but even such nations were not barred from unification, should they meet the above conditions. Even a non-European nation could become civilized. As you can see, he equated the notion of Europe (if only without wars!) with the notion of civilization, but others were also given the chance to become Europeans, that is to say, a civilized nation.

## *THE CONSTITUTION FOR EUROPE*

Preamble

The civilization is already in its fifty ninth century; isn't it time for the era of barbarity to dawn? Three hundred generations have already been governed be equal rights. When will the law of the mightier finally start to reign?

Article 1. All European nations (if they want to enjoy long-lasting peace and happiness) are to renounce their freedom and become slaves to laws; while all monarchs (if they want to reign peacefully, with the nations' blessing and fame) are from now on to be just guardians and executors of these laws and to use no other title than that of the fathers of nations, that is, patriarchs.

2. The laws in question shall be the interpretation of the eternal truth, that is of God's will revealed to us in his commandment: "Thou shalt love thy neighbour as thyself."

3. In the eyes of God and the law all people, and therefore all nations are equal.

4. The equality of the people making up a nation shall be safeguarded by national laws; while the equality of the European nations shall be safeguarded by European laws, which are to be the foundation of the everlasting alliance between civilized nations.

5. National laws are enacted by the nation through its emissaries, that is the seym; while European laws are enacted by Europe through its Congress, consisting of the plenipotentiaries of all nations.

6. The basis for both national and European laws shall be laws of nature, that is laws of God, while humanity and justice shall be their attribute.

7. The governing rule while enacting laws shall be the opinion of the majority of legislators.

8. The guardian and the executor of national laws shall be a patriarch, whereas the guardian and the executor of European laws shall be the Congress itself.

9. From now on there will be no states in Europe at all, only nations. Former borders between states (the main cause of European bloodshed) shall be abolished for ever.

10. There will be as many patriarchies as there are nations[5].

11. A nation shall be made up of people speaking one language, regardless of their place of abode in Europe.

12. Unequal number of individuals making up states will not strain their equality.

13. As has been the case so far, one region can be populated by one separate or a few intermingled, yet independent, nations. A nation, separate as well as intermingled, shall be subject only to its national laws. A dispersed nation, for example Gypsy- or Jewish-like, must be subject not only to its own laws but also to the laws of the nations it is mingled with. Yet this shall apply only until such nation makes its education its goal, as indicated under number 27.

14. All the nations belonging to the everlasting alliance in Europe owe equal submissiveness to European laws.

15. The patriarch's rank is hereditary and falls to the son who suits most the goal of education indicated under number 36.

16. Former monarchs will have priority to patriarchal offices. A nation that hasn't had a monarch so far will choose as its patriarch a ruler who has reigned so far without the nation[6] and in case of lack of such one, a person

[5] This number in accordance with the Charter of the Nations published in Berlin in 1821 by P. O'Etzel reaches 64 [a footnote by W.B. Jastrzębowski].

[6] Such monarch are, for example, the emperor of Austria, who could become a patriarch of the German nation or the king of Prussia, who could become a patriarch of the Polish nation, etc.

from the royal family who was the first to declare himself for the everlasting alliance.

17. Just like all nations, patriarchs shall be equal to each other in the eyes of the European law.

18. Upon taking his office a patriarch will pledge to his nation to keep national laws, while the nation in return will swear allegiance to him.

19. National laws enacted by the seym while a patriarch is in ofice should be confirmed by him to ensure that they apply to both him and the nation.

20. In order to guard and enforce the laws entrusted to him by the nation more effectively, a patriarch will select ministers in numbers indicated by the national law.

21. A patriarch, being the holder of the second to God most sacred thing, that is the law, is sacred and immune. An insult to a patriarch made by anybody will be punished by the European Congress in accordance with the existing law.

22. Only ministers will be responsible for the patriarch' s conduct towards the nation. Without their signature no ruling of a patriarch shall be legally biding.

23. The national seym shall report any violation of national laws by ministers to the European Congress, which will act in this matter in accordance with the existing laws.

24. The national government will consist of a patriarch, ministers and officials indicated by an internal national order. Appointing an official, both overt and secret, in defiance ofsuch an order will be considered a violation of national laws.

25. All offices shall be filled according to wisdom, virtue, merit as well as the love and trust of the nation, but above all, the knowledge of laws.

26. Religious differences will not result in legal differences; every man, of any faith, will therefore be protected by national and European laws and will have equal rights to any offices and ranks.

27. The goal of each nation's education shall be perfecting man, that is, preparing him to be a useful member of the society; reaffirming the control of his mind over heart, propagating the knowledge of divine and social laws, instilling respect for their sanctity, and finally inspiring fraternal love between nations united by the bond of the everlasting alliance. Historical reminiscences that might arouse hostile feelings towards other nations shall be presented to youth as relics of barbarity.

28. A patriarch, together with ministers, will perform the office in the national seat (the capital), where also the national seym shall hold its meetings. A patriarch or one of the ministers shall annually go on a tour of the nation to probe whether laws and rulings are rigidly adhered to. The tour in question should usually be made incognito.

29. The nations that have remained for centuries in close friendship and fellowship may, of their own volition, have a common patriarch, who will pledge to each nation individually to keep its laws and will alternate a national seat every three years. Such a patriarch will not cease to be equal to other patriarchs in Europe.

30. Every nation will send to the European Congress an equal number of plenipotentiaries, who shall be elected by the national seym.

31. Should the seym not be in session, a patriarch may dismiss the plenipotentiary who has betrayed the nation's trust and appoint in his place another one, who may be dismissed or approved by the next seym.

32. The European Congress shall be in session ceaselessly and shall carry out its duties in a different European seat every year, according to the legal order indicated under number 37.

33. The language most widespread in Europe shall be the diplomatic language of the Congress, while the national language shall be the official language of each nation. A patriarch ruling over a few nations will issue his decrees in the language of the nation they apply to.

34. The first duty of the European Congress shall be enacting European laws, which will begin as follows: peace in Europe is durable and everlasting, and its main purpose it to end human bloodshed for ever, that is, to put an end to barbarity.

35. All military weapons, that is, intended for shedding blood, and found on European soil, shall become the property of the whole Europe. One part of them will be stored in places indicated by the European Congress to be used if necessary to defend the rights and security of Europe. The other part, the superfluous one, will be assembled in the centre of this part of the world, where it shall be used to erect a temple to God, the guardian of laws and peace.

36. The few mile perimeter of this temple shall be called the holy place of Europe and shall be designated for the upbringing of European patriarchs' sons, whose [education][7] is to be entrusted to the most virtuous and the most learned citizens of Europe, chosen by the unanimous consent of the Congress and European patriarchs. Enacting laws applying to both young candidates for patriarchs and their masters is a duty of the European Congress. While enacting these laws, the Congress will not only pay heed to the goal of education indicated under number 27 but also to the fact that the lives of future patriarchs should set a good example of conduct to the nations they are going to rule over, and that these patriarchs should not base their fame and happiness on the number of people enslaved but made happy

37. Emblems, that is, coats of arms of all the nations belonging to the everlasting alliance, together with inscriptions in national languages

[7] That's how it was put in the manuscript. In the printed copy, there was a note in pencil in the margin – instruction.

and Latin stating the names of these nations and their patriarchs, as well as the date of their accession to the everlasting alliance in Europe, will be placed in the temple of God, the guardian of laws and peace. The order these emblems are to be placed in shall be the same as the order in which nations acceded to the alliance. In case all the nations declare themselves for the everlasting alliance within the next 5 years, from 1831 on, their names, together with their emblems, shall be placed in Latin alphabetical order. The order of national emblems in the temple will be called the legal order, according to which the plenipotentiaries of nations are obliged to seat themselves.

38. The nation which will not declare itself for the everlasting alliance in Europe within 10 years, all the more the nation which for either imaginary or forcibly gained claims will dare to resist another nation' s declaration, shall not be regarded as European, that is to say , civilized, but as a barbarian nation

39. A barbarian nation will not be protected by European laws until it accedes to the everlasting alliance.

40. Every nation, from any part of the world, has the right to accede to the everlasting alliance of Europe and to be protected by European laws.

41. If an autocratic authority opposes the nation's accession to the alliance of everlasting peace, such a nation is entitled to consider this authority hostile, illegitimate and endorsing the blood-shedding system.

42. The monarch who resists for over 5 years the nation' s accession to the alliance of everlasting peace not only loses for ever, together with his offspring, the right to serve as a patriarch but will also be recognized as the enemy of peace and laws and doomed to be cursed by future generations.

43. To every nation requesting help to overcome resistance to its accession to the everlasting alliance the European Congress guarantees its mediation.

44. Any harm done to the laws of one nation that belongs to the alliance by another nation, whether European or barbarian, shall be regarded as harm done to the laws of all Europe.

45. An attempt to break the everlasting alliance or to detach even one nation from this sacred union will be regarded as harm done to European laws.

46. It shall be the responsibility of the Congress to devise ways to make amends for harm done to European laws, which will act in this matter in accordance with the existing laws.

47. Storing military, in other words bloody weapons, even in the smallest number, in places other than those indicated by the European Congress will be regarded as an attempt to break the everlasting peace, and thereby as harm done to European laws.

48. The places where on the recommendation of the European Congress military weapons will be stored shall be called bloody spots. The very act of setting foot on the bloody spot without the Congress' authorization, all the more so reaching for the weapon stored there will be regarded as an attempt to break the everlasting peace in Europe and will result in the loss of national and European rights for 10 years. Even patriarchs and monarchs shall be subject to this law.

49. Having been rewarded for services rendered, regular army shall be abolished for ever, which the European Congress will handle immediately after its first session.

50. Any citizen of Europe (we call a citizen any man who is useful to the society in any respect) summoned by the European Congress shall become a soldier that cannot be used for any purpose other than protecting the laws and safety of Europe.

51. The Congress shall divide the costs of a forthcoming war among all the nations belonging to the alliance in accordance with the number of individuals that make them up.

52. To ensure national security, that is, to give a patriarch the necessary powers to guard and enforce national laws, each nation shall have the guard of laws, which will be maintained at the nation's expense.

53. Nobody else but a patriarch himself can be the commander of the guard of laws. The guard of laws of the intermingled nations will also remain under their patriarchs' command, while the chief command will belong to a dif ferent one every year , according to the legal order indicated under number 37.

54. Service in the guard of laws will at the same time be a military academy for future protectors of the security of Europe. Every citizen of Europe is obliged to spend 3 years of his life serving in the guard of laws of his nation. Apart from performing the duties related to this service, indicated by a patriarch, every member of the guard of laws will acquaint himself with the art of war and will learn laws of war, and in the third year he will get from the European Congress, through his patriarch, his commission for a citizen soldier, which will give him free access to all bloody spots in Europe to acquaint himself with the weapons stored there. After 3 years of service, a citizen soldier will hand over his commission to the successor and will return to civilian duties. The commission for a citizen soldier can in no way be entrusted to a person that does not belong to the guard of laws (wishing e.g. to visit a bloody spot), unless with an explicit permission of the proper patriarch; however, the citizen soldier himself shall be responsible before the European Congress for the consequences that may result from this. The custody of bloody spots in Europe is to be entrusted to citizen soldiers themselves.

55. In order not to be regarded as belonging to a bloody spot, hunting guns and any farming or craftsman's tools, etc., fit to kill should be marked with an emblem of everlasting peace prescribed by the European Congress.

56. Using a weapon marked with an emblem of everlasting peace to take someone's life or, generally speaking, to violate national or European laws will be regarded as the most serious crime in Europe and will result in losing the protection of these laws for 50 years. Nobody, not even a patriarch or a member of the European Congress, shall be exempt from this law

57. The guard of laws during its three-year service will use arms with an emblem of everlasting peace.

58. No man unacquainted with laws of war can carry either military weapons or weapons with emblems of everlasting peace.

59. Knowledge of laws of war , which, in the spirit of article 57, the Congress shall prescribe for the guard of laws, will constitute a part of education of each nation's youth.

60. All property owned by individuals making up one nation constitutes national property. A prescribed part of income from such property , that is, a tax, will come under the control of a national government to be used for general needs of the nation, such as maintaining the government, service to God, protecting laws as well as propagating science, art, industry, etc.

61. Public property, that is, the so-called national domain, shall be divided by the national government among the deserving members of the nation not owning any property. In intermingled nations, where it is questionable which nation such national domain belongs to, its division shall be performed by a committee designated by the governments of the interested nations. Indivisible domain, such as mines, will remain for ever under the direct control of the national government, while the income from it shall be used to purchase from private owners their superfluous properties, which are to be given away to the poor, yet thrifty members of the nation.

62. A member of one nation while purchasing any property from a member of another nation, intermingled with the first one, thus purchases it from the whole nation. This law does not apply to separate nations.

63. A citizen of one nation can become a member of another nation, and can transfer his property to it, only after he has ceased using his mother tongue and has made a distinct renunciation before his government in this regard.

64. The transfer of property from one nation to another , due to the changes covered by the two articles above, should take place with the knowledge of the committee mentioned under number 61.

65. Just like the takeover by force of private property of one man by another, so will the takeover of national property by another nation be each time regarded as unlawful plunder. In case the governments of the nations in dispute are unable to settle such a case peacefully, the matter shall be decided by the European Congress in accordance with the existing laws.

66. Misunderstandings and of fences among members of one nation will be dealt with and penalized by national courts in accordance with national laws, while misunderstandings and offences among members of separate nations shall be dealt with and penalized by judicial committees, designated by the courts of the nations which the members in dispute belong to. In case the judicial committee is unable to settle such a case, the matter shall be transfer red to the pr oper national governments for settlement.

67. Incidents between nations that cannot be handled peacefully by their governments will be decided, just like the cases of unlawful appropriation (65), by the European Congress.

68. The number of cases decided by the European Congress will be a measure of the inaccuracy of the laws and the government of the nation which has given grounds for such cases.

69. The life, freedom, property and honour of each member of a nation shall be the object of particular protection by national laws. The existence, independence, property and honour of each nation shall be the object of particular protection by European laws.

70. The freedom of speaking, writing and printing that does not jeopardize the laws accepted and honoured by nations shall be unrestricted. The Congress is to enact laws against abuses in this matter.

71. Every citizen of a nation has the right to submit (through proper channels) to his seym bills to amend the existing or enact new laws, without paying, however, for these bills to be necessarily passed. Every nation belonging to the everlasting alliance has the right to submit (through its Congress plenipotentiaries) bills to amend the existing European laws or enact new ones, also without demanding that these bills necessarily take effect.

72. Every 10 years a political-religious jubilee celebrating the enactment of European laws shall be held. All European patriarchs and all members of the Congress will be obliged to attend this ceremony , which is to take place in the temple of God, the guardian of laws and peace, firstly, in order to thank Him for successful peacekeeping for the past 10 years, secondly, to sanction the European laws amended and enacted during that time. Similar ceremonies will be held in all temples of all faiths in Europe for each of its inhabitants to be able to participate in universal joy and the opportunity to thank God for guarding the peace and well-being of Europe. The time of this sacred celebration shall be the period in which all the past grudges between nations are to sink into oblivion.

73. Just as the main aim of governments' ef forts so far has been the happiness and fame of nations, while arms, the form of the government, laws and education were a means to them, so will they remain the same in the future, with the reservation that the order of the latter , that is, of the means, should be reversed.

While the main source of not so much happiness, for it is alien to the world, as fame of the nations so far has been war , from the time of the formation of the everlasting alliance in Europe, only education, laws, government, sciences, skills, arts and industry , in the broadest sense of this word, shall be the objects of emulation and the claim to fame among European nations. For distinguishing oneself in perfecting and promoting the above, every year the European Congress shall commend a few nations and endow them with an award symbol. This symbol shall be issued in duplicate, of which one shall hang at the legislative chamber of the nation to which it was awarded, while the other shall be placed by the European

Congress deputation in the temple of God, the guardian of laws and peace, next to the emblem of the awarded nation. Since this award can only be granted for the deeds that benefit the whole of society , thus the costs of funding it shall be covered by all the nations united by the everlasting alliance.

74. Historical tales of fame gained by the sword shall sink into oblivion, and can only be told as atrocious mementoes of the past fifty centuries of barbarity. The fame that can be gained through the use of arms, after the everlasting alliance has been formed in Europe, shall not be called military fame but law protection fame. Taking up arms for any other purpose than protecting the laws and safety of Europe will result in eternal shame, being cursed by nations, and will furthermore be most severely punished in accordance with European laws.

75. Emblems, that is, nations' coats of arms, shall from now on bear no marks reminiscent of the brutal blood-shedding system of the barbarian era. Swords, spears and the representations of predatory animals, such as lions, eagles, etc., shall be replaced with the representations of other creatures and objects that can arouse gentle and noble feelings or are reminiscent of some special characteristic of the nation that chooses such representation as its emblem.

76. From the time of the formation of the everlasting alliance in Europe, in moral-religious terms,only two denominations shall be recognized: that of the good, that is, people obeying God's laws and of the bad, that is, people violating those laws. In moral-political terms, also only two nations in the world shall be recognized: one civilized, governed by laws based on God's laws, and the other barbarian, governed by passions, such as the desire for shedding human blood, seeking to exalt oneself by humiliating others, lying in wait for other people's property or freedom, etc.

(Persecution and hatred, which has so far taken place because of former incidents between denominations and nations, from now on shall turn into persecution and hatred only between the above-mentioned two denominations and two nations. If the denomination of the good, together with the civilized nation, gets the upper hand over the denomination of the bad and

the barbarian nation, the world shall become a paradise. If the latter defeats the former, the earth will remain for ever , just as it was for the past fifty nine centuries, the damned hotbed of immorality and slaughter.

77. From the time of the formation of the everlasting alliance (whose aim is to stop for ever the shedding of human blood), no of fence shall be punishable by death. Premeditated murder and any serious violation of rights, perpetrated personally or through someone else, will result in the loss of national and European rights for 50 years. Nobody, not even a patriarch or a member of the European Congress, may be exempt from this law. Prisons, inhabited by criminals deprived of the protection of laws, will be regarded not so much as punishment, but rather as shelter from the danger that the loss of rights entails.

Acting in accordance with these barbarian laws is recommended to all enemies of the truth and civilization, namely to all cruel and barbarian monarchs living in Europe now , with the exception of the most merciful and civilized Nicholas I, who (as a reward for his fatherly order issued in St. Petersburg on 22 March/3 April of the sixth year of his bloodless reign[8], as well as for giving us by this memorable order the reason to draft these barbarian bills) may be exempt from enacting them, and this without incurring the severe punishment promised in the preamble.

Issued in rebellious Warsaw on 21 April/3 May, of the first year of our bloody rule.

(Here come numerous signatures of the maddest Polish rebels)

Conformity of a copy to the original confirmed by (signature) Wojciech Jastrzębowski, an ordinary soldier, the secretary of a bunch of the maddest Polish rebels.

[8] Tsar's order from 22 March /13 April 1831 concerned the judicial proceedings and the sentence with regard to the rebels from gentry background and other social groups in the province of Vilnius. They were to be tried by courts-martial in accordance with the military penal code. Convicts' property was to be confiscated, while their male children were to be taken to the camps of military recruits, See Połnoje sobranije zakonow Rossijskoj Impierii, vol. 6, St. Petersburg 1832, ed. 2, no. 4444, pp. 252-253.

Information

This rebellious letter is sold for 25 groszys to support wounded Polish rebels and to erect a monument commemorating the immortal Russian heroes, who (having conquered half of the world and having soaked Asia and Europe with blood, and currently bringing peace, salvation and cholera to the West, endangered by a scandalous Polish rebellion) died a glorious death or sustained wounds for the good of the whole of the society , and now, at the will and pleasure of their most kind-hearted monarch, the angel of peace, lying around without burial in inaccessible woods and marshes or groaning at the main Russian army hospital, that is, in W arsaw, te ach heedless Europe how to give its blessing to its most merciful protector.

All agencies of rebellious Warsaw newspapers as well as the maddest Polish rebels themselves collect donations for this cause.

A list of the names of the benefactors who will contribute to them, together with the donation, shall be submitted to the office of the governor-general of Warsaw [9].

[9] From 3 March 1831 the governor-general of W arsaw was gen. Jan Krukowiecki, who was directly responsible to the National Government.

*Translated by Edwar d A. Mierzwa*

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## UNE CONSTITUTION POUR L'EUROPE PAR WOJCIECH BOGUMIŁ JASTRZĘBOWSKI

L'adhésion de la Pologne à l'Union européenne a fait accroître l'intérêt que mes concitoyens portent au problème de l'histoire de l'unification européenne à laquelle nous autres, Polonais, avons aussi essayé, à notre manière, de participer par le passé. Le présent ouvrage, sans être l'expression de la mégalomanie polonaise, ne prétend pas non plus revendiquer la reconnaissance des droits de coauteur du brevet de l'Europe unie. Je voudrais tout simplement y démontrer que l'idée – la plus à long terme qui soit – de créer des conditions d'existence de différents peuples, sociétés, cultures et religions dans la «maison européenne» commune n'a pas été non plus étrangère à nos ancêtres. On connaît plus ou moins bien les tentatives d'unification des empereurs Otton Ier et Otton III, du pape Innocent III ou du monarque tchèque Georges de Podìbrady, mais les tentatives polonaises dans ce domaine ne sont connues que d'un groupe restreint de spécialistes, encore que ces entreprises polonaises du passé n'aient point été si négligeables, ce que je vais tâcher de présenter.

L'idée de participation à la création d'un royaume universel, dans un premier temps en opposition au Reich allemand, puis à la Turquie musulmane, en alliance avec la papauté et les autres pays européens, apparaissait assez souvent dans l'histoire de la Pologne. Au Moyen Âge, après des tentatives d'un règlement pacifique des affaires polono-allemandes par le roi Boleslas Ier le Vaillant (environ 967-1025), entre autres lors du grand congrès avec l'empereur Otton III à Gniezno, en l'an 1000, la Pologne a freiné l'expansion du Saint Empire romain germanique

vers l'Est. Cela signifiait qu'elle a repris partiellement à son compte la tâche d'organiser l'Europe de l'Est dont le résultat majeur a été l'Union de la Couronne de Pologne et de la Lituanie, et ensuite, le rôle défensif de Rempart de la Chrétienté dans ses affrontements avec la Turquie, marqués par la mort du jeune roi polono-hongrois, Ladislas III Jagellon, à la bataille de V arna, en 1444, les démarches solitaires d'Étienne B áthory, prince de T ransylvanie et roi de Pologne (1576-1586), en vue de constituer une ligue antiturque non aboutie, et - le moment culminant – le secours, pathétique et victorieux, à Vienne, en 1683, du monarque polonais, Jean III Sobieski. Les tentatives susmentionnées confirment les prétentions de la Pologne à la reconnaissance de son rôle dans le projet historique de la communauté européenne, mais elles démontrent à la fois que le pays a été à l'époque solitaire dans ces œuvres. Cependant, il est dif ficile de nier que ce sont là des exemples d'engagement de la Pologne dans l'idée qui a pris aujourd'hui une dimension voire plus qu'européenne (OTAN), mais à laquelle la Pologne est restée fidèle, ne soit-ce qu'en raison de sa situation.

