Chapter 20: The Court of Auditors

The status and role of the Court of Auditors

20-1 Under the Treaty on European Union, the status of the Court of Auditors was elevated from that of a constitutional body to that of an Institution: it is the fifth of the five Institutions.[1] It is the duty of the Court of Auditors to carry out the audit of the Community's finances.[2]

The composition of the Court of Auditors

20-2 There are fifteen Members of the Court of Auditors; they are chosen from among persons who belong or have belonged in their respective countries to external audit bodies or who are especially qualified for this office. Their independence must be beyond doubt. They are appointed for a term of six years by the Council, acting unanimously after consulting the European Parliament. They are eligible for reappointment. They elect their President from among their number for a term of three years. The President may be re-elected.[3]

20-3 Members of the Court of Auditors must, in the general interest of the Community, be completely independent in the performance of their duties. In the performance of these duties, they must neither seek nor take instructions from any government or from any other body. They must refrain from any action incompatible with their duties. They may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they must give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.[4]

20-4 Apart from normal replacement, or death, the duties of a Member of the Court of Auditors end when he resigns, or is compulsorily retired by a ruling of the Court of Justice.[5] The vacancy thus caused is filled for the remainder of the Member's term of office. Except in the case of compulsory retirement, Members of the Court of Auditors shall in office until they have been replaced. A Member of the Court of Auditors may be deprived of his office or of his right to a pension or other benefits in its stead only if the Court of Justice, at the request of the Court of Auditors, finds that he no longer fulfils the requisite conditions or meets the obligations arising from his office.[6]

20-5 Conditions of employment of the President and the Members of the Court of Auditors and in particular their salaries, allowances and pensions are determined by the Council, acting by a qualified majority. By the same majority, the Council also determines any payment to be made instead of remuneration. The provisions of the Protocol on the privileges and immunities of the European Communities applicable to the Judges of the Court of Justice also apply to the Members of the Court of Auditors.[7]

Duties of the Court of Auditors

20-6 It is the duty of the Court of Auditors to examine the accounts of all revenue and expenditure of the Community. It also examines the accounts of all revenue and expenditure of all bodies set up by the Community insofar as the relevant constituent instrument does not preclude such examination. The Court of Auditors provides the European Parliament and the Council with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions which is published in the *Official Journal of the European Communities*. It examines whether all revenue has been received and all expenditure incurred in a lawful and regular manner and whether the financial management has been sound. In doing so, it reports in particular on any cases of irregularity. The audit of revenue is carried out on the basis both of the amounts established as due and the amounts actually paid to the Community. The audit of expenditure is carried out on the basis both of commitments undertaken and of payments made. These audits may be carried out before the closure of accounts for the financial year in question.[8]

20-7 Audits are based on records and, if necessary, performed on the spot in the other institutions of the Community, on the premises of any body which manages revenue or expenditure on behalf of the Community and in the Member States, including on the premises of any natural or legal person receiving payments from the budget. In the Member States the audit is 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 are required to cooperate in a spirit of trust while maintaining their independence. These bodies or departments have to inform the Court of Auditors whether they intend to take part in the audit.[9]

20-8 Other institutions of the Community, any bodies managing revenue or expenditure on behalf of the Community, any natural or legal person receiving payments from the budget, and the national audit bodies or, if these do not have the necessary powers, the competent national departments, must forward to the Court of Auditors, at its request, any document or information necessary to carry out its task.[10]

20-9 In respect of the European Investment Bank's activity in managing Community expenditure and revenue, the rights of the Court of Auditors to access to information held by the Bank are governed by an agreement between the Court, the Bank and the Commission. In the absence of an agreement, the Court of Auditors nevertheless has access to information necessary for the audit of Community expenditure and revenue managed by the Bank.[11]

20-10 One of the most important and publicly conspicuous duties of the Court of Auditors is to draw up an annual report after the close of each financial year, which is forwarded to the other institutions of the Community and published, together with the replies of these institutions to the observations of the Court of Auditors, in the *Official Journal of the European Communities*. This document tells the public more about the activities of the Community than any other, with the possible exception of the Commission's own Annual Report; and it is influential in drawing attention to financial and other anomalies in the Community's structure and in securing reforms. The Court of Auditors may also, at any time, submit observations, particularly in the form of special reports, on specific questions and deliver opinions at the request of one of the other institutions of the

Community. It adopts its annual reports, special reports or opinions by a majority of its Members. It also helps the European Parliament and the Council in exercising their powers of control over the implementation of the budget.[12] Much of the content of the annual reports is concerned with the question of fraud at the expense of the Community institutions; and the sheer size of the problem of fraud is such that a major constitutional development at present under way is the creation not only of a special prosecution procedure but also of special criminal rules.

1. Article 7(1) (formerly 4(1)), EC Treaty.

2. Article 246 (formerly 188a), EC Treaty

3. Article 247(1) to (3) (formerly 188b(1) to (3)), EC Treaty

4. Article 247(4) and (5) (formerly 188b(4) and (5)), EC Treaty.

5. That is, pursuant to Article 247(7) (formerly 188b(7)), EC Treaty.

6. Article 247(6) and (7) (formerly 188b(6) and (7)), EC Treaty.

7. Article 247(8) and (9) (formerly 188b(8) and (9)), EC Treaty.

8. Article 248(1) and (2) (formerly 188c(1) and (2)), EC Treaty.

9. Article 248(3) (formerly 188c(3)), first paragraph, EC Treaty.

10. Ibid, second paragraph.

11. Ibid, third paragraph.

12. Article 248(4) (formerly 188c(4)), EC Treaty.