En 1385, les Polonais et les Lituaniens ont conclu la plus ancienne union interétatique annonçant la fusion des deux pays en un seul organisme. C'est alors que, une fois sur le trône polonais, le Grand-duc de Lituanie, Ladislas Jagellon (en lituanien Jogaila), s'est engagé à unir la Lituanie à la Pologne et à créer un seul État des Lituaniens et des Polonais en Europe de l'Est qui disposerait d'un potentiel suffisant pour s'opposer aux conquêtes agressives de l'ordre des chevaliers Teutoniques attaquant avec acharnement les deux pays. Le 14 août 1385, dans le document établi dans la ville lituanienne de Krewo, Ladislas II Jagellon a déclaré

«Nous, Jagellon, par la grâce de Dieu grand-duc de Lituanie, maître et héritier naturel de la Russie, annonçons à tous ceux qui y tiennent, et qui vont lire le présent écrit... [que] le grand-duc Jagellon promet et garantit de ses propres fonds et soins de restituer au royaume de Pologne tous les pays qui aient jamais été séparés de lui et conquis. Ce même grand-duc Jagellon promet de restituer leur liberté originaire à tous les chrétiens, et notamment aux individus des deux sexes, des territoires polonais qui - en vertu des coutumes de guerre – ont été emmenés et déportés, de telle sorte que chacun ou chacune puisse se rendre là où bon lui semble. À la fin, ce grand-duc Jagellon promet d'unir à jamais ses territoires lituaniens et russes à la couronne du royaume de Pologne».

En 1385, Ladislas II Jagellon, plus tard roi de Pologne, a fait en Europe de l'Est ce qu'en 1950, Robert Schuman a présenté – certes, dans d'autres conditions et sous une autre forme - en tant que plan d'unification de l'Europe. A vec les seigneurs lituaniens et polonais, qui étaient également des hommes politiques hors de commun Ladislas II Jagellon a fait aboutir, sans le savoir, une première union interétatique, bénévole, organisant d'énormes territoires de l'Europe centrale et de

l'Est, à partir de la Baltique jusqu'au bas Dniepr, à partir des frontières silésiennes jusqu'aux limites du grand-duché de Moscovie, dont la superficie dépassait 1.200 mille km$^2$. Cet acte, après maints amendements et ajouts de l'union celui de Wilno et de Radom en 1401, de Horodło - en 1413, de Grodno - en 1432, de Mielnik – en 1501 et de Lublin - en 1569 a fait fondre en un seul organisme étatique deux pays différents, trois peuples différents. Abstraction faite de diverses unions et alliances conclues dans l'Antiquité, comme l'Union du Péloponnèse ou la Symmaquie de Délos, il faut souligner que l'Acte de Krewo - et après l'Acte de l'Union de Lublin - n'ont pas eu de précédent dans l'Europe moderne. Jusqu'en 1385, l'Europe n'a pas connu d'union interétatique qui lierait deux pays par une union de cette nature, non seulement personnelle, car – je le rappelle – l'acte de Krewo a apporté des modifications essentielles à l'histoire et à la culture de la Lituanie grâce à l'embrassement par les Lituaniens, de manière universelle et bénévole, de la chrétienté, quoi qu'on puisse penser de ce caractère universel et bénévole. Dans l'histoire de l'Europe moderne, il n'y a pas eu avant d'initiative qui serait née dans des circonstances similaires, aurait eu des conséquences tout aussi importantes et aurait duré 410 ans, soit depuis 1385 jusqu'en 1795.

L'union polono-lituanienne a demeuré une union personnelle jusqu'en 1569, lorsque – à la Diète commune de Lublin – le dernier des Jagellons sur le trône de Pologne, Sigismond II Auguste, a uni les deux États en un seul organisme appelé depuis République des deux Nations. La République des Polonais et des Lituaniens a survécu, sans grandes tensions et querelles internes, jusqu'à ses partages qui, dans les années 1772-1795, ont été l'œuvre des trois pays voisins : Autriche, Prusse et Russie.

Je n'ai l'ombre d'un doute que les actes de l'union polono-lituanienne ont été étudiés par le parlement anglais et le Privy Council au cours des derniers mois précédant la mort d'Élisabeth I$^e$ Tudor (24 III 1603) et l'union anglo-écossaise des couronnes de 1603. D'où cette certitude ? Elle vient de ce que, lors de plusieurs recherches de quelques mois réalisées par moi au Public Record Office de Londres, j'ai eu entre les mains les documents certifiant ce fait.

En examinant la série *Calendar of State Papers. Domestic*[1] et les procès-verbaux des séances du Privy Council anglais, j'ai trouvé des inscriptions qui prouvaient que les textes des unions polono-lituaniennes des années 1385, 1411, 1569 ont fait, à plusieurs reprises, l'objet d'étude et de débats du parlement anglais et du

[1] Des extraits de ces documents ont été publiés au *Calendar of State Papers. Domestic, 1603-1610*, London 1857, p. 46, 90 et ss.

Conseil secret au cours des dernières années du règne d'Élisabeth Ire Tudor[2]. Comme il résulte des *Proceedings* parlementaires, le parlement élisabethain a étudié à cinq reprises les textes des unions polono-lituaniennes, tandis que le Privy Council s'en est occupé lors de quatre sessions consécutives, en examinant le projet d'associer, par le biais d'une union personnelle, deux pays indépendants : Angleterre et Écosse. Ce fait m'autorise à avancer la thèse que les textes des unions polono-lituaniennes ont joué un certain rôle dans la formation de l'ainsi dite union des couronnes de 1603 et, à coup sûr, plus de cent ans plus tard (1707), au moment de la naissance de l'union réelle anglo-écocssaise. Il y a peu encore, ce problème était tout à fait méconnu des historiens polonais et britanniques[3].

D'un point de vue formel, l'ainsi dite union des couronnes de 1603 n'a été confirmée par aucun document écrit. De même que l'union polono-lituanienne de Krewo, elle a été proclamée par le monarque et tout comme l'union de Krewo elle a consisté en une union personnelle classique, assurée uniquement par la personne du monarque - Jacques I er/VI. À l'encontre des annonces de Jacques, qui voulait quelque chose de plus qu'une «union des couronnes» en parlant de la «perfect union», s'agissant de toutes les autres questions, les deux pays demeuraient pleinement indépendants et pleinement autonomes.

Or, en admettant comme point de départ le fait que les principes d'une«union des couronnes» de 1603 étaient presque identiques avec les normes de l'union polono-lituanienne de 1385, avec les ajouts postérieurs, l'on peut considérer comme certain que le modèle polono-lituanien était celui des Anglais et des Écossais de 1603.

L'avènement au trône paternel de Suède, en 1592, du roi de Pologne Sigismond III (prince suédois Vasa, apparenté aux Jagellons, élu roi de la République en 1587), a été une deuxième initiative d'unification des deux organismes étatiques par une union personnelle dans la personne d'un monarque commun. Cette union n'avait pas de perspectives d'avenir pour plusieurs raisons : à cause de la misère politique de Sigismond III que, malgré tout, je mets à la première place; des différences économiques, culturelles et celles religieuses, ces dernières ayant

[2] PRO, *CSP. Domestic*, *1601-1603* et *CSP.Domestic 1603-1610*. Ces registres ont été publiés par M.A. Everett : *CSP.Dom. 1602-1603*, London 1870 (passim), et *CSP.Domestic 1603-1606*, London 1857 (p. 46, 90) ; *Acts of Privi Council, 1602-1603*, London 1864. Au total, le *CSP.Dom.* comporte cinq inscriptions relatives aux textes des unions polono-lituaniennes, et l'*APC* - quatre.

[3] En 1994, j'ai proposé à B. Krysztopa-Czupryńska, qui travaille actuellement à l'Institut d'histoire de l'Université de Warmie et Mazurie, de s'en occuper dans son mémoire de maîtrise. Ce qui a donné comme résultat un traité extrêmement intéressant, *Unia polsko-litewska z 1569 r. i angielsko-szkocka z 1707 r. Studium porównawcze/Union polono-lituanienne de 1569 et celle anglo-écossaise de 1707. Étude comparée*, „Zeszyty Naukowe WSP w Olsztynie. Prace Historyczne", z. I. 1997, p. 7-20.

commencé, dans la Pologne du XVII e siècle, à gagner en importance, pas toujours positivement parlant, pour transformer la Pologne, dans la IIe moitié de ce même siècle, d'un pays de tolérance en un État d'emportement religieux aveugle et obscurantiste que combattait, jusqu'à il y a peu, notre pape Jean Paul II en proposant à d'autres confessions, non seulement chrétiennes, œcuménisme et coexistence au sein d'une communauté de diverses religions. L'union polono-suédoise s'est effondrée au bout de quelques années lorsque les Suédois, protestants, avaient détrôné le bigot catholique et transmis le trône du pays à Charles de Södermanland, père du futur grand soldat, appelé «Lion du Nord», et roi de Suède, Gustave II Adolphe. Ce qui a donné lieu à une querelle pluriannuelle polono-suédoise pour le «*Dominium Maris Baltici*» et la couronne suédoise à laquelle prétendait non seulement Sigismond III, détrôné, mais aussi ses deux fils occupant le trône polonais: Ladislas IV Vasa (1632-1648) et Jean II Casimir (1648-1668), conflit qui n'a été définitivement clos qu'après la grande Guerre du Nord, en 1721, dans laquelle la Pologne avait été empêtrée par le roi de Saxe et de Pologne, Auguste II Wettin. Depuis ces temps, nous n'avons pas de conflits avec les Suédois, à l'exception – peut-être – des sprats de la Baltique (les pêcheurs polonais reprochant à leurs collègues suédois de les pêcher dans les eaux territoriales polonaises).

Ici, je vais mentionner encore une initiative, hélas, non réalisée, et oubliée aujourd'hui, au moment où l'Europe s'unifie - je pense au projet de fédération de Lituanie, Moscou et Pologne conçu par le grand hetman polonais, Stanisław Żółkiewski (1547-1620).

Dans ses mémoires,*Początek i progres wojny moskiewskiej/Début et progression de la guerre moscovite* (publiés en 1833), Żółkiewski – en décrivant sa victoire dans la bataille de Kłuszyn, en 1610, où il a battu les forces russes numériquement plus importantes que les siennes – a dévoilé beaucoup de facteurs conditionnant la politique moscovite de Sigismond III Vasa. Peu favorable à l'aventure moscovite, mais absorbé – contre son gré – dans ses tourbillons, l'hetman a défini son propre programme politique, différent de celui royal et du programme de la coterie courtisane des familles des magnats tels que Potocki, Mniszech et autres, intéressées à l'expansion de la République à l'Est. L'hetman était opposé à la politique d'expansion et c'est dans l'union dynastique avec le voisin oriental et la fusion de la Moscovie, sur la base d'une fédération, avec l'État polono-lituanien en un seul organisme étatique dans l'Europe de l'Est qu'il voyait un *modus vivendi* avec Moscou. Żółkiewski a trouvé parmi les boyards russes bien des partisans de sa conception en faisant avancer au premier plan l'assurance du respect des traditions politiques et religieuses. Les mémoires de Żółkiewski se détachent positivement sur le fond d'un emportement antimoscovite, présenté par divers

auteurs contemporains. Sa relation ne comporte point d'invectives antimoscovites, mais propose une analyse politique lucide et concrète en démontrant la nécessité de faire montre d' «humanité» à l'égard de la Moscovie. D'où ses recommandations faites aux chefs militaires de faire preuve de discipline et de chevalerie à l'égard de la population russe. L'hetman s'est avéré être non seulement un stratège hors de commun, mais aussi un homme politique et un écrivain hors pair, car ses mémoires sont considérés comme faisant partie des classiques de la littérature ancienne polonaise.

Plusieurs raisons se sont conjuguées ayant empêché de donner une suite sérieuse au projet de Żółkiewski. La première, c'est que Sigismond III lui-même voyait d'un mauvais œil tout plan qui ne tiendrait pas compte de sa candidature au chapeau de Monomaque – couronne moscovite. La deuxième - un trop grand abîme religieux entre l'orthodoxie russe et le catholicisme polonais. La troisième - c'est la recherche, par les Russes eux-mëmes, des alliances voire avec Londres au lieu de les chercher avec Varsovie [4].

Les initiatives polonaises en matière de l'union ne prennent pas fin avec le XVII$^{e}$ siècle. Parmi les conceptions à caractère moins essentiel, qui n'avaient pas été suivies d'actions concrètes ou ne soit-ce que – comme dans le cas du projet de Żółkiewski – d'une plus vaste justificatiion politique, on peut mentionner la proposition de constitution d'une union étatique comprenant la Lituanie, la Pologne et l'Ukraine – contrepoids pour la Russie bolchevique – annoncée, en 1918 par l'éminent homme politique polonais, chef de l'État, Józef Piłsudski (1867-1935). Le général Władysław Sikorski (1881-1943), premier ministre du gouvernement de la République de Pologne en exil, mort le 4 juillet 1943 à Gibraltar , dans une catastrophe aérienne obscure jusqu'au jour d'aujourdhui, envisageait pendant la

[4] Dans ma vie, j'ai eu à connaître une répercussion plaisante de ce denier aspect de la question. En présentant la critique de ma thèse de doctorat, traitant des relations polono-anglaises au cours de la première moitié du XVII$^{e}$ siècle, un des plus éminents historiens de la seconde moitié du XIX$^{e}$ siècle m'a accusé dans un entretien – se basant sur des documents trouvés au Public Record Office londonien, entre autres la lettre du lord Chamberlain à Carleton, en date du 29 IV 1613, où celui-là écrivait : « Plusieurs grands seigneurs moscovites ont présenté l'of fre de se mettre sous la protection du roi, qui envisage d'envoyer une armée à Moscou et à exercer le pouvoir par l'intermédiaire d'un lieutenant et est sûr du succès », et la dépêche de l'ambassadeur de Venise à Londres qui rapportait au doge l'arrivée à Londres, le 5 novembre 1612, d'une ambassades des boyards moscovites avec la proposition faite à Jacques I$^{er}$ de prendre le trône des tsars (CSP Ven., t. XII, nr 137 et 808) - de confabulation et de fantaisi e, car il l'a considéré comme invraisemblable et non confirmé par les historiens plus anciens. Lorsque je lui avait montré les photocopies des documents de sources et communiqué que, durant la Grande Guerre, Nina Lioubimenko a publié dans l' « English Historical Review » trois articles à ce sujet, il en a été extrêmement surpris. À la fin de cette consultation, il m'a dit : «Vous savez, j'ai connu Nina Lioubimenko à Paris, en 1927» - et d'ajouter, avec quelque gêne : « Mon Dieu, c'était une blonde vive et très intéressante ». Sa critique ne comportait aucune réserve.

guerre la possibilité d'une alliance polono-tchèque après la Seconde Guerre mondiale. Józef Retinger (1888-1960), homme politique polonais, conseiller de Sikorski et ami d'Aristide Briand, travaillait à des conceptions de coopération et d'intégration européenne similaires mais de plus grande envergure encore. Adam Rapacki (1909-1970), politique et ministre des Afaires étrangères, a proposé un plan d'une autre échelle, cette fois-ci seulement, ou peut-être voire – de création d'une zone désatomisée européenne.

Pour en terminer avec cette énumération des idées unificatrices polonaises ayant pour but d'unir l'Europe de l'Est ou du Nord-Est, plusieurs siècles avant que ne l'aient fait les «pères» de l'Europe unie : Jean Monet, Robert Schuman, Alcide de Gasperi et Konrad Adenauer , il faut encore ajouter la *Constitution pour l'Europe* du participant àl'Insurrection de novembre (1830-1831) -Wojciech Bogumił Jastrzębowski. Ce qu'il y a de fascinant dans la*Constitution pour l'Europe,* ce n'est pas l'idée même de l'unification européenne, mais le fait que Jastrzębowski y a contenu et nommé nombre d'idées reprises plus tard dans l'ordre et la nomenclature communautaires bien que les créateurs de cette union aient ignoré jusqu'à l'existence de Jastrzębowski, et de sa *Constitution* dont le manuscrit a plus de 160 ans. C'est justementJastrzębowski qui a présenté l'idée des «présidences» de l'Europe unie – non pas de 6 mois, comme aujourd'hui, mais durant toute une année calendaire, de la Cour et de nombre d'autres principes constituant à l'heure actuelle un élément obligatoire du droit et du régime de l'Europe unie.

Jastrzębowski, participant à l'Insurrection de novembre, artilleur de la Garde nationale ayant combattu entre autres à Olszynka Grochowska, naquit en 1799 à Gierwaty, à proximité de Maków Mazowiecki. Bien que les deux parents l'aient rendu orphelin assez tôt, malgré les conditions matérielles difficiles, il a étudié à l'Université de Varsovie, dans un premier temps au Département de construction et de métrologie. Au bout de deux ans, il a changé d'avis et a obtenu l'autorisation d'étudier à la Faculté de philosophie qu'il a terminée en 1825. Ses études achevées, il a passé les quatre premières années au cabinet physique de l'Université où il s'occupait d'interprétation des observations météorologiques, réalisées par les météorologues de Varsovie depuis presque 50 ans, ainsi que de certains travaux du domaine de la métrologie nécessitant l'utilisation du compas. Ayant présenté les deux problèmes au cours des séances de la Société des amis des sciences de Varsovie, il a eu la possibilité, en 1829, de bénéficier de la qualité de l'ainsi dit «membre adoptif» de la SASV. Encore pendant ses études, il s'est intéressé à la botanique qui est devenue une véritable passion de sa vie et son métier. Sous la direction du prof. Marian Szubert, il a réalisé un herbier des plantes de la Podlachie, de la Mazovie, de la

région de Lublin, de Sandomierz et de Cracovie où il a décrit de nombreuses plantes méconnues des naturalistes. Son herbier a été apprécié par les autorités universitaires qui, en 1828, ont créé pour lui le poste de «naturaliste adjoint».

Il a pris part – comme je viens de le dire – à l'Insurrection de novembre et à la guerre polono-russe et, sans avoir de grade d'officier, il a harangué, en 1831, place Saski à Varsovie, les soldats allant au combat. La même année Jarzębowski a écrit *Wolne chwile żołnierza polskiego, czyli myśli o wiecznym przymierzu między narodami cywilizowanymi/Les Loisirs du soldat polonais ou réflexions sur l'éternelle alliance entre les nations civilisées*, auxquels est jointe la *Constitution pour l'Europe*. Le tout a paru au mois de mai 1831. La *Constitution* de Jastrzębowski contient le projet d'un Congrès européen – archétype de la future Société des Nations dont l'objectif non réalisé – c'est notoire – a été de garantir une paix durable. Jastrzębowski a développé ses réflexions dans le *Traktat o wiecznym przymierzu między narodami ucywilizowanymi/Traité de l'éternelle alliance entre les nations civilisées*. Aussi bien le premier que le deuxième de ces ouvrages lui ont valu des chicanes du régime tsariste et l'interdiction d'emploi. Ainsi, presque cinq ans durant, Jastrzębowski gagnait sa vie en donnant des cours particuliers. Seulement en 1836, il a trouvé un emploi à l'Institut d'agronomie de Marymont où il a étalé ses capacités pédagogiques et didactiques et, en commun avec un autre naturaliste illustre, M. Oczapowski, a créé le Jardin des plantes. Pendant vingt deux ans, l'auteur de la *Constitution pour l'Europe* a formé nombre d'éminents agronomes et agriculteurs, publié plusieurs traités de minéralogie, météorologie, etc., tandis qu'un de ses disciples, K. Majewski, a élaboré – sur la base des notes et des cours de Jastrzębowski – *Zasady rolnictwa/ Principes d'agriculture* (1875). Sa capacité à nouer des contacts avec ses étudiants et sa manière de leur transmettre ses connaissances l'ont rendu le plus populaire des professeurs ce qui, en définitive, en 1858, lui a valu le conflit avec le directeur de l'Institut, S. Zdzitowiecki. Ce dernier, sans avoir – il est vrai – de succès pédagogiques semblables, savait mieux comment il fallait procéder avec les jeunes. Il n'est pas difficile de deviner le résultat de ce conflit – *nec Hercules contra plures...*

Pendant un bref laps de temps, Jastrzębowski a exercé les fonctions de superviseur de l'école de powiat de Varsovie et, 1860, il s'est vu confier les fonctions d'inspecteur de la forêt Czerwony Bór, située au sud de Łomża, avec la mission de reboisement d'une vaste aire de terrains vagues sableux. Il a aménagé un arboretum à Brok sur le Bug et a doté d'une préparation pratique toute une génération de jeunes forestiers qu'il a suivis pendant leur stage. En 1874, il a pris sa retraite et s'est établi à Varsovie où il est mort en 1882. Il a été enterré au cimetière de Powązki, ses disciples lui ont rendu hommage en érigeant, à

l'église Sainte-Croix de Varsovie, une plaque commémorative, œuvre du sculpteur Andrzej Pruszyński, qui a également été l'auteur de la croix située devant l'entrée de l'église.

Je nourris l'espoir que les *Loisirs du soldat polonais...* dont j'ai trouvé la brochure, de 18 pages, publiée à Varsovie en 1831, à la Bibliothèque Jagellonne, cote 222707 I, susciteront enfin l'intérêt des historiens et des politologues, car l'ouvrage le mérite, et seront aperçus aussi des successeurs des «pères de l'Europe» qui, aujourd'hui, revendiquent le monopole d'être les héritiers et les continuateurs de l'idée de l'unification de l'Europe – je pense ici à des interventions hautaines de certains hommes politiques occidentaux. Et, pour revenir à Jastrzębowski – il n'a pas joui de beaucoup d'intérêt, même dans sa patrie. Il était plus connu comme naturaliste, certes. En 1926, Janusz Iwaszkiewicz, journaliste, a été le premier à essayer de mettre au grand jour sa *Constitution*… l'ayant dénichée dans les archives de la Société des amis des sciences de Varsovie. Il l'a rééditée sous le titre modifié de *Nieznany polski projekt wiecznego pokoju/Projet polonais méconnu d'une paix pérenne*, («Polityka Narodów», t. 9, 1937, z. 4, pp. 385 – 395), en tâchant de vulgariser dans la presse plus d'informations à son sujet. *Aujourd'hui, quand la Pologne a enfin trouvé sa place dans la Société des Nations* – écrivait Iwaszkiewicz dans le «Kurier Warszawski» – *que dans l'Europe tout entière retentissent des slogans pacifistes, il est bon de rappeler que la Pologne sacrifiait à ces mots d'ordre encore au moment où personne n'en parlait en Europe*.

Presque 30 ans après Iwaszkiewicz, M. Muszkat est revenu à Jastrzębowski en discutant, dans «Studia i Materiały do Historii Sztuki Wojennej /Études et matériaux concernant l'Histoire de l'art militaire» (1954, pp. 293-301), les opinions du soldat de l'Insurrection de novembre. Il y a quelques années, l'idée du naturaliste et politologue polonais a inspiré, en 1994, Mme Barbara Kubicka-Czekaj, docteur à la WSP de Częstochowa (actuellement : Académie), qui a publié, à ses frais, une petite brochure intitulée : *W.B. Jastrzębowskiego Konstytucja dla Europy/Une Constitution pour l'Europe, par W.B. Jastrzębowski*, et à qui j'exprime ici toute ma gratitude pour m'en avoir transmis un exemplaire. Madame le docteur a essayé de vulgariser à Paris les informations sur l'auteur polonais de l'idée de l'union européenne ce qui, il est vrai, a suscité de l'intérêt, mais aussi de l'incrédulité – Qu'est-ce à dire? Comment un *petit Polonais,* méconnu de tous pourrait-il être un meilleur prophète et visionnaire que leur J. Monet et R. Schuman ou, avant encore, Aristide Briand ? Benon Dymek, quant à lui, a publié, dans les années 2002-2003, deux traités scientifiques : *Wojciech Bogumił Jastrzębowski. Botanik, wizjoner zjednoczonej Europy / Wojciech Bogumił Jastrzębowski. Botaniste, visionnaire*

*d'une Europe unie* (2003) et *Wizja przymierza między narodami Europy z 1831 r. według Wojciecha Bogumiła Jastrzębowskiego/Vision d'une alliance des nations européennes de 1831 selon Wojciech Bogumił Jastrzębowski* (2003).

Dans *La Constitution pour l'Europe*, dont le Lecteur trouvera le texte intégral ci-après, composée de 77 articles, Jastrzębowski, un peu visionnaire et mystique - ce qui explique sans doute pourquoi il a clos la constitution par les deux chiffres de «7» magiques – admet la création par les institutions parlementaires nationales d'un «Congrès paneuropéen, composé de mandataires, élus par toutes les nations» dont l'objectif majeur serait d'assurer une paix pérenne, d'abolir les frontières géographiques dans l'existence desquelles Jastrzębowski voyait «la principale cause de l'effusion du sang européen» ; d'éliminer des manuels des informations sur les batailles d'antan, de condamner à l'oubli éternel l'histoire militaire qui – depuis les temps les plus anciens de l'humanité, à partir des *shiji* chinois anciens, à travers les épos grecs, chantés ou récités par des *aèdes*, jusqu'à l'histoire contemporaine des guerres et de l'art militaire – constitue sinon la base du moins un pourcentage important du patrimoine historiographique mondial.

Dans la conception de Jastrzębowski, l'Europe – privée des frontières internes – était censée respecter l'identité nationale des citoyens qui devaient jouir d'une autonomie vaste: *La nation doit être composée d'individus parlant la même langue, sans égard au lieu de leur séjour en Europe. Chaque nation relève des lois nationales, prises par la diète. Les nations dispersées, comme celle tzigane ou juive, doivent relever non seulement de leurs lois, mais aussi des lois des nations avec lesquelles elles sont mélangées*. Le motif essentiel de la *Constitution*... a été le pacifisme, ce qui a trouvé son reflet dans l'art. 36 : *Toutes armes de guerre, soit celles destinées à l'effusion de sang, se trouvant sur la terre européenne – deviennent propriété de l'Europe tout entière. Une partie d'entres elles vont être déposées dans des endroits indiqués par le Congrès européen pour s'en servir, le cas échéant, afin de défendre les lois et la sécurité de l'Europe. Une autre partie, inutile, de ces armes seront rassemblées dans un point central de cette partie du monde où elles seront utilisées pour faire ériger un temple à Dieu, protecteur des droits et de la paix.*

L'Europe devait devenir une fédération non pas des États, mais des nations, dont il est question à l'art. 1 1: *La nation sera composée d'individus parlant la même langue, sans égard au lieu de leur séjour en Europe.* Le cas échéant, Jastrzêbowski a bien devancé la réalité – nulle part et jamais, aucun accord rédigé par écrit ou pris par acclamation - à lire: imposé – parlant de l'amitié entre États n'a donné ses preuves, car il n'avait pas de sens. Si l'on a un peu de jugeote, il est évident qu'il ne peut pas y avoir de l'amitié entre les États – créa-

tions institutionnelles - et que l'on ne peut parler que des unions nationales, sociales, unions entre individus ou unions de sexes, mais jamais de celles entre États. Jastrzębowski l'avait compris il y a 176 ans et nous, récemment encore, nous rabâchions sans cesse les concepts de l'amitié polono-soviétique, polono-est-allemande ou polono-mongole.

Cette Europe des nations a été développée par Jastrzębowski dans les art.art. 13 et 14 :

13. *Tout comme avant, aujourd'hui aussi dans un seul pays peut vivre une seule nation ou plusieurs, mélangées, mais indépendantes les unes des autres. Séparée des autres ou mélangée avec elles, la nation ne va obéir qu'à ses propres lois nationales. Une nation dispersée, semblable par exemple à celle juive ou tzigane, doit obéir non seulement à ses propres lois, mais aussi à celles des nations avec lesquelles elle est mélangée. Et cela va durer jusqu'au moment où une telle nation ne se fixera pour objectif son éducation ce qui est visé par le chiffre 27.*

14. *Toutes les nations faisant partie de l'alliance éternelle en Europe se doivent d'obéir de manière égale aux lois européennes.*

Jastrzębowski considérait comme nations civilisées celles qui allaient s'allier pour constituer le Congrès européen et comme barbares celles qui n'avaient pas renoncé à l'avarice et aux guerres ; il ne fermait pas à de telles nations la voie de l'union, mais à condition de renoncer à l'avarice. Cette voie pourrait être aussi ouverte à une nation extraeuropéenne. Comme on le voit, pour Jastrzębowski le concept de l'Europe (qu'il n'y ait seulement pas de guerres !) était identique à celui de civilisation, mais il reconnaissait la possibilité de devenir européennes, c'est-à-dire civilisées, à d'autres nations aussi.

***CONSTITUTION POUR L'EUROPE :***

Introduction

Le cinquante neuvième siècle de c i v i l i s a t i o n touche à sa fin ; n'est-il pas temps d'inaugurer l'ère de la barbarie? Trois cents générations ont déjà été gouvernées par le droit de l' é g a l i t é. À quand l'avènement de la loi du p l u s f o r t ?

Article 1. Toutes les nations européennes (si elles veulent jouir d'une paix durable et du bonheur) doivent renoncer à leurs libertés et devenir esclaves des lois ; tandis que tous les monarques (s'ils veulent gouverner tranquillement, avec la bénédiction des nations et jouir de la gloire) ne peuvent être d'ores etdéjà que des gardiens et des exécuteurs de ces lois et ne se doter d'autres titres que de pères des nations, soit patriarches.

2. Les lois dont il y est question doivent interpréter la vérité de tous temps, soit la volonté de Dieu, qui nous est révélée dans son commandement : « Aime ton prochain comme toi même ».

3. Face à Dieu et la loi, tous les hommes, donc toutes les nations, sont égaux.

4. Les lois nationales seront la garantie de l'égalité des individus qui composent la nation ; tandis que la garantie de l'égalité des nations européennes seront les lois européennes qui doivent constituer la base de l'alliance éternelle entre nations civilisées.

5. Les lois nationales sont prises par la nation par le truchement de ses mandataires, c'est-à-dire la diète; alors que les lois européennes sont adoptées par l'Europe par le biais de son Congrès, composé de mandataires de toutes les nations.

6. Les lois de la nature, c'est-à-dire les lois de Dieu, seront la base tout aussi bien des lois nationales que celles européennes, l'humanité et la justice constituant leurs qualités.

7. La majorité des opinions des législateurs sera le principe de l'adoption des lois.

8. Le patriarche sera le gardien et l'exécuteur des lois nationales, tandis que le Congrès lui-même sera le gardien et l'exécuteur des lois européennes.

9. D'ores et déjà, il n'y aura plus de pays en Europe, mais seulement des nations. Les frontières actuelles entre les pays (cause principale de l'effusion du sang européen) sont abolies à jamais.

10. Il y aura tant de patriarchies dans l'Europe qu'il y a des nations[5].

11. La nation sera composée d'individus parlant la même langue, sans égard au lieu de leur séjour en Europe.

12. Le nombre inégal d'individus composant les nations ne va pa compromettre leur égalité.

13. Tout comme avant, aujoud'hui aussi dans un seul pays peut vivre une seule nation séparée ou plusieurs mélangées, mais indépendantes les unes des autres. La nation, tout aussi bien séparée que celle mélangée avec d'autres, ne va relever que de ses lois nationales. Une nation dispersée, comme par exemple celle juive ou tzigane, doit obéir non seulement à ses lois propres, mais aussi à celles des nations avec lesquelles elle est mélangée. Et cela va durer jusqu'au moment où une telle nation ne se fixera pour objectif son éducation ce qui est visé par le chiffre 27.

14. Toutes les nations, faisant partie de l'éternelle alliance en Europe, doivent la même obéissance aux lois européennes.

15. La dignité de patriarche est héréritaire, revenant à son fils qui va le mieux répondre à l'objectif de l'éducation dont il est question au chiffre 36.

[5] « Suivant la charte des nations, établie à Berlin en 1821 par PO « Etzel, ce chiffre atteint 64 » [note de W.B. Jastrzębowski].

16. Les monarques actuels disposeront de la primauté pour ce qui est des fonctions patriarcales. Une nation qui n'ait pas de monarque à ce jour, va élire comme patriarche un souverain qui gouvernait à ce jour sans nation[6] et, à défaut de celui-ci, une personne de la famille monarchique qui s'est le plus rapidement prononcée pour l'alliance éternelle en Europe.

17. À l'instar de toutes les nations, leurs patriarches aussi seront égaux face à la loi européenne.

18. Après avoir pris ses fonctions, le patriarche prêtera à sa nation serment de respecter les lois nationales, tandis que la nation lui jurera réciproquement obéissance.

19. Les lois nationales, adoptées par la diète au cours de l'exercice des fonctions d'un patriarche, doivent être par lui entérinées de sorte à être contraignantes tout aussi bien pour lui que pour la nation.

20. Le patriarche, afin de garantir plus d'ef ficacité à ses fonctions de gardien et d'exécuteur des lois qui lui sont confiées par la nation, va s'assurer l'assistance des ministres dont le nombre est indiqué par la loi nationale.

21. La personne de patriarche, en sa qualité de protecteur de la chose la plus sacrée après Dieu, c'est-à-dire la loi, est sacrée et inviolable. Le tort porté au patriarche par quiconque sera châtié par le Congrès européen en vertu des lois existantes.

22. Seulement les ministres seront responsables de la conduite du patriarche à l'égard de la nation, sans leur signature aucune disposition du patriarche ne pouvant être contraignante.

[6] Les monarques de ce type sont, par exemple empereur autrichien qui pourrait devenir patriarche du peuple allemand ; roi de Prusse qui pourrait devenir patriarche du peuple polonais, etc.

23. La diète nationale saisira le Congrès européen de la violation des lois nationales par les ministres et celui-ci, le cas échéant, procédera conformément à la législation existante.

24. Le gouvernement national sera composé de partiarche, de ministres et de fonctionnaires désignés par une disposition nationale interne. La nomination d'un fonctionnaire, aussi bien de manière publique que celle secrète, à l'encontre d'une telle disposition sera considérée comme violation des lois nationales.

25. Raison, vertu, mérite, amour et confiance de la nation, et – surtout – connaissance des lois donneront droit à l'exercice de toutes les fonctions.

26. La différence de religion n'entraînera pas de différence en droits ; tout individu donc, quelle qu'en soit la confession, jouira de la même protection des lois nationales et de celles européennes et disposera d'un droit égal à toutes les fonctions et dignités.

27. Le but de l'éducation de toute nation sera : perfectionnement de l'homme, soit sa préparation en vue de devenir un membre utile de la société ; confirmation en lui du pouvoir de la raison sur les passions, vulgarisation de la connaissance des lois divines et sociales : inculcation d'un respect religieux à leur égard ; à la fin, inculcation d'un amour familial entre les nations unies par le lien d'une alliance éternelle. Les souvenirs historiques, capables de ranimer les sentiments hostiles entres les nations, seront présentés aux jeunes comme autant de monuments de barbarie.

28. Le patriarche assurera avec ses ministres l'exercice de leurs fonctions au siège national (capitale) où la diète nationale aussi aura ses réunions. Le patriarche ou l'un de ses ministres réaliseront tous les ans un voyage à travers le pays pour voir si les lois et les décisions y sont partout étroitement exécutées. Un tel voyage s'effectuera le plus souvent incognito.

29. Les nations demeurant depuis des siècles dans des relations d'une étroite amitié et fraternité peuvent, suivant leur libre souhait, avoir en com-

mun un seul patriarche à qui chacune d'entre elles prêtera séparément serment de respecter ses droits et lui de résider, tous les trois ans, dans un autre siège. Un tel patriarche ne cesse d'être égal à d'autres patriarches en Europe.

30. Chaque nation enverra au Congrès européen un nombre égal de mandataires qui doivent être élus par la diète nationale.

31. Si la réunion de la diète n'a pas lieu, le patriarche peut révoquer le mandataire compromettant la confiance que la nation a en lui et nommer à sa place un autre qui peut être révoqué ou entériné par la diète suivante.

32. Le Congrès européen sera permanent et devra exercer ses fonctions tous les ans dans un autre siège des nations européennes, conformément à l'ordre juridique mentionné au chiffre 37.

33. La langue la plus répandue en Europe sera celle diplomatique du Congrès, tandis que la langue nationale sera la langue gouvernemantale au sein de chaque nation. Le Patriarche gouvernant plusieurs peuples prendra des dispositions dans la langue de la nation à laquelle celles-ci se rapportent.

34. La première des obligations du Congrès européen consistera à adopter des lois européennes qui doivent commencer par un article prenant la teneur suivante : la paix en Europe est durable et éternelle, son principal objectif sera d'arrêter pour tous temps l'effusion du sang humain ou de mettre fin à la barbarie.

35. Toutes armes de guerre, soit celles destinées à l'effusion de sang, se trouvant sur la terre européenne – deviennent propriété de l'Europe tout entière. Une partie d'entres elles vont être déposées dans des endroits indiqués par le Congrès européen pour s'en servir , le cas échéant, afin de défendre les lois et la sécurité de l'Europe. Une autre partie, inutile, de ces armes seront rassemblées dans un pointcentral de cette partie du monde où elles seront utilisées pour faire ériger un temple à Dieu, protecteur des lois et de la paix.

36. Un périmètre de quelques milles tout autour de ce temple sera appelé lieu sacré en Europe et destiné à éduquer les fils des patriarches européens dont l' [éducation][7] sera confiée aux plus vertueux et aux plus savants des citoyens de l'Europe, élus d'un commun accord par le Congrès et les patriarches européens. Il appartiendra au Congrès européen d'adopter des lois pour de si jeunes candidats aux fonctions de futurs patriarches, de même que pour leurs maîtres. En adoptant ces lois, le Congrès non seulement prendra en considération les objectifs de l'éducation mentionnés sous le chiffre 27, mais aussi prendra en compte que la vie de futurs patriarches puisse devenir un modèle de conduite à suivre pour les nations qu'ils doivent gouverner ; en outre, que ces patriarches ne fassent pas asseoir leurs gloire et bonheur sur le nombre d'individus assujettis par eux, mais sur ceux qu'ils ont rendu heureux.

37. Dans le temple de Dieu, protecteur des lois et de la paix, seront placés des emblèmes ou des armoiries de toutes les nations faisant partie de l'alliance éternelle, avec des inscriptions portant, en langue nationale et celle latine, les dénominations de ces nations et de leurs patriarches, tout comme la date d'adhésion à l'alliance éternelle en Europe. L'ordre dans lequel tous ces emblèmes doivent être placés correspondra à celui dans lequel les nations ont adhéré à l'alliance. Au cas où toutes les nations se seraient déclarées pour la paix éternelle au cours de cinq années consécutives, à partir de 1831, en ce cas-là leurs dénominatons avec leurs emblèmes seront placés suivant l'ordre alphabétique latin. L'ordre des emblèmes nationaux dans le temple s'appelera ordre juridique conformément auquel les mandataires des nations sont tenus de siéger au Congrès européen.

38. Une nation qui, pendant dix ans, ne se serait pas déclarée pour la paix éternelle en Europe, et a fortiori celle qui, à base de quelconques prétentions imaginaires ou acquises par violence, aurait osé s'opposer à une autre nation, ne sera pas considérée comme une nation européenne, ou civilisée, mais comme une nation barbare.

[7] C'est la version du manuscrit. Le texte imprimé comporte en marge un ajout au crayon – instruction.

39. Une nation barbare sera exclue de la protection des lois européennes tant qu'elle n'aura pas adhéré à l'alliance éternelle.

40. Toute nation, de quelque partie de la terre que ce soit, a le droit d'adhérer à l'alliance éternelle en Europe et de jouir de la protection des lois européennes.

41. Toute opposition faite par un pouvoir autoritaire à l'adhéson de la nation à l'alliance éternelle autorise cette nation à considérer un tel pouvoir comme lui hostile, illégal et s'obstinant à être en faveur d'un système sanguinaire et barbare.

42. Un monarque qui s'opposerait pendant plus de cinq ans à l'adhésion de la nation à l'alliance éternelle non seulement perdra à jamais, ainsi que sa progéniture, le droit d'exercer des fonctions patriarcales, mais en plus sera considéré comme ennemi de la paix et des lois et condamné à être éternellement maudit par les générations futures.

43. Le Congrès européen assure son intermédiaire à toute nation demandant de l'aide afin de surmonter cette opposition, l'empêchant de participer à l'alliance éternelle.

44. Le préjudice porté aux lois d'une nation faisant partie de l'alliance éternelle par une autre nation, qu'elle soit européenne ou barbare, sera considéré comme un tort fait aux lois de toute l'Europe.

45. Tout attentat perpétré en vue de détruire l'alliance éternelle ou l'idée consistant à extraire ne soit-ce qu'une seule nation de cette union sacrée seront considérés comme un tort porté aux lois européennes.

46. Il appartiendra au Congrès de définir les modes de réparation des torts faits aux lois europoéennes qui, ce faisant, est tenu au respect de la législation existante.

47. La conservation des armes de guerre ou sanglantes, ne soit-ce qu'en quantités minimes, dans des endroits non définis par le Congrès européen, sera considérée comme un attentat visant à rompre la paix pérenne et, par là-même, comme préjudiciable aux lois européennes.

48. Les endroits où, sur l'ordre du Congrès européen, seront déposées les armes de guerre, vont s'appeler lieux sanglants. Le seul fait de pénétrer dans un lieu sanglant sans autorisation du Congrès et, a fortiori, de prendre en main les armes qui s'y trouvent sera considéré comme un attentat visant à rompre la paix pérenne en Europe et entraînera la perte pour dix ans des droits nationaux et européens. Mêmes les patriarches et les membres du Congrès seront assujettis à cette loi.

49. L'armée permanentne sera dissoute à jamais en Europe, après la rémunération au préalable de ses mérites posés à ce jour, ce dont le Congrès européen s'occupera immédiatement après sa première réunion.

50. Sur la demande du Congrès européen, tout citoyen de l'Europe (nous appelons citoyen tout individu qui, pour une raison quelconque, est utile à la société) devient soldat que l'on ne peut utiliser à d'autres fins que celles consistant à assurer la défense des lois de l'Europe et sa sécurité.

51. Les coûts d'une gurre à venir doivent être répartis par le Congrès également sur toutes les nations faisant partie de l'alliance en fonction du nombre des individus les composant.

52. Afin de maintenir la sécurité intérieure au sein de la nation, soit pour doter de la puissance nécessaire le patriarche qui est le gardien et exécuteur des lois nationales, une garde des lois sera conservée aux frais de la nation.

53. Personne d'autre que le patriarche lui-même ne peut être chef de la garde des lois. Les gardes des lois des nations mélangées entre elles demeureront sous le commandement de leurs patriarches, mais le commandement en chef sera exercé tous les ans par quelqu'un d'autre, conformément à l'ordre juridique dont il est question au chiffre 37.

54. Le service dans la garde des lois sera donc une école militaire de futurs défenseurs de la sécurité de l'Europe. Tout citoyen de l'Europe est tenu de consacrer trois ans de sa vie au service dans la garde des lois au sein de sa nation. Outre l'obligation d'accomplir les devoirs inhérents à ce service que lui indiquera le patriarche, tout membre de la garde des lois aura à connaître l'art de guerre et apprendre les lois de la guerre pour recevoir, la troisième année, de la part du Congrès européen, des mains de son partriarche, un brevet de citoyen soldat qui lui donnera un accès libre à tous les lieux sanglants en Europe pour prendre connaissance de l'utilisation des armes qui s'y trouvent. Le citoyen soldat, une fois terminé son service de trois ans, remet son brevet à son successeur et retourne à des obligations civiles. Le brevet du citoyen soldat ne peut en aucun cas être confié à une personne ne faisant pas partie de la garde des lois (désireuse, par exemple, de visiter un lieu sanglant), seulement après une autorisation expresse du patriarche compétent ; toutefois, seul le citoyen soldat sera responsable devant le Congrès européen des effets qui puissent en découler. La surveillance des lieux sanglants en Europe doit être confiée aux seuls citoyens soldats.

55. Pour ne pas être considérées comme provenant d'un lieu sanglant, les armes de chasse et tous les outils de la ferme, ceux artisanaux, etc., pouvant servir à priver de vie, devraient être marquées de l' emblème de la paix pérenne prescrit par le Congrès européen.

56. Utiliser une arme marquée de l'emblème de la paix pérenne pour priver quelqu'un de vie et, en règle générale, pour enfreindre les lois nationales ou européennes, sera considéré comme le crime majeur en Europe et provoquera en conséquence la perte de la protection de ces lois pour cinquante ans. Nul, même le patriarche et membre du Congrès européen, n'échappe à ces lois.

57. La garde des lois, au cours du service de trois ans, se servira d'armes frappées de l'emblème de la paix pérenne.

58. Aucun homme méconnaisant les lois de la guerre ne peut porter ni armes de guerre, ni armes frappées de l'emblème de la paix pérenne.

59. La connaissance des lois de la guerre que le Congrès, dans l'esprit de l'article 57, prescrira pour la garde des lois constituera une partie de l'éducaton des jeunes de chacune des nations.

60. L'ensemble des biens possédés par les individus composant une nation constitue la propriété nationale. La partie prescrite du revenu de tels biens, c'est-à-dire l'impôt, sera confiée à la gestion du gouvernement national, afin de satisfaire les besoins généraux de la nation, à savoir : maintien du gouvernement, service de Dieu, garde des lois, de même que vulgarisation des sciences, arts, industrie, etc.

61. Les biens publics, c'est-à-dire les biens nationaux, seront répartis par le gouvernement national entre les membres de la nation ayant posé des mérites et étant dépourvus de propriété. Dans le cas des nations mélangées, où il n'est pas certain à quelle nation de tels biens nationaux appartiennent, leur répartition sera effectuée par un comité désigné par les gouvernements des nations intéressées. Les biens indivis, comme par exemple les mines, doivent demeurer à jamais sous l'administration directe du gouvernement national, tandis que le revenu qui en résulte sera destiné au rachat des propriétaires privés de biens qui leurs sont inutiles et qui seront distribués aux membres de la nation pauvres et respectueux des lois.

62. Le membre d'une nation acquérant la propriété d'un membre d'une autre nation, mélangée à la première, l'acquiert par là-même de la nation toute entière. Cette loi n'est pas applicable aux nations séparées.

63. Le citoyen d'une nation ne peut devenir citoyen d'une autre nation et y transférer ses biens que lorsqu'il aura cessé de se servir de la langue nationale et y renoncera manifestement devant son gouvernement.

64. En résultat des changements dont il est question dans les deux articles précédents, le passage du bien d'une nation, devant devenir propriété d'une autre nation, devrait être porté à la connaissance du c o m i t é dont il est question au chiffre 62.

65. Tout comme une prise de possession violente d'un bien privé d'un homme par un autre, une acquisition semblable de la propriété nationale par une autre nation sera considérée dans tous les cas comme un pillage illégal. Au cas où les gouvernements des nations en conflits ne seraient pas à même de régler une telle af faire par des moyens pacifiques, la question doit être tranchée par le Congrès européen conformément à la législation existante.

66. Les malentendus et délits intervenant entre les membres d'une nation seront réglés et sanctionnés par les tribunaux nationaux en vertu des lois nationales ; tandis que les malentendus et délits intervenant entre les membres des nations séparées seront réglés et sanctionnées par des commissions judiciaires désignées par les tribunaux des nations dont ces membres en conflit font partie. Au cas où la commission judiciaire ne serait pas à même de régler l'af faire en question, celle-là va être tranchée par les gouvernements nationaux compétents.

67. Tous litiges entre les nations ne pouvant pas être réglés par la voie pacifique par leurs gouvernements seront tranchés de la même manière que les questions relatives aux appropriations illégales (66) par le Congrès européen.

68. Le nombre des questions tranchées par le Congrès européen sera la mesure de l'imprécision des lois et du gouvernement de la nation qui aura donné les preuves de telles af faires. Tous les ans, le Congrès publiera dans des périodiques européens publics une liste statistique concernant ce sujet.

69. La vie, la liberté, la propriété et l'honneur de tout membre de la nation feront l'objet d'une protection particulière des lois nationales. L'existence, l'indépendance, la propriété et l'honneur de chaque nation feront l'objet d'une protection particulière des lois européennes.

70. La liberté de parole, d'écriture et d'impression ne portant pas atteinte aux lois adoptées et consacrées par les nations sera illimitée. Le Congrès européen établira des lois réglant tout abus dans ce domaine.

71. Chaque citoyen de la nation a le droit de saisir (par la voie appropriée) sa diète des projets d'amendement des lois anciennes et de prise de nouvelles, sans rémunérer pour autant pour que ces projets soient nécessairement adoptés. Toute nation faisant partie de l'alliance éternelle a le droit, par le truchement de ses mandataires au Congrès, de présenter des projets d'amendements des anciennes lois européennes et de prise de nouvelles sans exiger non plus que de tels projets soient nécessairement retenus.

72. Tous les dix ans sera fêté en Europe un jubilé politico-religieux d'institution des lois européennes. Tous les partiarches européens et tous les membres du Congrès seront tenus de participer à cette cérémonie qui aura lieu dans la maison de Dieu protecteur des lois et de la paix, tout d'abord pour le remercier d'avoir heureusement maintenu la paix pendant les dix ans révolus, puis pour sanctionner pendant ce temps les lois européennes ammendées et établies. Des cérémonies semblables auront lieu dans tous les temples de toutes les confessions en Europe de sorte que chacun de ses habitants puisse avoir sa part à la liesse générale et l'opportunité de remercier Dieu d'avoir pris soin de la paix et du bonheur de l'Europe. Pendant la durée de cette manifestation sacrée, tous les préjudices passés entre les nations doivent être oubliés à jamais.

73. Tout comme pour le moment, le principal objectif des tentatives des gouvernements ont été le bonheur et la gloire des nations, tandis que les moyens pour le faire: armes, forme de gouvernement, lois et éducation, dans l'avenir également l'objectif et les moyens, demeureront les mêmes, mais avec la modification que la primauté des derniers, c'est-à-dire des moyens, aille dans le sens contraire de l'ordre par lequel ils sont modifiés.

Tout comme à ce jour la principale source, je ne dis pas de bonheur, car celui-ci est méconnu sur la terre, mais de gloire des nations a été la guerre, de la même manière, depuis le moment de la conclusion d'une alliance éternelle en Europe seulement l'éducation, les lois, le gouvernement, les science, les capacités, les arts et l'industrie, dans le sens le plus large de ces termes, seront les seuls objets d'émulation et source de gloire des nations européennes. Tous les ans, le Congrès européen félicitera quelques nations et leur remettra une marque de prix adéquate pour s'être distinguées dans

le perfectionnement et la vulgarisation de tout cela. Cette marque sera remise en deux exemplaires dont une sera suspendue dans la chambre législative du pays ayant bénéficié de ce prix, tandis que la deuxième sera placée par la représentation du Congrès européen dans la maison de Dieu, protecteur des lois et de la paix, à côté de l'emblème de la nation distinguée. Comme ce prix ne peut être destiné que pour commémorer des actes dont les avantages doivent profiter à l'ensemble de la société, les coûts nécessaires pour fonder ce prix appartiendront à toutes les nations unies par le lien de l'alliance éternelle.

74. Les contes historiques de la gloire prise par les armes seront voués à un oubli éternel ou répétés uniquement comme autant de souvenirs exécrables des cinquante siècles barbares passés. La gloire acquise par les armes, une fois l'alliance éternelle conclue en Europe, ne va plus s'appeler gloire des armes, mais gloire de la défense des lois. Prendre les armes à un autre effet, et non pas pour défendre les lois et la sécurité de l'Europe, entraînera l'opprobre éternel et la malédiction des nations et sera, en outre, sanctionné le plus rigoureusement par les lois européennes.

75. Les emblèmes soit les blasons des nations ne vont depuis porter d'aucuns signes rappelant le système sanglant et cruel des siècles barbares. Epées, lances et même représentations des animaux prédateurs, à savoir : lions, aigles, etc., seront remplacées par celles des autres créatures ou objets capables de susciter des sentiments doux et nobles ou rappeler un trait spécifique de la nation qui arbore un tel signe comme son emblème.

76. Depuis la conclusion de la paix éternelle en Europe seulement deux confessions, du point de vue moral et religieux, seront considérées comme telles, et notamment : gens bonnes, soit obéissant aux lois de Dieu, et mauvaises, soit enfreignant ces lois. Du point de vue moral et politique ne seront considérées comme telles que deux nations dans le monde: à savoir une civilisée, ou obéissant aux lois, dont les lois divines constituent la base, et l'autre nation barbare, ou gouvernée par les passions consistant, par exemple, à : désirer l'effusion du sang humain, rechercher sa propre élévation dans l'abaissement des autres, s'attaquer à la propriété d'autrui ou à sa liberté.

(La persécution et la haine qu'il y avait à ce jour, en raison des affrontements plus anciens entre les confessions et les nations, doivent être d'ores et déjà remplacées par la persécution et la haine seulement entre les deux confessions et deux nations que je viens d'énumérer . Si la confession des gens bonnes avec la nation civilisée l'emportent sur la confession des gens mauvaises et une nation barbare, le monde deviendra paradis, et si c'est la deuxième partie qui l'emporte sur la première, la terre demeurera à jamais, tout comme l'a été au cours des 59 siècles passés, un siège vicieux d'illégalités et de meurtres).

77. Aucun délit, à partir du moment de la conclusion de l'alliance éternelle (qui a pour objectif d'arrêter pour tous temps l'ef fusion du sang humain), ne sera puni de mort. Un meurtre prémédité et toute violation grave des lois, perpétrés personnellement ou par quelqu'un d'autre, seront sanctionnés de perte de droits nationaux et européens pendant cinquante ans. Nul ne peut échapper à cette loi, même pas un patriarche et membre du Congrès européen. Les prisons où doivent séjourner les criminels privés de la protection des lois serontconsidérées non pas comme un châtiment, mais plutôt un refuge contre le danger qu'entraîne la perte des droits. Il est recommandé d'exécuter les présentes lois barbares à tous les ennemis de la vérité et de la civilisation, et notamment à tous les monarques cruels et barbares vivant actuellement en Europe, à l'exception du plus généreux et civilisé Nicolas I[er] qui (en récompense de son oukase paternel, fait à Saint-Pétersbourg, en date du 22 mars / 3 avril de l'an 6 de son règne non sanglant[8], et aussi pour nous avoir donné, par le biais de cet oukase mémorable, une raison de rédiger les présentes dispositions barbares) peut être dispensé de les adopter sans encourrir pour autant un châtiment rigoureux annoncé par nous au début.

[8] L'oukase du tsar, en date du 22 mars 13 avril 1831, concernait le recours à la procédure judiciaire et l'administration de la justice à l'égard des insurgés d'origine noble et des autres groupes sociaux du gouvernement de W ilno. Ils devaient être jugés par des cours martiales en vertu du code pénal de campagne. Les biens des condamnés devaient être confisqués, tandis que leurs enfants de sexe masculins placés dans des camps des cantonistes militaires, conf. *Polnoïe sobranïe zakonov Rossiïskoï Imperii*, t. 6, Sankt-Peterburg 1832, éd. 2, nr 4444, p. 252 - 253.

Fait à Varsovie révoltée, le 21 avril /3 mai, l'an Ier de notre règne sanglant.

(suivent ici les signatures des plus fous révoltés polonais)

Pour copie conforme à l'original (signé) Woj[ciech] Jastrzębowski Simple soldat, secrétaire d'une troupe des révoltés polonais les plus fous.

Annonce

Le présent écrit des révoltés se vend 25 groszy l'exemplaire pour venir en aide aux révoltés polonais blessés et pour faire ériger un monument aux héros immortels Russes qui (ayant conquis la moitié du monde et arrosé de sang l'Asie et l'Europe, actuellement porteurs de paix, salut et colère à l'Occident menacé par la révolte blâmable des Polonais), ont trouvé une mort glorieuse ou des cicatrices pour le bien de la société, et maintenant, par la volonté de leur monarque meilleur de tous, ange de la paix, laissés sans enterrement dans des forêts inaccessibles et des marais ou en geignant dans l'hôpital principal de l'armée russe, c'est-à-dire à V arsovie, apprennent à l'Europe insouciante à bénir son meilleur des protecteurs.

Toutes les rédactions des périodiques révoltés de Varsovie, de même que les révoltés polonais les plus fous eux-mêmes s'emploient à collecter des fonds pour réaliser cet objectif.

Une liste nominative des donateurs qui auront contribué à multiplier ces fonds, ainsi que la contribution, seront déposées au bureau du gouverneur général de Varsovie[9].

[9] À partir du 3 mars 1831, le gén. Jan Krukowiecki, relevant directement du Gouvernement national, exerçait les fonctions du gouverneur général de la ville métropolitaine de Varsovie.

*Traduit du polonais par W ojciech G ilewski*

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# VERFASSUNG FÜR EUROPA VON WOJCIECH BOGUMIŁ JASTRZĘBOWSKI

Der Beitritt Polens zur Europäischen Union stärkte das Interesse meiner Landsleute für die Geschichte der innereuropäischen Unifizierung, an der wir Polen in der Vergangenheit auch im gewissen Sinne teilzuhaben versuchten. Die vorliegende Studie ist nicht Ausdruck des polnischen Größenwahns oder der Forderung, unser Mitwirken am Patent für das vereinte Europa zu würdigen. Ich möchte hiermit lediglich die Tatsache belegen, dass diese weitestgehend perspektivische Idee – Bedingungen für das Zusammenleben unterschiedlicher Gesellschaften, Völker, Kulturen und Religionen in einem gemeinsamen „europäischen Heim" zu schaffen – auch unseren Vorfahren nicht fremd war. Mehr oder weniger bekannt sind die Unifizierungsversuche der Kaiser Otto I. und Otto II., des Papstes Innozenz III. oder des böhmischen Herrschers Georg von Kunstadt und Podiebrad, doch die polnischen Aktivitäten in diesem Bereich kennen nur wenige Spezialisten, und diese Aktivitäten waren in der Vergangenheit gar nicht so bedeutungslos, was ich hier kurz darstellen möchte.

In der Geschichte Polens kommt der Gedanke, am Schaffen eines allgemeinen Königreichs mitzuwirken, zuerst als Gegengewicht zum Deutschen Reich, dann zur islamischen Türkei, in einer Allianz mit dem Papsttum und anderen europäischen Ländern, verhältnismäßig oft zum Vorschein. Im Mittelalter, nach den Versuchen des polnischen Königs Bolesław Chrobry

(Boleslaw der Tapfere, um 967-1025), die deutsch-polnischen Beziehungen friedlich zu gestalten, unter anderem im Jahre 1000 während der großen Zusammenkunft mit Kaiser Otto III. in Gniezno, trug Polen dazu bei, die Expansion des Heiligen Römischen Reiches Deutscher Nation nach Osten aufzuhalten. Dies bedeutete, dass teilweise Polen allein die Aufgabe übernahm, Osteuropa zu gestalten. Ausdruck dessen war die Union des Königreichs Polen mit Litauen, später seine Verteidigungsrolle als christliche Vorhut im Krieg gegen die Türkei, was im Jahre 1444 der Tod des jungen polnisch-ungarischen Königs Władysław III. Jagiellończyk in der Schlacht bei Warna markierte, danach die einsamen und erfolglosen Bemühungen von Stefan Batory (Stephan Bathory), Fürst von Siebenbürgen und König von Polen (1576-1586), eine antitürkische Liga zu bilden, und als Höhepunkt – der pathetische, siegreiche Entsatz von Wien des polnischen Herrschers Jan III. Sobieski im Jahre 1683. Diese erwähnten Aktivitäten bekräftigen einerseits den Anspruch Polens, seine Rolle als Mitstreiter im historischen Werk, eine europäische Gemeinschaft zu erschaffen, anzuerkennen, andererseits belegen sie seinen Einzelkampf um dieses Projekt in jenen Zeiten. Zweifelslos sind dies aber auch Beispiele dafür, wie sich Polen für eine Idee engagierte, die heutzutage einen die europäischen Grenzen überschreitenden Charakter hat (NATO) und der Polen treu geblieben ist, schon seiner geografischen Lage wegen.

Die früheste zwischenstaatliche Union, die eine Vereinigung zweier Staaten in einen Organismus vorsah, schlossen Polen und Litauen im Jahre 1385. Damals verpflichtete sich der Großfürst von LitauenWładysław Jagiełło (lit. Jogajla), nach dem Besteigen des polnischen Thrones Litauen an Polenanzuschließen und einen gemeinsamen Staat der Polen und der Litauen in Osteuropa zu bilden, der über ein ausreichendes Potential verfügen würde, um sich den aggressiven Eroberungen des Deutschen Ritterordens, der beide Länder verbissen angrif f, widersetzen zu können. Am 14. August 1385 erklärte Władysław Jagiełło in einem Dokument, das in der litauischen Stadt Krewo niedergeschrieben wurde:

„Wir Jagiełło, von Gottes Gunst und Gnaden Großfürst von Litauen, Herr und geborener Erbe zu Rus, thun hiermit allen kund und zu wissen ... [dass] Wir, Großfürst Jagiełło, versprechen und versichern, mit Eigenen Kosten und Eigenen Mühen an das polnische Königreich alle Länder zurückzuführen, die von dem Königreich getrennt und von anderen eingenommen wurden. W ir, Großfürst Jagiełło, versprechen, allen Christen ihre angeborene Freiheit zurückzugeben, besonders den Personen beiden Geschlechtes, die dem Kriegsgesetz unterliegend aus den polnischen Gebieten entführt und verschleppt wurden, und dies auf eine Weise zu thun, dass jeder und jede sich dorthin begeben dürfen, wohin sie wollen. Endlich versprechen Wir, Großfürst Jagiełło,

Unsere litauischen und russischen Länder auf ewige Zeiten der Krone des polnischen Königreiches anzuschließen."

Władysław Jagiełło, der spätere König von Polen, schaffte im Jahre 1385 in Osteuropa etwas, was 1950 Robert Schuman, natürlich unter anderen Bedingungen und in anderer Form, als seinen Plan zur Vereinigung von Europa vorlegte. Mit den polnischen und litauischen Adligen, die auch überdurchschnittliche Politiker waren, obwohl sie sich dessen selbst nicht bewußt waren, verwirklichte Jagiełło die erste freiwillige zwischenstaatliche Union in Europa, die ein riesengroßes Gebiet in Mittel- und Osteuropa umfasste – von der Ostsee bis zum unteren Lauf des Dnjepr, von den Grenzen von Śląsk (Schlesien) bis hin zu den Grenzen des Großen Moskauer Fürstentums mit einer Gesamtfläche von über 1,2 Millionen Quadratkilometern. Durch diesen Akt und seine zahlreichen späteren Änderungen und Ergänzungen: die Unionen von Wilna und Radom 1401, von Horodlo 1413, von Grodno 1432, von Mielnik 1501 und von Lublin 1569, sind zwei verschiedene Länder und drei unterschiedliche Völker in einen Staatsorganismus verschmolzen. Abgesehen von den diversen Allianzen und Unionen, die im Altertum geschlossen wurden, wie der Peloponnesische Bund oder die Delische Symmachie, soll betont werden, dass weder die Union von Krewo noch die spätere Realunion von Lublin irgendein Vorbild im neuzeitigen Europa hatten. Bis zum Jahr 1385 war in Europa keine vergleichbare zwischenstaatliche Vereinigung bekannt, die zwei Länder nicht lediglich durch eine Personalunion verband. Hier sei daran erinnert, dass die Union von Krewo grundlegende Veränderungen in der Geschichte und Kultur Litauens bewirkte durch die allgemeine und freiwillige Christianisierung der Bevölkerung, egal wie wir diese Allgemeinheit und Freiwilligkeit bewerten. In der Geschichte des neuzeitigen Europas gab es keine frühere Initiative, die unter solchen Bedingungen entstanden wäre, solch weitreichende Konsequenzen hätte und 410 Jahre, das heißt von 1385 bis 1795, bestehen geblieben wäre.

Die polnisch-litauische Union war eine Personalunion bis zum Jahr 1569, als der letzte polnische König aus dem Hause der Jagiellonen, Zygmunt II. August (Sigismund II. August), bei dem gemeinsamen Sejm in Lublin die zwei Staaten in einen gemeinsamen Organismus vereinte, der seither Republik Beider Nationen genannt wurde. Die Republik der Polen und der Litauen blieb ohne grössere innere Spannungen und Unruhen bis zu ihrer Teilung erhalten, die in den Jahren 1772-1795 drei Nachbarländer vollzogen hatten: Österreich, Preußen und Rußland.

Ich hege keine Zweifel, dass die polnisch-litauischen Unionsdokumente von dem englischen Parlament und Privy Council in den letzten Monaten vor dem Tod von Elisabeth I. Tudor (am 24.03.1603) und vor der englisch-schottischen Union der Kronen 1603 studiert worden sind. Woher diese Überzeugung? Diese Tatsache bestätigende Dokumente hielt ich in der Hand bei mehrmaligen, monatelangen Nachforschungen im Public Record Office in London.

Bei den Untersuchungen der Serie *Calendar of State Papers. Domestic*[1] und der Sitzungsprotokolle des englischen Privy Council fand ich Urkunden darüber, dass die Texte der polnisch-litauischen Unionen aus den Jahren 1385, 1411 und 1569 mehrmals Gegenstand der Studien und Debatten im englischen Parlament und des Geheimen Rates in den letzten Jahren der Herrschaft von Elisabeth I[2]. waren. Wie aus den parlamentarischen *Proceedings* hervorgeht, studierte das elisabethanische Parlament die Texte der polnisch-litauischen Unionen fünf Mal, und das Privy Council beschäftigte sich damit bei vier aufeinander folgenden Sitzungen, als es das Projekt einer Personalunion zwischen zwei unabhängigen Staaten, nämlich England und Schottland, erwog. Diese Tatsache berechtigt mich die These aufzustellen, dass die polnisch-litauischen Unionstexte wahrscheinlich bei der Gestaltung der so genannten Union der Kronen aus dem Jahre 1603 und bestimmt bei der hundert Jahre späteren (1701) englisch-schottischen Realunion eine gewisse Rolle spielten. Dieses Problem war bis vor kurzem weder polnischen noch britischen Historikern bekannt[3].

Die so genannte Union der Kronen aus dem Jahr 1603 war formell gesehen durch kein Dokument bestätigt worden; ähnlich wie die polnisch-litauische Union von Krewo wurde sie vom Herrscher proklamiert und war ähnlich wie sie eine klassische Personalunion, die lediglich die Person des Königs Jakob I./VI. verband. Trotz der Versicherungen Jakobs, der etwas mehr als eine „Union der Kronen" wollte und von einer „perfect union" sprach, waren beide Länder völlig unabhängig und vollkommen autonom.

Nehmen wir also als Ausgangspunkt die Tatsache, dass die Voraussetzungen der Union der Kronen aus dem Jahr 1603 mit den Regelungen der polnisch-litauischen Union aus dem Jahr 1385 und ihren späteren Änderungen beinahe identisch waren, können wir als bewiesen annehmen, dass das polnisch-litauische Modell als Muster für die Engländer und Schotten im Jahr 1603 diente.

Die zweite Initiative, die zwei Staatsorganismen durch die Person des gemeinsamen Herrschers vereinte, diesmal Schweden mit der Republik Polen, ist auf das

[1] Auszüge aus diesen Dokumenten wurden in *Calendar of State Papers. Domestic, 1603-1610*, London 1857, S. 46, 90 ff. herausgegeben.

[2] PRO, *CSP. Domestic*, *1601-1603* und *CSP.Domestic 1603-1610*. Ihre Regesten wurden von M.A. Everett: *CSP.Dom. 1602-1603*, London 1870 (passim), und *CSP.Domestic 1603-1606*, London 1857 (S.46, 90); *Acts of Privi Council, 1602-1603*, London 1864, herausgegeben. Insgesamt befinden sich in *CSP.Dom.* fünf Einträge über die polnisch-litauischen Unionstexte, und in *APC* - vier.

[3] Im Jahre 1994 schlug ich B. Krzysztopa- Czupryńska vor, die heute im Institut für Geschichte der Universität Warmińsko-Mazurski in Olsztyn arbeitet, diese Problematik in ihrer Magisterarbeit zu behandeln. Es entstand eine äußerst interessante Abhandlung *Polnisch-litauische Union 1569 und englisch-schottische Union 1707. Eine Vergleichsstudie, (Unia polsko-litewska z 1569 r. i angielsko-szkocka z 1707 r. Studium porównawcze)*, „Zeszyty Naukowe WSP w Olsztynie. Prace Historyczne", Heft I. 1997, S. 7-20.

Jahr 1592 zu datieren, als der polnische König Zygmunt III. Waza (Sigismund III., schwedischer Kronprinz aus der Vasa-Dynastie, verwandt mit den Jagiellonen, zum polnischen König 1587 gewählt) den väterlichen Königsthron von Schweden bestieg. Aus vielen Gründen hatte dieser Bund keine guten Aussichten: an erster Stelle würde ich die politische Unbeholfenheit von Zygmunt III. nennen, danach auch wirtschaftliche, kulturelle und religiöse Aspekte, wobei die letzteren im 17. Jahrhundert eine immer größere, aber nicht immer positive Rolle zu spielen begannen, um in der zweiten Hälfte jenes Jahrhunderts Polen aus einem toleranten Land in ein verklemmtes, von religiösem Fanatismus besessenes Land zu verwandeln. Noch vor kurzem kämpfte dagegen unser Papst Johannes Paul II., indem er anderen nicht nur christlichen Konfessionen die ökumenische Idee und ein friedliches Zusammenleben verschiedener Religionen angeboten hatte. Der polnisch-schwedische Bund zerfiel nach einigen Jahren, als die schwedischen Protestanten den katholischen Frömmler abgesetzt und den schwedischen Thron Karl IX. (Herzog von Södermanland) über geben hatten, dem Vater des späteren großen Kriegers und Königs von Schweden Gustav II. Adolf „Löwe aus Mitternacht" genannt. Dies war der Beginn eines jahrelangen Streites zwischen Polen und Schweden um das *„Dominium Maris Baltici"* und um die schwedische Krone, auf die nicht nur der abgesetzte Zygmunt III. Anspruch erhob, sondern auch seine zwei Söhne, die polnischen Könige Wladyslaw IV. (1632-1648) und Jan II. Kazimierz (Johann II. Kasimir, 1648-1668). Dieser Konflikt wurde endgültig nach dem Grossen Nordischen Krieg im Jahre 1721 beendet, in den Polen durch August II. (August den Starken), König von Sachsen und Polen, verwickelt wurde. Seit jener Zeit bestehen zwischen Polen und Schweden keine Zwistigkeiten, abgesehen vielleicht von dem Problem der baltischen Sprotten (polnische Fischer verübelten es den schwedischen, dass diese angeblich in polnischen Territorialgewässern fischten).

An dieser Stelle möchte ich noch eine Initiative erwähnen, die leider nicht verwirklicht und in der jetztigen Epoche des vereinten Europas vergessen worden ist – und zwar das Projekt einer Föderation von Litauen, Moskau und Polen, dessen Autor der Große Kronen-Hetman Stanisław Żółkiewski (1547-1620), Oberbefehlshaber und Heerführer war.

In seinen Tagebüchern *„Beginn und Progreß des Moskauer Krieges"* (*Początek i progres wojny moskiewskiej*, 1833 veröffentlicht) beschreibt Żółkiewski den Sieg in der Schlacht bei Kłuszyn im Jahre 1610, bei der er die zahlenmäßig überlegenen russischen Kräfte bezwang, und enthüllt dabei viele Faktoren, die die Politik von Zygmunt III. Waza gegenüber Moskau beeinflußten. Der Hetman, Gegner einer Auseinandersetzung mit Moskau, doch gegen seinen Willen in den Krieg hineingezogen, zeichnete ein eigenes politisches Programm, das sich von dem

königlichen und dem der Hochadel-Kamarilla der Familien Potocki, Mniszech u.a., die an einer Expansion der Republik nach Osten interessiert waren, wesentlich unterschied. Żółkiewski sprach sich gegen eine Expansion aus und das *modus vivendi* mit Moskau sah er in einer Personalunion mit unserem östlichen Nachbarn und in der föderativen Vereinigung Moskaus mit dem polnisch-litauischen Staat zu einem großen Staatsor ganismus in Osteuropa. Unter den russischen Bojaren fand er viele Anhänger dieser Idee, da er an erster Stelle die Wahrung der Moskauer politischen Tradition, der Staatsordnung und der Religion verkündete. Die Tagebücher von Żółkiewski heben sich positiv von den damaligen moskaufeindlichen Gemütern anderer Autoren ab. Sein Bericht enthält keine Beschimpfungen, sondern stellt eine nüchterne, sachliche politische Analyse dar und weist auf die Notwendigkeit hin, Moskau etwas „Menschlichkeit" entgegenzubringen. Daher auch seine an die Befehlshaber gerichteten Empfehlungen, in denen er Gehorsam und Ritterlichkeit gegenüber der russischen Zivilbevölkerung als vorrangig bezeichnete. Hetman Żółkiewski war nicht nur ein hervorragender Stratege, sondern auch ein überdurchschnittlicher Politiker und Schriftsteller, denn seine Tagebücher zählen heute zur Klassik der altpolnischen Literatur.

Das Projekt von Żółkiewski stieß auf viele unterschiedliche Hindernisse. Als erstes sei der Widerwille von Zygmunt III. zu allen Plänen genannt, die ihn nicht als Kandidaten zur Mütze des Monomachen – dem Moskowiter Zarenhut – vorsahen. Zweitens – die unüberwindbare Kluft zwischen der russisch-orthodoxen Kirche und dem polnischen Katholizismus. Und drittens – die Suche der Russen nach Allianzen sogar im entfernten London, statt im nahen Warschau.[4]

Die polnischen Unionsinitiativen enden aber nicht im 17. Jahrhundert. Zu den weniger wichtigen Ideen, die auch von keinerlei konkreteren Aktivitäten oder –

[4] Dieser letztgenannte Aspekt ist mit einer amüsanten Geschichte aus meinem Leben verbunden. In meiner Dissertation zum Thema polnisch-englische Beziehungen in der ersten Hälfte des 17. Jahrhunderts stützte ich mich auf Dokumente, die ich im Londoner Publik Record Of fice fand, u.a.: auf den Brief von Lord Chamberlain an Carleton vom 29.04.1613, in dem er schrieb: „Einige Moskauer Adlige haben sich an den König mit der Bitte gewandt, er möge die Schutzherrschaft übernehmen, und er denkt daran, ein Heer nach Moskau zu schicken und dort durch einen Statthalter zu herrschen, und dabei ist er seines Erfolges sicher" sowie auf ein Telegramm des Botschafters von Venedig in London, der dem Dogen mitteilte, dass am 5. November 1612 eine Gesandtschaft der Moskauer Bojaren nach London kam mit dem Angebot an Jakob I., den Zarenthron zu übernehmen (CSP V en., Band XII, Nr . 137 und 808) - d er Rezensent meiner Arbeit, einer der bedeutendsten Historiker der zweiten Hälfte des vergangenen Jahrhunderts, warf mir in einem Gespräch vor, ich müsse phantasieren und mir das zusammendichten, denn er hielt dies für unwahrscheinlich und durch andere Historiker nicht bestätigt. Als ich ihm Fotokopien der Quellendokumente zeigte und hinzufügte, dass in der Zeit des ersten W eltkrieges Nina Ljubimienko in „English Historical Review" drei Artikel zu diesem Thema veröffentlichte, war er sichtlich überrascht. Und am Ende der Sprechstunde meinte er: „Wissen Sie, ich habe Nina Ljubimienko 1927 in Paris kennengelernt" – und er fügte etwas benommen hinzu: „Mein Gott, sie war damals eine sehr interessante, hübsche Blondine". Seine Rezension meiner Dissertation beinhaltete keinerlei Vorbehalte.

wie bei Żółkiewski – zumindest von einer politischen Begründung begleitet worden waren, kann das 1918 vorgeschlagene Projekt des polnischen Staatschefs Józef Piłsudski (1867-1935) genannt werden, der ein Staatenbündnis von Polen, Litauen und der Ukraine als Gegengewicht zum Russland der Bolschewiki schaffen wollte. An eine polnisch-tschechische Allianz nach dem Zweiten Weltkrieg dachte General Władysław Sikorski (1881-1943), Premierminister der Polnischen Exilregierung, der am 4. Juli 1943 in einer bisher noch nicht vollständig aufgeklärten Flugzeugkatastrophe bei Gibraltar ums Leben kam. An ähnlichen aber weiter reichenden Ideen der europäischen Zusammenarbeit und Integration arbeitete ein Berater von Sikorski und Freund von Aristide Briand, der polnische Politiker Józef Retinger (1888-1960). Eine etwas andere Größenordnung hatte der Plan des polnischen Aussenministers Adam Rapacki (1909-1970), in Europa eine atomfreie Zone zu schaffen.

Zum Schluß der Aufzählung von polnischen Unifizierungsideen, die die Vereinigung von Ost- oder Nordosteuropa zum Ziel hatten, Jahrhunderte vor den Bemühungen der „Väter" des vereinten Europas: Jean Monet, Robert Schuman, Alcide De Gasperi und Konrad Adenauer, soll noch die *Verfassung für Europa* (*Konstytucja dla Europy*) von Wojciech Bogumił Jastrzębowki, einem Teilnehmer des November-Aufstandes (1830-1831), erwähnt werden. In der *Verfassung für Europa* ist nicht der Gedanke an ein vereintes Europa faszinierend, sondern die Tatsache, dass Jastrzębowski darin viele Ideen festhielt und nannte, die später in der Organisation und Terminologie der Europäischen Union wiederholt wurden, ohne dass die Gründer der Union von Jastrzębowski oder seiner *Verfassung*, die 160 Jahre lang als Manuskript unveröffentlicht blieb, je gehört hätten. Eben Jastrzębowski hatte die „Präsidentschaften" des Vereinten Europa entworfen – die aber nicht 6 Monate, sondern ein ganzes Kalenderjahr dauern sollten, das Tribunal (den Gerichtshof) und viele Prinzipien, die heute Elemente der Ordnung und Gesetzgebung der Europäischen Union sind.

Jastrzębowski war Teilnehmer am November-Aufstand, Artillerist der Nationalgarde, kämpfte unter anderem bei Olszynka Grochowska. Er wurde 1799 in Gierwaty bei Maków Mazowiecki geboren und ist früh verwaist. Trotz schwieriger finanzieller Situation studierte er an der Warschauer Universität, anfangs an der Fakultät für Bauwesen und Vermessungskunde, um nach zwei Jahren zur Philosophischen Fakultät zu wechseln, die er 1825 erfolgreich beendete. In den ersten vier Jahren nach dem Abschluß arbeitete er im physikalischen Kabinett der Universität, wo er sich mit Interpretationen der seit 50Jahren von Warschauer Meteorologen geführten Wetterbeobachtungen, sowie mit gewissen Arbeiten aus dem Bereich der Vermessungen mittels Kompaß beschäftigte. Zu beiden Problemen hielt er Vorträge in der Warschauer Gesellschaft von Freunden der Wissenschaften

(Towarzystwo Warszawskie Przyjaciół Nauk), was ihm 1829 die Mitgliedschaft in dieser Gesellschaft erlaubte. Noch während des Studiums zeigte er großes Interesse für Pflanzenkunde, die zur Leidenschaft und zum Beruf seines Lebens wurde. Unter der Leitung von Professor Marian Szubert bearbeitete Jastrzębowski ein Herbarium der Pflanzen von Podlachien, Masowien, der Regionen um Lublin, Sandomierz und Krakau, in dem er viele den Botanikern bisher unbekannte Pflanzen beschrieb. Sein Werk wurde von der Leitung der Universität gewürdigt, indem 1828 eigens für ihn die Stelle des „Adjunkten für Naturkunde" geschaffen wurde.

Wie bereits erwähnt, nahm Jastrzębowski am Novemberaufstand und am polnisch-russischen Krieg teil und feuerte 1831 in Warschau die Soldaten in einer Rede am Plac Saski zum Kampf an, obwohl er keinen Offiziersrang hatte. Im gleichen Jahr schrieb Jastrzębowski *„Freie Augenblicke eines polnischen Soldaten oder die Gedanken über eine ewige Allianz zwischen zivilisirten Völkern"* (*Wolne chwile żołnierza polskiego, czyli myśli o wiecznym przymierzu między narodami cywilizowanymi*), deren Teil die *Verfassung für Europa* ist. Das Werk ist im Mai 1831 erschienen. Die *Verfassung...* enthält das Projekt eines Europäischen Kongresses – das Urbild der späteren Völkerliga, deren nicht realisiertes Ziel – wie bekannt – die Sicherung eines dauerhaften Friedens war. Seine Gedanken entwickelte Jastrzębowski in der *„Abhandlung über eine ewige Allianz zwischen zivilisirten Völkern"* (*Traktat o wiecznym przymierzu między narodami ucywilizowanymi)*. Sowohl das eine als auch das andere war für die zaristischen Behörden Grund genug, um Jastrzębowski zu schikanieren und ein Beschäftigungsverbot gegen ihn zu verhängen, deswegen musste er fast fünf Jahre lang seinen Lebensunterhalt mit Privatunterricht verdienen. Erst 1836 wurde er im Agronomischen Institut in Marymont beschäftigt, wo er seine pädagogischen und didaktischen Fähigkeiten zeigen und entwickeln konnte, und wo er zusammen mit dem hervorragenden Naturkundler M. Oczapowski den Botanischen Garten gründete. In den nächsten 22 Jahren bildete der Autor der *Verfassung für Europa* viele ausgezeichnete Agronomen und Landwirte aus, veröffentlichte einige Abhandlungen über Mineralogie, Meteorologie u.a. Sein Schüler K. Majewski bearbeitete 1875 anhand von Notizen und Vorträgen von Jastrzębowski die *„Prinzipien der Landwirtschaft"* (*Zasady rolnictwa*). Dank der Fähigkeit, mit den Studenten zu kommunizieren, und seiner Art, das Wissen zu vermitteln, wurde Jastrzębowski bald zu einem der beliebtesten Professoren, was aber letztendlich 1858 zu einem Konflikt mit dem Direktor des Instituts S. Zdzitowiecki führte. Der letztgenannte konnte zwar keine vergleichbaren pädagogischen Erfolge nachweisen, wusste aber besser, wie mit jungen Menschen umzugehen ist. Der Ausgang dieses Konfliktes war leicht vorzusehen - *nec Hercules contra plures...*

Für kurze Zeit übernahm Jastrzębowski die Aufsicht der Warschauer Kreisschule, und 1860 bekam er die Stelle des Forstinspektors von Czerwony Bór (Roter Forst) im Süden von Łomża mit der Aufgabe, weite Flächen von sandigem Ödland zu bewalden. Er schuf ein Arboretum in Brok am Bug und lehrte eine ganze Generation junger Förster, die bei ihm ihr Praktikum absolvierten. 1874 setzte er sich zur Ruhe und siedelte nach Warschau um, wo er 1882 verstarb. Er wurde auf dem Powązki-Friedhof beigesetzt und seine Schüler ehrten sein Andenken, indem sie in der Heiligen-Kreuz-Kirche in Warschau eine Gedenktafel errichten ließen, ein Werk von Andrzej Pruszyński, der auch das vor der Kirche stehende Kreuz schuf.

Die *Freien Augenblicke eines polnischen Soldaten...* , deren 18-seitige Heftausgabe, Warschau 1831 datiert, ich in der Jagiellonen Bibliothek in Krakau unter der Signatur 222707 I fand, sollten endlich das verdiente Interesse unter Historikern und Politikwissenschaftlern erwecken und auch von den Nachkommen der „Väter Europas" beachtet werden, die heutzutage den Anspruch erheben, alleinige Erben und Fortsetzer der Idee eines vereinten Europa zu sein – ich denke hierbei an die hochmütigen Äußerungen mancher westeuropäischer Politiker. Aber zurück zu Jastrzębowski – auch in seiner Heimat erfreute sich sein Werk keines großen Interesses, da er selbstverständlich als Naturkundler bekannter war . Die *Verfassung...* versuchte als erster 1926 der Journalist Janusz Iwaszkiewicz ans Tageslicht zu bringen, der sie im Archiv der Warschauer Gesellschaft von Freunden der Wissenschaften entdeckte und in einer Neufassung unter dem veränderten Titel *Unbekanntes polnisches Projekt des ewigen Friedens*(*Nieznany polski projekt wiecznego pokoju,* „Polityka Narodów", Band 9, 1937, Heft 4, S. 385-395) veröffentlichte, wobei er gleichzeitig die Information darüber in der Presse verbreitete. *In den heutigen Zeiten, als Polen endlich seinen Platz im Rat der Völkerliga erhielt* – schrieb Iwaszkiewicz in der Zeitung „Kurier Warszawski" – *als in ganz Europa pazifistische Losungen verlauten, soll daran erinnert werden, dass Polen solchen Losungen bereits zu jenen Zeiten huldigte, als sie sonst niemand in Europa vernommen hatte.*

Knapp 30 Jahre später beschäftigte sich mit der Idee von Jastrzębowski M. Muszkat in den „Studien und Materialien zur Geschichte der Kriegskunst" („Studia i Materiały do Historii Sztuki Wojennej", 1954, S. 293-301). Vor ein paar Jahren inspirierten die Gedanken des polnischen Naturkundlers und Politologen Dr. Barbara Kubicka-Czekaj aus der WSP in Częstochowa (Fachschule für Pädagogik, heute: Akademie), die 1994 auf eigene Kosten eine kleine Broschüre unter dem Titel *Verfassung für Europa von W.B. Jastrzębowski* (*W.B. Jastrzębowskiego Konstytucja dla Europy*) herausgab, und der ich an dieser Stelle für das mir überreichte Exemplar meine Verbundenheit ausdrücken möchte. Dr. Kubicka-Czekaj

versuchte, Informationen über den polnischen Autor der Idee einer Europäischen Union in Paris zu verbreiten, doch sie stieß zwar auf Interesse, aber auch auf Mißtrauen – wie denn? Irgendein unbekannter *petit Polonais* sollte ein besserer Prophet sein als ihr J. Monet und R. Schuman oder früher Aristide Briand? Weiterhin sollen auch zwei in den Jahren 2002-2003 von Benon Dymek veröffentlichte wissenschaftliche Studien erwähnt werden: *Wojciech Bogumił Jastrzębowski. Botaniker, Visionär des vereinten Europa* (*Wojciech Bogumił Jastrzębowski. Botanik, wizjoner zjednoczonej Europy*, 2003) und *Die Vision einer Allianz zwischen den Völkern Europas aus dem Jahr 1831 nach Wojciech Bogumił Jastrzębowski* (*Wizja przymierza między narodami Europy z 1831 r. według Wojciecha Bogumiła Jastrzębowskiego*, 2003).

Die *Verfassung für Europa*, deren vollständiger Wortlaut unten angeführt ist, bestehend aus 77 Artikeln – Jastrzębowski war in gewissem Sinne Visionär und Mystiker, was die Tatsache erklären könnte, dass er seine Verfassung mit der magischen Sieben abschloß – setzte die Einberufung durch parlamentarische Institutionen aller Länder eines allgemeineuropäischen „Kongresses der Bevollmächtigten, die von allen Völkern gewählt worden sind" voraus. Die Hauptaufgabe des Kongresses wäre Sicherung eines ewigen Friedens sowie Abschaffung der geografischen Grenzen, die für Jastrzębowski „Ursache des Blutvergießens in Europa" waren. Des weiteren sollten aus Geschichtsbüchern alle Informationen über vergangene Schlachten gelöscht werden, in Vergessenheit sollte die Kriegsgeschichte geraten die seit den Anfängen der Menschensgeschichte, seit den altchinesischen Shuji, über griechische von den Aöden gesungene oder vorgetragene Epen, bis hin zu der gegenwärtigen Geschichte der Kriege und des Militärwesens wenn nicht die Grundlage, dann zumindest den größten Teil der historischen Hinterlassenschaft der Welt ausmachte.

Laut Jastrzębowski sollte das von inneren Grenzen befreite Europa die nationale Identität seiner Bürger achten und ihre weitgehende Autonomie wahren: *Zu einem Volke sollen all diese Menschen gehören, die eine gemeinsame Sprache sprechen, unabhängig davon, wo in Europa sie sich aufhalten. Ein jedes Volk unterliegt den nationalen Gesetzen, die von dem Sejm [Parlament] verabschiedet werden. Zerstreut lebende Völker, wie die Zigeuner oder Juden, unterliegen nicht nur den eigenen Gesetzen, sondern auch Gesetzen der Völker, mit denen sie vermischt sind.* Das wichtigste Motiv der *Verfassung...* war der Pazifismus, was in Artikel 36 seinen Ausdruck fand: *Kriegswaffen jeglicher Art, also zum Blutvergießen dienende, die sich auf europäischem Boden befinden – sollen Eigenthum von ganz Europa werden. Ein Theil davon wird an Orten verwahrt, die vom Europäischen Kongress genannt werden, um sie im Notfall für die Vertheidigung der Gesetze und der Sicherheit von Europa zu*

*nutzen. Der andere Theil, entbehrliche, wird im Mittelpunkt dieses Erdtheiles gehortet, wo er zum Errichten des Tempel Gottes, Beschützers der Rechte und des Friedens, genutzt werden soll.*

Europa sollte nicht eine Staaten-, sondern eine Völkerföderation sein, was Artikel 11 bestätigt: *Zu einem Volke sollen all diese Menschen gehören, die eine gemeinsame Sprache sprechen, unabhängig davon, wo in Europa sie sich aufhalten.* In dieser Hinsicht war Jastrzębowski der Wirklichkeit weit voraus – nie und nirgends hatte ein Friedensvertrag zwischen zwei Staaten, egal ob niedergeschrieben oder durch Akklamation (sprich: erzwungen) angenommen, die Probe der Zeit bestanden, weil so etwas schlicht sinnlos war. Es ist doch einfach zu begreifen, dass es keine Freundschaft zwischen Staaten, also institutionellen Gebilden, geben kann – man kann lediglich von Beziehungen zwischen Völkern, Gesellschaften, Individuen oder Geschlechtern reden, keinesfalls zwischen Staaten. Jastrzębowski hatte dies bereits vor 176 Jahren begriffen, wir dagegen feierten noch vor kurzem die Freundschaft zwischen Polen und der Sowjetunion, der DDR oder der Mongolei.

Seine Idee vom Europa der Völker formulierte Jastrzębowski in den Artikeln 13 und 14:

13. *Wie bisher, so auch weiter hin kann in einem Gebiet ein getrenntes Volk oder aber mehrere vermischte, doch voneinander unabhängige Völker leben. Ein Volk, getrenntes oder mit anderen vermischtes, unterliegt nur seinen nationalen Gesetzen. Zerstreut lebende Völker, wie die Zigeuner oder Juden, unterliegen nicht nur den eigenen Gesetzen, sondern auch Gesetzen der Völker, mit denen sie vermischt sind. Dies dauern wird aber nur solange, bis ein solches Volk sich seine Edukation zum Ziel macht, wie unter der Zahl 27 festgehalten.*

14. *Alle Völker, die der ewigen Allianz in Europa angehören, schulden den europäischen Gesetzen gleiche Achtung.*

Jastrzębowski hielt für zivilisiert diese Völker, die im Europäischen Kongress vereint sein werden, als Barbaren dagegen bezeichnete er jene, die auf Habgier und Kriege nicht verzichten wollten; doch auch solchen Nationen verschloß er nicht den Zugang zur Vereinigung, wenn sie der Habgier entsagen. Es hätten auch außereuropäische Völker sein können. Sichtbar ist also, dass er den Begriff Europa (aber ohne Kriege!) dem Begriff Zivilisation gleichstellte, und auch anderen das Recht einräumte, Europäer also ein zivilisiertes Volk zu werden.

## *VERFASSUNG FÜR EUROPA*

Einleitung

Bereits das neunundfünfzigste Jahrhundert der Zivilisation verstreicht; ist nicht die Zeit gekommen, die Aera der Barbaren zu beginnen? Bereits dreihundert Generationen waren dem Gesetz der Gleichheit unterworfen. Wann beginnt die Herrschaft des Stärkeren?

Artikel 1. Alle europäischen Völker (wollen sie einen dauerhaften Frieden und Glück genießen) sollen auf ihre Freiheit V erzicht leisten und Sklaven der Gesetze werden; und alle Monarchen (wollen sie ruhig, mit dem Segen der Völker und ruhmreich herrschen) sollen von jetzt an nur Hüter und Vollstrecker jener Rechte sein und keinen anderen Titel tragen, als den der Väter der Völker, also der Patriarchen.

2. Die Gesetze, von denen hier die Rede ist, sind die V ermittler der urzeitlichen Wahrheit, also des göttlichen Willens, uns offenbart durch sein Gebot: „Du sollst deinen Nächsten lieben wie dich selbst“.

3. Vor Gott und vor dem Gesetz sind alle Menschen, also auch alle Völker gleich.

4. Die Gleichheit der Menschen, aus denen ein Volk besteht, gewährleisten die nationalen Gesetze; die Gleichheit der europäischen Völker gewährleisten die europäischen Gesetze, die eine Grundlage für die ewige Allianz zwischen zivilisirten Völkern sein sollen.

5. Die nationalen Gesetze werden von einem Volk durch seine Abgeordneten, also durch den Sejm erlassen; die europäischen Gesetze dagegen werden von Europa durch seinen Kongress erlassen, der aus Bevollmächtigten aller Völker besteht.

6. Grundlage für die sowohl nationalen wie auch europäischen Gesetze werden Naturgesetze, also Gottes Gesetze sein, und ihre Eigenschaft ist Menschlichkeit und Gerechtigkeit.

7. Das Prinzip beim Erlassen der Gesetze wird die Stimmenmehrheit der Gesetzgeber sein.

8. Hüter und Vollstrecker der nationalen Gesetze ist der Patriarch, und Hüter und Vollstrecker der europäischen Gesetze ist der Kongress selbst.

9. Seither giebt es in Europa keine Länder mehr , sondern nur Völker. Die bisherigen Gränzen zwischen den Ländern (die wichtigste Ursache des Blutvergießens in Europa) werden für immer aufgehoben.

10. So viele Patriarchien giebt es in Europa, wie viele Völker es hier giebt[5].

11. Zu einem Volke sollen all diese Menschen gehören, die eine gemeinsame Sprache sprechen, unabhängig davon, wo in Europa sie sich aufhalten.

12. Die ungleiche Zahl der Individuen, die ein Volk bilden, wird seine Gleichheit nicht beeinträchtigen.

13. Wie bisher, so auch weiterhin kann in einem Gebiet ein getrenntes Volk oder aber mehrere vermischte, doch voneinander unabhängige Völker leben. Ein Volk, getrenntes oder mit anderen vermischtes, unterliegt nur seinen nationalen Gesetzen. Zerstreut lebende Völker, wie die Zigeuner oder Juden, unterliegen nicht nur den eigenen Gesetzen, sondern auch Gesetzen der Völker, mit denen sie vermischt sind. Dies dauern wird aber nur solange, bis ein solches Volk sich seine Edukation zum Ziel macht, wie unter der Zahl 27 festgehalten.

14. Alle Völker, die der ewigen Allianz in Europa angehören, schulden den europäischen Gesetzen gleiche Achtung.

15. Die Würde des Patriarchen ist erblich, sie wird auf diesen Sohn übertragen, der am meisten dem Ziel der Edukation entspricht, wie unter der Zahl 36 festgehalten.

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[5] „Diese Zahl, nach der Charta der Völker herausgegeben 1821 in Berlin von P . O'Etzel, beträgt 64" [Anm. W.B. Jastrzębowski]

16. Die bisherigen Monarchen haben Vorrang zum Amt des Patriarchen. Ein Volk, das bisher keinen Monarchen hatte, wählt zu seinem Patriarchen einen solchen Herrscher, der bisher ohne ein Volk regierte[6], oder bei Mangel eines solchen eine Person aus diesem Königlichen Hause, das sich am ehesten für die ewige Allianz in Europa erklärt hatte.

17. Wie alle Völker, so auch ihre Patriarchen werden vor dem europäischen Gesetz gleich sein.

18. Der Patriarch leistet vor Ergreifung seines Amtes einen Eid, die nationalen Gesetze zu wahren, und das Volk leistet ebenfalls einen Gehorsamseid.

19. Die nationalen Gesetze, die vom Sejm zur Amtszeit des Patriarchen erlassen worden sind, sollen durch ihn bestätigt werden, damit sie sowohl für ihn, als auch für das Volk gültig sind.

20. Dem Patriarchen steht das Recht der Wahl von Ministern zu, in einer vom nationalen Gesetz bestimmten Zahl, um die Gesetze, mit denen er vom Volk betraut wurde, wirksamer zu hüten und zu handhaben.

21. Die Person des Patriarchen, als Hüters der nach Gott heiligsten Thatsache, also des Gesetzes, ist heilig und unverletzlich. Eine Beleidigung des Patriarchen durch irgendeine Person wird durch den Europäischen Kongress bestraft nach Maßgabe des Gesetzes.

22. Für die Handlungen des Patriarchen gegenüber dem Volk sind nur die Minister verantwortlich, ohne deren Gegenzeichnung keine Verordnung des Patriarchen gültig sein wird.

23. Über die Verletzung der nationalen Gesetze durch die Minister setzt der Sejm den Europäischen Kongress in Kenntnis, der in solchem Fall nach Maßgabe des Gesetze zu handeln hat.

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[6] Solche Monarchen sind z.B.: der Kaiser von Österreich, der Patriarch des deutschen Volkes werden könnte; der König von Preußen, der Patriarch des polnischen Volkes sein könnte etc.

24. Die nationale Regierung besteht aus dem Patriarchen, den Ministern und den nach der inneren nationalen Ordnung ernannten Beamten. Die Ernennung eines öffentlichen sowie auch eines geheimen Beamten entgegen diese Ordnung wird als Verletzung der nationalen Gesetze betrachtet.

25. Über das Recht, ein jedes Amt zu erhalten, entscheiden: Verstand, Tugend, Verdienst, Liebe und Vertrauen des Volkes, und vor allem die Kenntnis der Gesetze.

26. Durch die Unterschiede in dem religiösen Bekenntnis darf kein Abbruch in den Rechten geschehen; jeder Mensch also, egal welchen religiösen Bekenntnisses, genießt die gleichen nationalen und europäischen Rechte, und hat den gleichen Anspruch auf alle Ämter und Würden.

27. Das Ziel der Edukation eines jeden Volkes ist: Vervollkommnung des Menschen, das bedeutet, ihn zu einem nützlichen Mitglied der Gesellschaft auszubilden; die Herrschaft des Verstandes über den Leidenschaften in ihm zu stärken, die Kenntnis der göttlichen und bürgerlichen Gesetze zu verbreiten: ihm ihre gehörige Achtung beizubringen; letzlich ihm auch die Nächstenliebe zwischen den in der ewigen Allianz verbundenen Völkern einzuprägen. Erinnerungen an die Vergangenheit, die feindliche Gefühle zwischen den Völkern erwecken könnten, sollten der Jugend als Geschichten aus der Barbarenzeit dargestellt werden.

28. Der Patriarch und seine Minister walten ihres Amtes in dem nationalen Wirtshaus (Hauptstadt), wo auch der nationale Sejm zu seinen Beratungen sich versammeln wird. Der Patriarch oder einer seiner Minister unternimmt jedes Jahr eine Reise unter das Volk um einzusehen, ob überall die Gesetze und Verordnungen exact ausgeführt werden. Eine solche Reise soll des öfteren incognito stattfinden.

29. Die seit Jahrhunderten in enger Freundschaft und Stammesverwandtschaft lebenden Völker können nach ihrem ungezwungenen Wunsch einen gemeinsamen Patriarchen haben, der einem jeden von diesen Völkern einen Eid zur Wahrung seiner Rechte leisten und abwechselnd alle drei Jahre

in einem anderen nationalen Wirtshaus residiren soll. Dieser Patriarch ist weiterhin anderen Patriarchen in Europa gleich.

30. Jedes Volk entsendet eine gleiche Zahl von Bevollmächtigten zum Europäischen Kongress, die durch den nationalen Sejm gewählt werden sollen.

31. Der Patriarch, sollte der Sejm nicht zusammenkommen, kann einen das Vertrauen des Volkes enttäuschenden Bevollmächtigten abberufen und an seine Stelle einen neuen ernennen, der durch den nächsten Sejm entweder im Amt bestätigt oder abberufen werden kann.

32. Der Europäische Kongress ist anhaltend und erfüllt seine Tätigkeiten jedes Jahr in einem anderen Wirtshaus der europäischen Völker, und dies in einer Reihenfolge, wie unter Zahl 37 beschrieben.

33. Die in Europa meist verbreitete Sprache ist die diplomatische Sprache des Kongresses, und die nationale Sprache ist die Regierungssprache in jedem Volk. Der mehrere Völker regierende Patriarch verkündet seine Verordnungen jeweils in der Sprache, für deren Volk diese zutreffen.

34. Die erste Pflicht des Kongresses ist: das Erlassen der europäischen Gesetze, die mit einem Artikel folgenden Wortlauts beginnen sollen: Der Frieden in Europa ist dauerhaft und ewig, und seine Hauptaufgabe ist, auf ewige Zeiten das menschliche Blutvergießen aufzuhalten, also der Barbarenzeit ein Ende zu setzen.

35. Kriegswaffen jeglicher Art, also zum Blutvergießen dienende, die sich auf europäischem Boden befinden, sollen Eigenthum von ganz Europa werden. Ein Theil davon wird an Orten verwahrt, die vom Europäischen Kongress genannt werden, um sie im Notfall für die Vertheidigung der Rechte und der Sicherheit von Europa zu nutzen. Der andere Theil, entbehrliche, wird im Mittelpunkt dieses Erdtheiles gehortet, wo er zum Errichten des Tempel Gottes, Beschützers der Rechte und des Friedens, genutzt werden soll.

36. Ein meilenweites Gebiet um diesen Tempel wird die heilige Stätte in Europa genannt und als Erziehungsort für die europäischen Patriarchensöhne dienen, mit deren [Edukation][7] die tugendhaftesten und gebildetsten Bürger von Europa betraut werden, ausgewählt im gemeinsamen Einverständnis mit dem Kongress und den Patriarchen von Europa. Die Festlegung der Verordnungen sowohl für die jungen künftigen Patriarchenkandidaten als auch für ihre Meister ist Aufgabe des Europäischen Kongresses. Bei der Festlegung dieser Verordnungen nimmt der Kongress Rücksicht nicht nur auf die unter der Zahl 27 festgelegten Ziele der Edukation, sondern auch darauf, damit das Leben der künftigen Patriarchen ein Vorbild für die Völker werden kann, die sie regieren; darüber hinaus, damit diese Patriarchen die Grundlage ihres Ruhmes und Glückes nicht in der Zahl der unterjochten, sondern in der Zahl der von ihnen beglückten Menschen sehen.

37. Im Tempel Gottes, Beschützers der Rechte und des Friedens, werden die Wappen aller Völker aufgestellt, die der ewigen Allianz angehören, zusammen mit Aufschriften in der nationalen und lateinischen Sprache, die die Namen des Volkes und dessen Patriarchen nennen, sowie auch das Datum des Beitritts zur ewigen Allianz in Europa. Die Reihenfolge, in der die Wappen aufgestellt werden ist die gleiche, wie die des Beitritts der Völker zur ewigen Allianz. Sollten sich aber alle Völker für den ewigen Frieden aussprechen, in den kommenden fünf Jahren mit dem Jahr 1831 beginnend, so werden ihre Namen und Wappen in der Reihenfolge des lateinischen Alphabets aufgestellt. Die Reihenfolge der Wappen im Tempel wird die rechtliche Ordnung genannt, nach der die Bevollmächtigten der Völker im Europäischen Kongress ihre Sitze einzunehmen verpflichtet sind.

38. Ein Volk, das sich in zehn Jahren nicht für den ewigen Frieden in Europa erklärt, und noch mehr ein Volk, das sich wegen irgend welchen imaginairen oder gewaltsam erlangten Ansprüchen gegenein anderes Volk richtet, wird nicht für ein europäisches also zivilisirtes Volk gehalten, sondern für ein barbarisches.

[7] So im Manuskript. Im Druck wurde am Rande mit Bleistift hinzugefügt – Instruktion.

39. Ein barbarisches Volk ist von dem Schutz durch europäische Gesetze so lange ausgeschlossen, bis es der ewigen Allianz beitritt.

40. Jedes Volk, aus irgend einem beliebigen Erdtheil, hat das Recht, der ewigen Allianz anzugehören und den Schutz der europäischen Gesetze zu genießen.

41. Stößt der Wille des Volkes, der ewigen Allianz beizutreten, auf Widerspruch seitens der Zwingherrschaft, ist das V olk berechtigt, diese Herrschaft als feindlich, unrechtmäßig und am blutvergießenden Systema hängend zu erklären.

42. Ein Monarch, der sich länger als fünf Jahre dem Willen des Volkes widersetzt, der ewigen Allianz beizutreten, verliert nicht nur mit allen seinen Nachkommen das Recht auf das Amt des Patriarchen, sondern wird als Feind des Friedens und des Gesetzesangeprangert und zum ewigen Fluch der kommenden Generationen verurtheilt.

43. Jedem Hilfe suchenden V olk, um den W iderstand gegen den Beitritt zur ewigen Allianz zu überwinden, versichert der Europäische Kongress seine Unterstützung.

44. Jedes Unrecht, das den Gesetzen eines der Allianz angehörenden Volkes angetan wird, durch ein anderes sowohl europäisches als auch barbarisches Volk, wird als Unrecht gegenüber den Gesetzen von ganz Europa betrachtet.

45. Ein Anschlag mit dem Ziel, die ewige Allianz zu vernichten, oder der Gedanke, auch nur ein Volk von diesem heiligen Bund zu lösen, wird als Unrecht gegenüber den Gesetzen von Europa betrachtet.

46. Dem Kongress obliegt die Aufgabe, Maßnahmen zur V ergeltung des den europäischen Gesetzen zugefügten Unrechts festzulegen, und in dieser Hinsicht richtet er sich nach Maßgabe der bestehenden Gesetze.

47. Der Besitz von Kriegswaffen also blutigen Waffen, auch in geringster Menge, an einem von dem Europäischen Kongress nicht vorgesehenen Ort, wird als Anschlag gegen den ewigen Frieden, und desgleichen als Unrecht gegenüber den europäischen Gesetzen betrachtet.

48. Die Orte, an denen auf Anordnung des Europäischen Kongresses die Kriegswaffen verwahrt werden, werden blutige Orte genannt. Schon der Eintritt zum blutigen Ort ohne Einwilligung des Europäischen Kongresses, und besonders der Griff nach den dort befindlichen Waffen, wird als Anschlag gegen den ewigen Frieden in Europa betrachtet und mit dem Verlust für zehn Jahre jeglicher nationaler und europäischer Rechte bestraft. Diesem Gesetz unterliegen sogar die Patriarchen und Mitglieder des Kongresses.

49. Das stehende Heer wird für immer in Europa aufgelöst, nachdem seine bisherigen Verdienste entsprechend belohnt worden sind, womit sich der Kongress gleich nach seiner ersten Versammlung beschäftigen soll.

50. Jeder Bürger von Europa (Bürger ist ein jeder Mensch, der auf irgend eine Weise der Gesellschaft nützlich ist) kann auf Aufruf des Kongresses als Soldat eingezogen werden und darf zu keinem anderen Zweck genutzt werden, als zur Vertheidigung der Gesetze und der Sicherheit von Europa.

51. Die Kosten des kommenden Krieges vertheilt der Kongress gleichmäßig unter alle der Allianz angehörenden Völker, und das je nach Zahl der Individuen, die jedes Volk bilden.

52. Für die innere Sicherheit im Volk, also um dem Patriarchen die nötige Macht zu verleihen, die nationalen Gesetze zu wahren und zu handhaben, wird auf Kosten des Volkes eine Gesetzeswache unterhalten.

53. Der Führer der Gesetzeswache darf kein anderer als der Patriarch selbst sein. Die Gesetzeswächter der miteinander vermischten Völker stehen auch unter der Führung ihrer Patriarchen, doch den Oberbefehl über jene Gesetzeswache führt jedes Jahr nacheinander ein anderer, nach der rechtlichen Ordnung wie unter Zahl 37 angegeben.

54. Der Dienst in der Gesetzeswache ist gleichzeitig eine Soldatenausbildung für die späteren Vertheidiger der europäischen Sicherheit. Jeder Bürger von Europa ist verpflichtet, drei Jahre seines Lebens dem Dienst in der Gesetzeswache seines Volkes zu opfern. Neben den vom Patriarchen festgelegten Dienstpflichten soll jedes Mitglied der Gesetzeswache die Kriegskunst und das Kriegsrecht kennenlernen und erlernen, und im dritten Jahr seines Dienstes erhält er vom Europäischen Kongress, aus den Händen seines Patriarchen, ein Patent zum Bürger-Soldaten, mit dem er freien Zugang zu allen blutigen Orten in Europa haben wird, um die Bedienung der dort befindlichen Waffen zu erkunden. Der Bürger-Soldat giebt nach seinem dreijährigen Dienst das Patent seinem Nachfolger ab und kehrt zu seinen civilen Pflichten zurück. Das Patent zum Bürger-Soldaten darf auf keinen Fall einer Person anvertraut werden, die der Gesetzeswache nicht angehört (um zum Beispiel einen blutigen Ort zu besichtigen), nur mit einer ausdrücklichen Genehmigung des Patriarchen; für alle möglichen Folgen hat sich aber der Bürger-Soldat selbst vor dem Europäischen Kongress zu verantworten. Die Aufsicht über die blutigen Orte in Europa soll nur den Bürger-Soldaten selbst übertragen werden.

55. Die Jagdwaffen sowie alle handwerkliche, häusliche usw. Werkzeuge, mit denen Leben genommen werden kann, damit sie nicht als aus den blutigen Orten stammende betrachtet werden, sollen mit einem vom Europäischen Kongress bestimmten Wappen des ewigen Friedens geprägt werden.

56. Der Mißbrauch der Waffen mit dem Wappen des ewigen Friedens zum Töten eines Individuums oder im allgemeinen zum Verstoß gegen die nationalen und europäischen Gesetze wird als das größte Verbrechen in Europa betrachtet und mit dem Verlust für fünfzig Jahre jeglicher nationaler und europäischer Rechte bestraft. Diesem Gesetz unterliegen alle, sogar die Patriarchen und Mitglieder des Kongresses.

57. Die Gesetzeswächter benutzen während ihrer dreijährigen Dienstzeit Waffen mit dem Wappen des ewigen Friedens.

58. Kein Mensch, der die Kriegsrechte nicht kennt, ist berechtigt, weder Kriegswaffen noch Waffen mit dem Wappen des ewigen Friedens zu tragen.

59. Die Kenntnis der Kriegsrechte, die von dem Kongress im Geiste des Artikels 57 für die Gesetzeswache vorzuschreiben ist, wird ein Theil der Edukation der Jugend eines jeden Volkes sein.

60. Alles Eigenthum der Individuen, die ein V olk bilden, ist das Eigenthum des Volkes. Ein vorgeschriebener Theil der Einkommen von diesem Eigenthum, also die Steuer, wird zur Verwaltung an die nationale Regierung übergeben, um sie zum allgemeinen Wohl des Volkes zu nutzen, das ist: für die Erhaltung der Regierung, des Dienstes Gottes, der Gesetzeswache sowie für das V erbreiten der W issenschaften, Künste, Industrie, usw.

61. Das öffentliche Eigenthum, also die so genannten nationalen Güter, werden von der nationalen Regierung unter den verdienten aber kein Eigenthum besitzenden Mitgliedern des V olkes vertheilt. In vermischten Völkern, wo es zweifelhaft ist, zu welchem Volk die jeweiligen nationalen Güter gehören, wird ihre Theilung durch ein Komitee vollzogen, das von den Regierungen der betroffenen Völker ernannt wird. Untheilbare Güter, wie zum Beispiel Ber ggruben, sollen für immer unter der unmittelbaren Verwaltung der nationalen Regierung verbleiben, und der daraus kommende Gewinn wird für den Kauf von privaten Besitzern ihrer entbehrlichen Eigenthümer bestimmt, die danach unter die armen, aber gut wirtschaftenden Mitglieder des Volkes vertheilt werden.

62. Ein Mitglied eines Volkes, das ein Eigenthum von einem Mitglied eines anderen Volkes erwirbt, das mit dem ersteren vermischt ist, erwirbt dieses Eigenthum gleich vondem ganzen Volk. Dieses Gesetz betrifft nicht die getrennten Völker.

63. Der Bürger eines Volkes kann Bürger eines anderen Volkes erst dann werden und sein Eigenthum übertragen, wenn er seine Muttersprache nicht mehr benutzt und vor der Regierung eine entsprechende Erklärung ablegt.

64. Die Übertragung des Eigenthums eines Volkes zum anderen Volk, als Folge der Geschehen wie in den zwei vor gehenden Artikeln beschrieben, soll mit Wissen des unter der Zahl 62 genannten Komitees geschehen.

65. Sowohl der gewaltsame Erwerb des privaten Eigenthums eines Menschen durch einen anderen, als auch der gewaltsame Erwerb des nationalen Eigenthums durch ein anderes Volk, wird in jedem Fall als gesetzwidriger Raub betrachtet. Sollten die Regierungen der in solchen Streit verwickelten Völker diese Angelegenheit nicht mit gütigen Mitteln lösen können, muß dieser Streit durch den Europäischen Kongress nach Maßgabe des Gesetzes geklärt werden.

66. Über Zwistigkeiten und Verbrechen zwischen Mitgliedern eines Volkes werden Gerichte nach nationalen Gesetzen urtheilen und sie bestrafen, über Zwistigkeiten und Verbrechen zwischen Mitgliedern getrennter Völker urtheilen und sie bestrafen werden Gerichtskommissionen, die von den Gerichten jener betroffenen Völker ernannt werden. Sollte die Gerichtskommission eine Angelegenheit nicht lösen können, wird die Angelegenheit von den Regierungen der jeweiligen Völker entschieden.

67. Auseinandersetzungen zwischen den Völkern, die von ihren Regierungen nicht auf gütigem Wege gelöst werden können, werden ähnlich wie die Angelegenheiten des gesetzwidrigen Raubes (65), durch den Europäischen Kongress entschieden.

68. Die Zahl der durch den Europäischen Kongress entschiedenen Angelegenheiten ist das Maß für die Ungenauigkeit der Gesetze und der Regierung eines Volkes, das zu solchen Angelegenheiten Anlaß gegeben hat. Ein statistischer Ausweis in dieser Sache wird jedes Jahr in europäischen öffentlichen Zeitschriften bekanntgegeben.

69. Leben, Freiheit, Eigenthum und Ehre eines jeden Mitgliedes des Volkes sind Gegenstand eines besonderen Schutzes seitens der nationalen Gesetze. Dasein, Unabhängigkeit, Eigenthum und Ehre eines jeden Volkes sind Gegenstand eines besonderen Schutzes seitens der europäischen Gesetze.

70. Die Freiheit der Rede, der Schrift und des Druckes, die die von den Völkern angenommenen und geheiligten Gesetze nicht gefährdet, ist nicht beschränkt. Gegen Mißbrauch in dieser Hinsicht erläßt der Europäische Kongress Gesetze.

71. Jeder Bürger eines Volkes hat das Recht, (auf entsprechendem Wege) an den Sejm Entwürfe auf Abänderung der alten und Erlassen der neuen [nationalen] Gesetze zu bringen, aber ohne Entlohnung, damit die Entwürfe unbedingt angenommen werden. Jedes Volk, das der ewigen Allianz angehört, hat das Recht, über seine Bevollmächtigten im Kongress Entwürfe auf Abänderung der alten und Erlassen der neuen europäischen Gesetze zu bringen, aber auch ohne zu verlangen, daß diese Projekte angenommen werden.

72. Alle zehn Jahre wird in Europa ein politisch-religiöses Jubiläum der Einrichtung der europäischen Gesetze gefeiert. Alle europäischen Patriarchen und alle Mitglieder des Kongresses sind verpflichtet, an dieser Zeremonie theilzunehmen, die im Tempel Gottes, Beschützers der Rechte und des Friedens, stattzufinden hat, und dies als erstes, um Ihm für das Aufrechterhalten des Friedens in dem vergangenen Jahrzehnt zu danken, als zweites, um die Gültigkeit der in dieser Zeit angenommenen oder abgeänderten Gesetze zu bestätigen. Ähnliche Zeremonien finden in allen Tempeln aller religiösen Bekenntnisse in Europa statt, damit jeder Bewohner die Möglichkeit hat, an der gemeinsamen Freude theilzunehmen und Gott für den Schutz, den Frieden und das Glück in Europa zu danken. Die Zeit dieser heiligen Zeremonie ist eine Aera, in der jeder vergangene Groll zwischen den Völkern in Vergessenheit geraten soll.

73. So wie bisher die Hauptaufgaben der Regierungen: Glück und Ruhm des Volkes, und die Mittel dazu: Waffen, Form der Regierung, Gesetze und Erziehung waren, so auch in der Zukunft bleiben die Aufgaben und die Mittel die gleichen, doch mit dieser Änderung, daß die letzteren, also die Mittel, in der verkehrten Reihenfolge als genannt, geordnet werden.

So wie bisher die wichtigste Quelle, ich sage nicht des Glückes, denn das ist auf Erden unbekannt, sondern des Ruhmes der Völker, der Krieg war, so sind seit der Gründung der ewigen Allianz in Europa nur Erziehung, Gesetze, Regierung, Wissen, Fähigkeiten, Künste und Industrie im weitesten Sinn dieses Wortes, Gegenstand des Wetteiferns und die einzigen Quellen des Ruhmes unter den europäischen Völkern. Für besondere Verdienste in der Vervollkommnung und Vermittlung von all diesem, spricht der Kongress jedes Jahr einigen Völkern ein Lob aus und überreicht eine entsprechende

Auszeichnung. Diese Auszeichnung wird in zwei Exemplaren überreicht, von denen eins in der gesetzgebenden Kammer des Volkes aufgehängt wird, das diese Auszeichnung erhielt, und das andere eine Gesandtschaft des Europäischen Kongresses im Tempel Gottes, Beschützers der Rechte und des Friedens, neben dem Wappen des ausgezeichneten Volkes anbringt. Diese Auszeichnung wird nur für solche Thaten zugesagt, die Nutzen für die gesamte Gesellschaft bringen können, deswegen tragen auch alle Völker, die in der ewigen Allianz vereint sind, die Kosten für das Errichten dieser Auszeichnung.

74. Historische Übermittlungen über im Kampf mit Waffen geernteten Kriegsruhm sollen in ewige Vergessenheit geraten, oder als schreckliche Andenken aus den vergangenen fünfzig Jahrhunderten der Barbarenzeit erzählt werden. Der im Kampf geerntete Ruhm wird nach der Gründung der ewigen Allianz in Europa nicht mehr als Kriegsruhm bezeichnet, sondern als Ruhm der Gesetzesvertheidigung. Der Kampf mit Waffen zu einem anderen Ziel, als zur Vertheidigung der Gesetze und Sicherheit in Europa, bringt ewige Schande und Fluch der Völker mit sich und wird darüber hinaus nach Maßgabe der europäischen Gesetze strengstens bestraft.

75. Die Wappen der Völker tragen ab jetzt keine Zeichen, die an das grausame blutvergießende Systema der barbarischen Zeiten erinnern könnten. Schwerter, Speere und auch die Gestalten von Raubtieren, wie die der Löwen, Adler und anderer, sollen in Gestalten anderer Wesen oder Sachen verwandelt werden, die gütige und edle Gefühle wecken oder an besondere Eigenschaften des Volkes, das diese Gestalten zu seinem Wappen wählt, erinnern können.

76. Seit der Aera der ewigen Allianz in Europa werden nur zwei Arten der moralisch-religiösen Bekenntnisse geachtet, und das sind: die guten Menschen, also die Gottes Gesetze befolgenden, und die bösen Menschen, die diese Gesetze verletzenden. In moralisch-politischer Hinsicht werden auch nur zwei Völker geachtet: das eine zivilisirte, das die Gesetze befolgt, deren Grundlage Gottes Gesetze sind, und das andere barbarische, das sich von Leidenschaften leiten läßt, die sind zum Beispiel: die Lust am Blutvergießen, der Drang zur eigenen Erhebung durch Unterjochung anderer, das Trachten nach fremdem Eigenthum oder Freiheit, und so weiter

(Verfolgungen und Haß, die bisher wegen alter Gegebenheiten zwischen Bekenntnissen und Völkern vorkamen, sollten ab jetzt in Verfolgungen und Haß zwischen den eben genannten zwei Bekenntnissen und zwei Völkern umgewandelt werden. Wenn das Bekenntnis guter Menschen vereint in einem zivilisirten Volk Oberhand gewinnt über das Bekenntnis der bösen Menschen und über das barbarische Volk, wird die Welt zu einem Paradies, wenn aber die zweite Seite die erstere besiegt, bleibt die Erde für immer, wie auch in den vergangenen 59 Jahrhunderten, eine verfluchte Höhle von Unsittlichkeit und von Morden.)

77. Seit der Aera der ewigen Allianz (die auf ewige Zeiten das menschliche Blutvergießen aufhalten soll) wird kein Urteil mit dem Tode bestraft. Eine vorsätzliche Tötung oder ein anderer schwerer Verstoß gegen die Gesetze, selbst oder durch andere vollzogen, wird mit dem Verlust der nationalen und europäischen Rechte für fünfzig Jahre bestraft. Diesem Gesetz unterliegen alle, sogar der Patriarch und die Mitglieder des Kongresses. Die Gefängnisse, in denen sich die gesetzeslosen Verbrecher aufhalten, werden nicht als Strafe betrachtet, sondern als Schutz vor den Gefahren, die der Verlust der Rechte verursachen kann. Der Vollzug dieser vorliegenden barbarischen Gesetze wird allen Feinden der Wahrheit und Zivilisation empfohlen, das ist allen grausamen und barbarischen, jetzt in Europa lebenden Monarchen, ausgenommen den gütigsten und zivilisirtesten Mikołaj I. [Nikolaus I.], der (zur Belohnung für seinen väterlichen Ukas, ausgegeben in Sankt Petersbug mit dem Datum 22. März/3. April im 6. Jahr seiner unblutigen Herrschaft[8], sowie dafür, daß er uns durch seinen denkwürdigen Ukas den Grund gegeben hat, diese barbarischen Gesetze niederzuschreiben) von deren Annahme befreit werden kann, und dies ohne die strenge Strafe, die zu Beginn von uns angekündigt wurde.

[8] Der Ukas des Zaren vom 22. März/3. April 1831 betraf die Anwendung der Gerichtsprozedur und der Urteilssprechung gegenüber den Aufständischen adliger Abstammung und anderer Stände in dem Gouvernement von Wilna. Sie sollten nach dem Kriegsgesetz durch Kriegsgerichte verurteilt werden. Das Vermögen der Verurteilten wird konfisziert, und ihre Kinder männlichen Geschlechts sollen in Kantonistenlager gebracht werden. Siehe: *Polnoje sobranije zakonów Rossijskoj Impierii*, Band 6, Sankt-Pietierburg 1832, 2. Ausgabe, Nr. 4444, s. 252 - 253.

Gegeben zu aufständischem Warschau am 21. April/3. Mai, im 1. Jahr unserer blutigen Herrschaft.

(hier folgen zahlreiche Unterschriften der wahnsinnigsten polnischen Aufständischen) Urkundlich bestätigt (unterzeichtet) W oj[ciech] Jastrzębowski, Gemeiner Soldat, Sekretär der Bande von wahnsinnigsten polnischen Aufständischen

Bekanntgabe

Diese vorliegende aufständische Schrift wird im Preis von 25 Groschen verkauft zur Unterstützung der verwundeten polnischen Aufständischen und zur Errichtung eines Denkmals für die unsterblichen russischen Helden, die zum W ohl der ganzen Gesellschaft (nachdem sie die halbe Welt unterjocht und Asien und Europa in Blut getränkt hatten, und jetzt dem von der polnischen Aufruhr bedrohten W esten Frieden, Heil und Cholera bringen) dem Tod oder ihren Wunden erlegen sind, und die jetzt durch den Willen ihres gütigsten Herrschers, des Engels des Friedens, ohne Begräbnis in unwegsamen Mooren und Wäldern herumliegen oder im Hauptlazarett des russischen Heeres in Warschau vor Schmerzen ächzen, und auf diese Weise dem unachtsamen Europa beibringen, wie es seinen gnädigsten Beschützer preisen soll.

Gaben für diesen Zweck sammeln alle Kontoren der aufständischen Warschauer Schriften, sowie die wahnsinnigsten polnischen Aufständischen selbst.

Die Namensliste der W ohlthäter, die zum V ermehren der Spenden beitragen, gemeinsam mit der Höhe ihrer Gaben, wird im Amt Seiner Hoheit des Generalgouverneurs von Warschau[9] vorgelegt.

[9] Seit dem 3. März 1831 übernahm das Amt des Generalgouverneurs von Warschau General Jan Krukowiecki, der unmittelbar der Nationalen Regierung untergeordnet war.

*Übersetzt von Elżbieta Łabińska*

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SUPREME CHAMBER OF CONTROL

# SUPREME AUDIT INSTITUTIONS FOR IMPROVEMENT OF EUROPEAN UNION FUNDS ACCOUNTABILITY

Insert to the Special Issue of ”Kontrola Państwowa”

(1) December 2006

**John Purcell**
**Comptroller and Auditor General of Ireland**

# THE AUDIT OF EUROPEAN AGRICULTURE GUIDANCE AND GUARANTEE FUND – IRISH OPERATIONS

## *The Contribution of the Agriculture Sector to the Irish Economy*

Since the foundation of the Irish State the agri-food sector has made a significant contribution to the economy. Though this contribution has declined in recent times relative to other sectors, it still is of major economic importance in terms of employment, exports and contribution to Gross Domestic Product (GDP). The sector's contribution in 2005 is summarised in the following table:

| **Economic Contribution of Agri-food Sector in 2005** | |
|---|---|
| GDP | |
| – Total GDP | €141,961m |
| – Agri-food GDP | €12,219m |
| – % Contribution | 8.6% |
| Employment | |
| – Total Employment | 1,929,200 |
| – Agri-food Employment | 163,100 |
| – % Total Employment | 8.5% |
| Exports | €7.5 billion |
| *Source: DAF Annual Review and Outlook 2005/2006* | |

### *Public Expenditure on Agriculture*

Total expenditure on the agri-food sector by DAF was €3,259 million in 2005, almost 70% of which was accounted for by EU Guarantee expenditure.

| **Expenditure on Irish Agriculture 2005** | **€m** |
|---|---|
| EAGGF Guarantee Expenditure | 1,841 |
| Intervention Purchases | 63 |
| State Expenditure (including co-funded measures) | 1,077 |
| Administration | 278 |
| Total | 3,259 |
| *Source: DAF's Annual Review and Outlook 2005/2006* | |

### *EU Supports in Agricultural Sector*

The European Agricultural Guidance and Guarantee Fund (EAGGF), better known by its French abbreviation FEOGA, was established in 1962 and forms part of the general budget of the European Union. The Guarantee Section finances Common Agriculture Policy (CAP) expenditure such as direct payments to farmers and EU market supports. The Guarantee Section also provides the EU contribution towards co-financed (national exchequer and EU) CAP Rural Development Programme (2000-2006) and a contribution towards the financial and operational costs of intervention purchases of specific agricultural commodities.

The European Union (EU) contribution towards rural development co-funded measures varies from 50% to 85% of eligible expenditure, subject to overall financial ceilings.

The Guidance part of the EAGGF is one of the EU Structural Funds which part finances the cost of agreed national development measures implemented over a number of years, currently 2000 – 2006.

Payments out of the EAGGF are made at Member State level and recouped subsequently from the EU Commission.

## Financial Control Framework

### *Role of Member States*

The Treaty of Rome, as amended in particular by the Maastricht Treaty, places specific obligations on Member States to protect the EU's financial interests.

Member States are responsible for ensuring the correctness of expenditure where responsibility has been delegated. This includes prior checks (ex-ante) based on documentary evidence, on-the-spot controls and post payment (ex-post) checks.

Article 280 of the Treaty of Rome gives responsibility both to the EU and to Member States for countering fraud and other illegal activity affecting the EU's financial interests. Member States are required to take the same measures to counter fraud affecting EU financial interests as they take in relation to national financial interests.

Member States, through accredited paying agencies, have delegated authority to make payments on measures financed from the Guarantee Fund of the CAP.

For Structural Funds, the EU institutions decide on programme allocations. Member States authorities (national, regional etc.) select projects to be financed and are responsible for day-to-day management and the checking of claims for EU funding.

### *Accreditation for EU Guarantee Purposes*

Department of Agriculture and Food (DAF) is the Government Ministry responsible for agricultural matters. It is also the accredited paying agency for Guarantee Fund supported measures. As a paying agency accredited in accordance with EU rules, DAF is responsible for the correct authorisation, execution and accounting for payments, for sound financial management, for preventing and dealing with irregularities, for recovery of sums lost as a result of irregularities or negligence and for countering fraud and illegal activities. It is obliged to adhere to stringent regulatory requirements to meet financing and accounting standards and to submit independently certified annual accounts of expenditure out of the Guarantee Fund to the EU Commission.

The annual accounts for the EAGGF year (16 October to 15 October) must be forwarded to the EU Commission by 10 February with "an attestation" as to their integrity, accuracy and veracity from a body operationally independent of the paying agency – this body is referred to as the Certifying Body. The opinion of the Certifying Body is based on an examination of procedures and a sample of transactions, conducted in accordance with internationally accepted auditing standards.

The Certifying Body issues a report of its audit. The report details the audit resources applied, the audit approach and techniques employed, the extent of sampling and testing and the audit findings.

When certified, the annual accounts are examined and cleared by the EU Commission, which may impose disallowances on grounds of failure to comply with regulations or because of poor systems of control.

Ireland is also a recipient of EU structural funds and must adhere to EU financial management rules and requirements on protecting EU finances in relation to these funds. DAF is the lead Department for the Guidance section of the EAGGF and is responsible for implementing a number of structural measures under the National Development Plan 2000-2006.

In order to fulfil its obligations regarding the EU's financial interests, DAF operates comprehensive financial management, control and accounting systems which include:

– Written financial controls and procedures,

– A SAP computerised accounts system providing enhanced financial management capability,

– A significant Internal Audit function,

– An Audit Committee consisting mainly of members external to DAF,

– An Accreditation Review Group which seeks to ensure that DAF maintains its status as an accredited EU paying agency,

– The implementation of a formal Risk Management Programme, which seeks to identify and manage risks.

### *Irregularities*

Member States general obligations to protect the EU's financial interests from irregularities and fraud are set out in Article 280 of the Treaty of Rome, Article 8 of Regulation 1258/99 (EAGGF Guarantee) and Article 38 of Regulation 1260/99 (Structural Funds). Detailed rules on irregularities and recovery of sums wrongly paid and specifically on the obligation to inform the Commission of irregularity and fraud cases detected and on the action taken, are set out in Council Regulations[1].

### *Certifying Body*

In some Member States, the national audit authority is appointed as the Certifying Body. In Ireland, the Comptroller and Auditor General declined an offer to become the Certifying Body on the grounds that his reporting responsibility under the Irish Constitution is solely to Parliament. One of the four largest international accounting firms acts as the Certifying Body following a competitive tendering process. However, the C&AG does audit EAGGF operations in Ireland and this audit is discussed in greater detail in the following paragraphs.

## Audit of EAGGF – Irish Operations

### The Comptroller and Auditor General

Under a constitutional and statutory mandate, the Comptroller and Auditor General (C&AG) audits the annual accounts of central Government and non-commercial State agencies in Ireland.

A core function of the C&AG is to provide assurance to Parliament that the accounts of public bodies properly reflect the underlying financial transactions and that proper books of account have been kept. In addition, he publishes reports on matters arising in the course of audit and on the outcome of value for money examinations. A select Parliamentary Committee[2] examines the audit opinions and published reports of the C&AG and senior civil and public

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1 EAGGF Guarantee (Agriculture) - Regulation 595/91
Structural Funds - Regulation 1681/94 and (Cohesion Fund - Regulation 1831/94).

2 Committee of Public Accounts.

servants are required to account for the stewardship of State funds at public hearings of the select Committee. The C&AG is a permanent witness at these public hearings.

Historically, the annual accounts of State agencies recorded EU funds where measures or activities were co-funded by the State. However, some years ago the Irish Parliament concluded that there was an accountability gap in that activities administered by national agencies but financed wholly by the EU Commission were excluded from financial reporting at a national level. The accountability gap was addressed by the preparation of an annual account of all EAGGF measures administered in Ireland and by the appointment, by agreement, of the C&AG to audit this account.

The annual account, known as EAGGF – Irish Operations, gives an overall view of the measures funded by the EAGGF and incorporates:

– Guarantee funded activity (direct subsidies and market supports),

– Intervention activities,

– Those elements of DAF's expenditure concerning activity co-funded by the EU.

### *Audit Scope, Policy and Standards*

The audit approach, policies and standards adopted by the C&AG in the audit of public accounts are applied equally in the audit of EU funds, viz.

– The primary purpose of financial audit is to carry out sufficient work to enable the C&AG to express an opinion on the financial statements. In planning audits a risk-based approach is followed designed to apply audit time and resources to areas of greatest risk.

– Each annual audit culminates in an opinion by the C & AG on whether the accounts are complete, the transactions regular and properly valued and the level of disclosure is appropriate.

– The formal audit opinion may be supplemented by a published report if the C&AG considers that an issue arising on the audit merits reporting on the grounds of public accountability.

– The C&AG's work, in common with the wider auditing profession, is undertaken in accordance with international auditing standards.

### *Assurance from the Work of Other Auditors*

In line with best practice and in the interests of maximising the efficient use of audit resources, the C&AG takes account of the work of other auditors and derives audit assurance from that work, where appropriate.

In regard to the audit of the EAGGF – Irish Operations, the two primary sources of assurance are:

– The audit undertaken by the Certifying Body.

– The work of the Internal Audit Unit in DAF.

The Certifying Body presents an annual report of its audit of the Guarantee Section of the EAGGF to the EU Commission and to DAF. This report outlines in detail the resources applied by the Certifying Body to the audit, the audit approach followed (including risk assessment), the techniques employed, the areas covered by the audit, the tests performed, the samples tested and the audit findings ranked by order of seriousness.

The planning process for the C&AG's audit includes a review of these reports and a judgment made on placing reliance on the work carried out and on the audit findings and conclusions.

The second significant source of audit assurance is the work of the Internal Audit Unit in DAF. The primary role of the Unit is to provide assurance to management that:

– Accounting records are reliable and an adequate basis for the production of financial statements;

– Financial and other data supplied to management for decision making purposes are reliable;

– Assets are safeguarded and no unauthorised liabilities or unnecessary exposures are contracted.

In addition, a dedicated team within the Unit undertakes a programme of ex post controls to satisfy the requirements of Council Regulation (EEC) No 4045/89, sometimes referred to as the Scrutiny Regulation.

The Unit has a staff complement of 20 and reports to a senior management committee and the Audit Committee. Its audit reports are systematically provided to the C&AG and, on request, to the Certifying Body.

The work of the Internal Audit Unit is overseen by the Department's Audit Committee which has been in existence since 1994. The Committee comprises representatives from the private and public sectors. It meets on a quarterly basis and issues an annual report to the relevant Government Minister.

The C&AG also has regard for the examinations undertaken by the European Court of Auditors (ECA) and the EU Commission.

In summary, two external auditors, the C&AG and the Certifying Body, examine and report on EAGGF funded activities in Ireland. In addition, the Internal Audit Unit in DAF devotes a substantial number of days to auditing agricultural expenditure, including EAGGF operations. Moreover, the EU Commission and the ECA oversee and test the administration of EU activities by national agencies.

Overall audit coverage by the various audit bodies is shown in the following table:

| **Audit Coverage in Person Days** | | | |
|---|---|---|---|
| **Audit Body** | **2005** | **2004** | **2003** |
| Internal Audit Unit in DAF | 1,792 | 1,897 | 1,905 |
| Comptroller and Auditor General | 480 | 495 | 500 |
| Certifying Body | 444 | 460 | 410 |
| ECA - mission days in Ireland | 40 | 94 | 55 |
| EU Commission – mission days in Ireland | 36 | 30 | 32 |
| **Total** | **2,792** | **2,976** | **2,902** |
| *Source: DAF Audit Committee Eleventh Annual Report 2005* | | | |

**Ubaldo Nieto de Alba**
**President of the Court of Audit of Spain**

# THE AUDIT OF THE COMMUNITY FUNDS MANAGED IN SPAIN

## I) Approach to the management and control of community funds in the member states of the European Union

The Agreement on the Financial Perspectives for the period 2007-2013 reached in the European Council of Heads of Government in December 2005; the tacit establishment of a period of reflection after the rejection of the European Constitution by France and the Netherlands in the referenda held; the enlargement of the acceding and candidates countries for a new process of integration into the European Union (EU) and the beginning of negotiations with the Balkan countries and Turkey; the weakness of the economic growth and job creation in Europe; the advances achieved as regards Common Agricultural Policy to increase the competitiveness and to assure the stability of the markets, and in the field of the external performance and development aid; the divergences expressed by EU countries in questions as important as the competition policies or immigration, have been some of the hottest debates in this year. This reflects the dynamism of the EU and their democratic character, as well as the difficulties that arise, characteristic of all integration processes, in the road towards the complete effectiveness of the common policies.

Two and a half years since the last enlargement of the EU have passed; a Community already composed of twenty-five States and 450 million citizens. It offers an extensive unique market now; a monetary and economic union, with the Euro as a common currency whose assumption by the countries of new integration will begin starting from 2007; the "Schengen space" that facilitates citizens more internal freedom of movement; as well as an intense cooperation in areas such as justice, foreign policy and common security.

The enlargement has supposed, no doubt, a reinforcement of the EU as a Community founded in the State of Law, united in its diversity and committed with the principles of freedom, democracy, stability, and communion of its people. However, it should not be ignored that it is in an adjustment phase and that, in development and economic terms and social cohesion, they still have a long way ahead; that makes precise an important structural and financial effort, as well as an internal process of adaptations and reforms to assume the growth produced and to achieve the necessary fitting and effectiveness of its institutional operation.

The principle of cooperation becomes essential in this framework to design and to put into practice formulas that make possible the balance between rationality and effectiveness in the expenditure; the structural, economic and democratic development, and the solidarity in the EU.

To carry out their objectives the EU designs common policies guided to encourage the economic and social progress and the improvement of the living conditions, the consolidation of the unit of the economies and the reduction of the regional inequalities. These policies require the application of an important amount of financial resources that make them possible.

In agreement with articles 274 and 275 of the EC Treaty, the Commission, under its own responsibility and inside the limits of the authorized credits, will execute the community Budget in agreement with the provisions of the regulations adopted and subject to the principle of good financial management. The Commission will also present every year to the Council and the European Parliament the accounts of the financial year ended regarding the operations of the Budget.

Over 80% of EU funds are channelled through the Members States. Their national provisions will always be subject to the actions that those ones determine, even when its management is governed, as for the procedures, for the regulations of national budgetary Law; with full respect and application

of the community precepts. This way, the Member States become responsible for the management of the funds before the Commission, establishing the EC Treaty itself that those ones must cooperate with this one to guarantee the referred principle of sound financial management and the execution of the common objectives; contributing this way to make effective the attainment of budgetary stability, transparency and the respect to the convergence limits designed in the Stability Pact. The management and its audit become, therefore, essential elements that should be articulated on solid relationships of cooperation.

The control of the community resources managed in the Member States of the EU should be considered from two different, although complementary, perspectives: the one developed by the community institutions and the one that corresponds to the national audit institutions. The entities implied in the control, still when partially act from concurrent competence environments on determined areas of the management, have their own mandate and performance field, as well as a purpose and diverse perspective in the development of their functions; at the same time that they participate of the unique objective of contributing to the improvement of the management and the application of the common policies.

Indeed, the control that develop the Community bodies is aimed at verifying the operation of the systems and to the exercise of the confirmations demanded by the Community economic-financial regulation, so that the correct management of these funds is guaranteed by the national institutions (joint responsible for the execution of those policies) and the execution of the formal and materials obligations imposed to its final collectors. The national bodies, on the other hand, will guide the control towards the verification of the ordinary execution of the national Budget and the management of the public funds of this nature; both of those that are part of the resources of the EU that finance state and regional programs as well as those that come directly from the Member State and that are aimed at wider objectives that the correlative Community ones and that are aimed at the execution of the national policies (it should be kept in mind that the community funds received by the Member State represent a reduced amount in terms of GDP; in the case of Spain, 1 % annual as average in the whole period since Spain joined the EU).

To carry out the control of the management of Community funds it is indispensable, with full respect to their own mandate and independence, the coordination among the diverse bodies that carry it out, with the purpose of

avoiding duplicity of actions or gaps, as well as the development of cooperation mechanisms in order to improve the effectiveness of its own control, endowing it with authentic added value. A good management of the Community funds redounds in a good operation of the EU itself, as different but integrative supranational reality of the Member States, and in the establishment of the application of the common policies.

It can be distinguished two approaches in the audit of the management of the Community funds managed in the Member States. The first approach is centred in considering the mere condition of the countries as Member States of the supranational Entity that has the competencies to settle down and to receive those economic resources, as well as to dedicate them to the corresponding purposes. From this perspective the audit activity is guided towards the operation of the systems and the exercise of the confirmations according to the community economic-financial regulation, examining the correct management of these funds by the national institutions, as well as to the execution of the formal and material obligations imposed to their final recipients.

This control that is complementary and concomitant with that referred to the management of these funds subject to the national regulations, relapses on three activity areas: the collection of the own resources, the management in the national field of certain community policies and the intermediation of the State in the management of the funds whose final collectors are the regions, municipalities, companies or individuals.

The second of the approaches referred starts by estimating that the funds coming from the EU, besides being the financial instrument for the execution of the community policies, constitute in each Member State an important source of financing for the development of certain state and regional public policies whose objectives are wider, but partially coincident with, than the correlative Community ones.

From this perspective the point of interest is located in the national management of a source of revenues for the State, as beneficiary of the application of the community policies. This way, the audit will be centred in the analysis of the effectiveness and efficiency of the activities guided to the best use of the financing possibilities that the community policies facilitate to the Member States, without detriment of the aspects related to the correct management of the use of the funds obtained.

Community regulations establish the principle of the unity of treatment in the control and in the sanctioning regime, being the States obliged to adopt the same measures to fight fraud that affects to the financial interests of the EU than those ones referred to their own interests. This postulate makes precise that differences are not generated in the internal or external control that is exerted in the Member States on the exclusively national resources or of the Community origin, in function of their origin.

## II) The audit of the community funds managed in Spain

The audit of the EU funds of the UE managed in Spain is developed, at Community level, by the European Court of Auditors (ECA); and, at national level, by the Spanish Court of Audit (TCu) and the Regional Audit Institutions of the Autonomous Communities (Regions), in agreement with the competencies and regulations designed by the national Law.

### *The audit of community funds by the European Court of Auditors*

According to the Treaty of the EU, it corresponds to ECA to verify and to give an opinion on the regularity and legality of accounts and operations in execution of the Community Budget, and on the good financial management of the funds. This audit is carried out on the information available in the Commission, as responsible for the management of that, but also "in situ" in the Member States where the management and the transactions are developed in an effective way. The control will be made by ECA in the Member States in collaboration with the Supreme Audit Institutions (SAIs) that will cooperate with a spirit of trust, respecting the independence of the Institutions, in the terms settled down by article 248.3 of the EC Treaty.

Indeed, it is in the framework of cooperation that the SAIs provides where the performance of ECA must develop in the Member States, since the realization of audits of Community funds or the elaboration of reports assigned to the competence of that one, cannot be imposed to the SAIs. It is attributed to ECA, also, the duty of elaborating for the European Parliament and the Council an statement about the reliability of the community accounts and the legality and regularity of the underlying operations (article 248. 1 of the EC Treaty), the DAS.

ECA plans, executes and elaborates its own reports, and develops its activity by means of its auditors, according to its exclusive approaches and according to its own regulations. The procedures of cooperation of the SAIs in the missions of the ECA in the Member States, given the absence of a homogeneous regulation, it is articulated in a bilateral way derived from practice.

The TCu offers its cooperation to ECA in the missions that this one develops in Spain. In this area, the TCu acts from a double perspective. On one hand, it takes part in these missions as a channel of the communications and actions between ECA and the entities of the Spanish public sector that receive Community funds. The announcements of the missions of ECA, the sector letters, the allegations of those auditees and the replies of ECA to them, as well as the audit reports are processed in Spain through the TCu. This intervention facilitates the work of the European Institution in a great measure, as the Spanish Administration is vastly decentralized and it is not always easy to identify immediately the entities responsible for the management and the internal control as well as the national institution in charge of the general coordination of each Community Fund. In this process, the TCu maintains a mere position of liaison entity and it doesn't participate in any way in the development of the audit itself by means of contribution of information, the presentation of allegations neither the simultaneous practice of parallel national audits to the missions of ECA.

The TCu frequently designates one or several auditors of the Institution that take part as observers in the missions of ECA in Spain. Even when its intervention in any case exceeds of such condition, since ECA is the only incumbent and responsible for those audits, however, it facilitates in great measure its development. Indeed, the auditors of the TCu may constitute for the auditors of ECA a support in what refers to facilitate the knowledge of the systems and the Spanish management and control of the public funds procedures, as well as to act as an approach vehicle to those responsible for the management, facilitating the contacts. This intervention in the missions of the ECA contributes also to provide the TCu with an important source of information on the field in order to identify areas of risk and weaknesses in the systems and in the organization of the national entities managing community public funds, that might be taken into account in the ordinary audits of the TCu or that might result in the performance of special national audits on determined sectors of the management.

Likewise, the remission by ECA of the audit reports to the TCu constitutes for this one a source of information of great interest, as they refer to the verification of the management of Community funds by the national entities, with a view to the planning of its audits and to its audit activity development, as well as for the formulation, in its case, of recommendations to the Parliament to improve the management.

It must also be highlighted that the TCu seconds a national officer to the ECA. He/she is subjected to the management and instructions of ECA as one more auditor of the European Institution to support it in the audit work that develops and, when it is necessary, in the knowledge of the management systems and the operation of control in Spain.

### *The audit of community funds by the Spanish Court of Audit*

#### *General notes on the development of the audit of the economic-financial management of the public sector by the national audit institution*

The TCu is defined by the Spanish Constitution as the Supreme Audit Institution of the accounts and of the economic management of the Spanish public sector. Its audit function is exerted with an external, permanent and final nature, in connection with the execution of all the programs of public revenues and expenses; verifying the subjection to the economic-financial activity to the principles of legality, efficiency and economy.

The TCu is competent to investigate all the funds managed by the public sector, understanding for such the State Administration, the Autonomous Communities (regions), the local Entities, and the Managing Entities of the system of Social Security, the public autonomous bodies, and public companies and entities. It also corresponds to it the audit of subsidies, credits, guarantees or other aids of the public sector received by individuals or companies; as well as the development of specific audits, outside of the strict area of the public sector, settled down by special Laws, as it is the case of those ones that relapse on the accounting of the ordinary activity of the political parties and the accounting of the electoral processes.

The results of the audit function of the TCu are presented in reports or memoirs that are remitted to the Parliament, providing it technical information about the management as such and the efficiency and rationality of the operation of

the systems and the organization. They facilitate the development of the function of political control that corresponds to this one, and the planning of the general economic-financial activity. It is worth standing out to this respect the capacity that it is endowed to the TCu of elaborating motions, derived from the experience that emanates of the exercise of its function and of its technical know-how and not simply as a result of a concrete audit, proposing to the Parliament measures that, in its opinion, guide to the improvement of the economic-financial management, in what refers to the regulations; as to the shortcomings in the organization, the management or the control; and in what concerns to management practices.

In each audit the TCu examines and evaluates, as a first aspect, the system of internal control settled down at the auditee. A system of internal control is considered appropriate when it provides enough security regarding the safeguard of the assets and resources of the entity, about the reliability of the accounting registrations, and the guarantee of a sound operation of the organisation. The verification of the internal control that the TCu carries out has as an object the analysis of the design of the system established in the auditee, that its operation has been developed in practice as foreseen, and that it has made it during the whole period and for as many operations as it was designed. The analysis of the objectives and procedures of internal control made in order to identify the strong and weak points of the established system, the main confirmations should be increased in the areas or sections where it presents more weaknesses. This verification of the TCu also extends to the operation of the organisation and performance of the own bodies that develop the internal control itself, and its agreement with the parameters of legality, effectiveness, efficiency and economy.

It is also of great interest to highlight the horizontal audits that the TCu develops whose purpose is to analyze and to verify the operation of areas, organisations and systems in the diverse components of one or several concrete sectors of the public management, so that general knowledge can be obtained about them as well as information that enables to make comparative studies of the management in the diverse sectors or territorial levels, as it proceeds, and to propose recommendations to the Parliament guided to a global improvement of those ones.

The mandate of the TCu is very extensive since it covers the audit of the economic-financial management of all the national public funds, in the whole national territory and regarding all the entities or people managing them.

All this, without detriment of the competencies that the respective Statutes of Autonomy and the corresponding regulating laws can attribute to the Regional Audit Institutions of the Autonomous Communities. These entities develop their audit activity with full independence of the TCu, and following their own programs and audit procedures regarding the regional economic-financial activity and their organizational and operational standards; and they send their reports as a technical result to the regional Parliaments where they serve as support to these ones in the exercise of their function of political control of the regional Government.

With full respect to the autonomy granted, the regional audit institutions will coordinate their activity with that of the TCu by means of the establishment of approaches and common audit techniques that guarantee the highest effectiveness in the results and avoid the duplicity in the audit actions. To such effects, they will send to the TCu their audit reports on the autonomous public sector. The TCu will be able to examine them, to practice the extensions and confirmations that it estimates necessary, and to incorporate its own conclusions to the annual Report to be sent to the Parliament.

In practice diverse procedures and coordination and collaboration ways have been articulated between the TCu and the audit institutions of the Autonomous Communities that are expressed in the reciprocal exchange for the respective annual audit programs with an informative purpose; in the setting up of a Committee of Presidents of those entities to discuss and to establish joint performance rules, and sector committees to work for common objectives, the study and the exchange of experiences on concrete aspects of the audit; as well as in the development of joint and coordinated audits on concrete areas.

*The Spanish Court of Audit and the audit of Community funds*

The TCu is competent to audit public funds coming from the Community Budget, that enjoy to all the effects the nature of Spanish public funds, both regarding the operations guided to be part in a definitive way of the Treasury of the State Administration as of those that go trough it to the final recipient (the Ministry of Treasury has been commended the operations of Treasury that demand the economic relationships with the EU). The TCu also verifies the financial flows between Spain and the EU.

Those funds that come from the activities of Community entities (European Investment Bank and the European Coal and Steel Community, among others) as financial institutions, granting loans to the Spanish private sector are not subject to the audit of the TCu. Neither it will be able to investigate the resources granted and transferred directly to the final recipients. In such cases, the audit will be competence of the ECA.

The audit of the Community funds that the TCu carries out, as national public funds, doesn't exclude the one that the regional audit institutions might carry out regarding the funds coming from the EU managed by the Autonomous Communities, in agreement with the respective competence mandates attributed by the national Law.

This concurrence of audits requires common lines, guides and parameters of action with the purpose of avoiding duplicities, increase of expenditure, and even contradictory results. It is necessary to work in the construction of models that not only guarantee the effectiveness of the management, but also of the audit itself.

The TCu verifies Community funds in the same way and jointly with the other national public funds, in the same way and with the scope previously exposed. The TCu investigates the public economic-financial management in agreement with its own procedures and regulations, without taking into account specifically the directly national or community origin of the funds, but to the programs of revenues and expenses through which this is carried out; this is, considered horizontally in the group of the public funds dedicated to the programs and objectives in which the management is materialized. Therefore, there is not a specific Unit or Department in the TCu in charge of the verification of the Community funds, but rather their audit is developed jointly with the funds of direct national origin, by the sectorial or territorial Departments of the TCu in charge of the control attending to the nature of the programs to which the funds had been applied.

The General Statement of State Accounts drafted by the TCu frequently contains a reference to the situation of the financial flows between Spain and the EU. Likewise, some special reports of the TCu carry out an expressed mention to the specific management of community funds as far as they show the results of audits of programs that have received an important financing from these funds or in which the procedures of national management are analyzed for the application and execution of the policies of the EU; this has

taken place, fundamentally, as regards infrastructures, workers' professional training, and in concrete aspects of the common agricultural policy.

The TCu has included in its Audit Program the last few years in, some audits referred specifically to questions related to certain aspects of the management of the resources and Community policies. Specifically, special audits on the procedures applied by the Central Administration to the financial flows between Spain and the UE, as well as on the verification of the execution of the objective of budgetary stability from the 2003 financial year have been integrated in the Program for 2006. Likewise, the TCu has participated from 2003 in the two coordinated actions on diverse areas of the management of the Structural Funds agreed in the meetings of the Contact Committee of 2002 and 2004; elaborating its corresponding national report and providing the precise information for the preparation of the joint reports to be presented to the Contact Committee in 2004 and 2006, respectively.

The TCu sends to ECA periodically the audit reports containing the results of the management of the economic-financial activity of the Spanish public sector, what may provide to the Community Institution information that can be useful regarding the management itself, and help the ECA to identify possible irregularities, shortcomings in the organisation or in the systems, or areas at risk.

It should be pointed out, on the other hand, that the TCu is endowed with a jurisdictional function guided to elucidate the possible accounting responsibilities derived from the management of the public funds, among those ones are included the ones arising from mismanagement of those funds that come from the EU. This jurisdiction has a reparatory character and it is aimed at obtaining the refund of the improper payments received or of the funds that had been damaged.

The development of the performance of the TCu regarding the management of the community funds redounds positively in the attainment of a higher dimension and effectiveness of its results, in its facet of technical audit institution.

The results coming from these audits have a double repercussion. On one hand, they provide the Parliament a wider knowledge of the national management of the Community funds and about the execution degree by the managing entities of the recommendations resulting from the reports of ECA and the TCu; giving rise to motions or notes, when it is considered precise, with proposals of measures for the improvement of this management.

The second important consequence of this initiative is the provision of more information to improve the detection of irregularities, providing a valuable information to the criminal Courts, when behaviours that could constitute crimes or misdemeanour of this nature converge; to the Jurisdictional Section of the TCu so that the prosecution of the possible accounting responsibilities that could originate as a consequence of the referred management; as well as to other entities in charge at the national or community levels to investigate and to follow up the irregularities and frauds made. This way, it becomes more effective the protection of the financial interests of the Community that the community Treaties commend to the Member States.

These performance rules favour, no doubt, the exchange of internal and external information among the community and national audit institutions, generates a process of horizontal and vertical feedback that implies the audit institutions, the Parliament and the managing bodies, and it redounds in more transparency and effectiveness in the application of community funds in Spain.

This organizational network requires of the rationalization and ordination of a complex net of relations of cooperation and coordination to get a flow of effective information and a productive performance process guided to obtain advances in the joint and coordinated audits in the concurrent audit areas; to identify the shortcomings in the regulations and in practice, to base recommendations and to impel the identification of responsibilities.

Institutional cooperation must be accompanied by a tendency toward the procedural homogenization (common audit techniques, harmonization of standards and determination of principles of general application in the whole European Community), in order to endow with sufficient degree of effectiveness and operability, the coordinated audit of the management of Community funds. This way the performance of the audit institutions in the Community framework will be presented as a "whole" integrated in a net under the principles of independence and cooperation.

## III) Cooperating and coordination of controls: pending challenges

The decentralization of the national management of the community funds has been followed by decentralization in its verification (at community, state, regional and local level). The proliferation of audit institutions of this activity demands cooperation in the performance and coordination of results, so that they don't overcome or they are not duplicated, neither gaps or unclear areas

are left aside of the control; since, inevitably, it could end in risks of inefficiency when not of fraud.

For this reason, it is essential any effort guided to the understanding and the advance in the cooperation among the diverse entities that participate in common spaces of performance that are subject to continuous integration processes and globalization that, at the same time, they imply processes of decentralization. The reason of this decentralization process resides in the fact that, when integrating and globalizing the diversity, it is given rise to more complexity, generating uncertainty and insecurity and less transparency, and where the solidarity and the social controls are perceived more remote.

These processes don't simply consist on locating competitions upwards (EU) or downwards (regions), but rather they must be accompanied by a process of "relocation" preceded of a process of "delocation", where each element that you "relocate" may include the "global" *in situ*; that is to say, where the integration process leads to give a new meaning to the *deterritoriality* of local elements. This makes the obligation of a relocation of the public controls as a previous condition to make operative this net of controls in the global environment.

It is necessary to make real the principles expressed on article 248.3 of the EC Treaty: competence independence of the institutions auditing Community funds (ECA, SAIs and regional audit institutions) and cooperation in the execution of the audit. It is necessary to deepen in the operational aspect, for what we must insist in the philosophy of the horizontality, both in the national aspect as the community one, with the purpose of strengthening the subsidiarity principle.

It would be of great interest that ECA applied, equally, this double strategy of the horizontality in the whole environment of the EU and the specific uprightness for each case. This way it will direct the focus of attention of their activity, not only to the detection of concrete irregularities in the national management of Community funds, but also to the analysis of the framework and the context where they take place: verification of the community transposition of the regulations and of the management procedures of these funds in each one of those, and identification of the stimuli to the negligence in the standards and in the audits. This will allow favouring a tendency towards the homogenization of principles and procedures and towards surveillance of the execution of the directives and recommendations in the whole area of the EU, avoiding this way asymmetries regarding the different countries and managing entities.

This way, the performance of the audit Institutions in the community framework will be presented as a "whole" integrated in a net under the principles of more independence in the vertical environment and of horizontal cooperation in the environment of the global context; all starting from the principle of full cooperation. At this point the reciprocal exchange, between the UE Member State's SAI and ECA, of reports that affect or that they refer to the control of the Community funds contribute towards sharing information on the management that can be of great interest for the development of the respective competencies and to get a complementary and integral control of those ones.

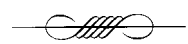
It is a difficult balance, upward-downward / intergovernmental-institutional that demands to overcome the tensions originated by the hierarchy principle that breaks before the postulate of a cooperation of effectiveness with legitimacy. This takes successively to identify shortcomings in the standards and in the audits, to issue recommendations to overcome them, and to converge towards the homogenization of the management and audit systems that more and more are decentralized towards the local environment, ending up in coordinated controls on areas of common interest.

Auditing cannot be conceived as a static function but rather it must be dynamic and flexible, being adjusted in each moment to the tendencies and modalities of the management and to the demands of society. In consequence, it should not be performed currently without exerting the control of the consideration of aspects as important as the restructuring of the public sector; the tendency to the budgetary discipline; the demand of more responsibilities to the Member States in the management and the control of community funds; the increased use of technology and the risks that, in turn, the information systems generate...

The audit institutions, in logical correspondence, won't be able to stay unaware of these changes. They should be involved in a constant process of adaptation, not only as verifiers of the execution of the standards and the development of a good management, but and, fundamentally, as initiators of the transformations, driving force of the standards, and instigators of the organisation and the management; even anticipating to them.

We are in a new stage that should be confronted from a deep understanding, where the exchange of information and the practice of audits provide solvent technical and qualitative support to the Parliaments, showing the risks to stimuli to the negligence and impelling an improvement in the management of the Community funds and good management practices.

It is in fact in this outline of supreme values where it must be located the strategy of cooperation and coordination of audits (effectiveness with legitimacy), overcoming the grey area of cooperation; so that indeed the "whole" is bigger than the mere "addition of the parts", and where all that can be won competing is smaller than it can be obtained cooperating.



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