

# Reconciling Audit and Evaluation?

## The Shift to Performance and Effectiveness at the European Court of Auditors

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*In the last twenty years, the European Court of Auditors has placed increasing importance on the production of “special reports” examining the economy, efficiency and effectiveness of EU spending (the three “E”s). This institutional focus on performance audit, alongside traditional financial and compliance audit, has occurred at a time when the European Union is increasingly evaluating its own policies and programmes, under political pressure to demonstrate their added value. With performance audit, the EU’s external auditors make value judgements on what was achieved through the EU budget, arguably bringing a greater political dimension to the Court as it works to deliver conclusions and recommendations meant to assist the legislature (European Parliament) in carrying out its scrutiny role and the executive (European Commission) in shaping better future policy. This raises questions about how financial accountability is interpreted, and whether it depends on the quality of audit reports or on the forums to which they are delivered, and subsequently, how they act upon them. This article analyses the factors that explain the increased use of special reports by the Court, questioning if they resemble evaluation studies. It examines their focus and impact, as well as the institutional challenges implicit in performance audit.*

### I. Introduction

As the external auditor of the EU, in theory the Court works in cooperation with other multi-level institutions, committees and individual experts, including national audit offices at member state level (“supreme audit institutions”). As the “financial conscience” of the EU, the Court contributes to “delivering” accountability in the EU. The Court claims to “add value by publishing reports and opinions, based on independent audit and review procedures, which contribute to public oversight of the implementation of the EU budget and to informed decision-making on governance arrangements, policy and programme design, and the allocation of the EU budget”.<sup>1</sup> This added value arguably depends on how its output is scrutinized and acted upon.

This article examines the Court’s role in the institutional “chain of accountability”, addressing the ongoing shift from compliance audit (regularity, legality) towards performance audit (effectiveness, value for money). Audit by the Court ranges from checking individual transactions carried out (the annual report on the implementation of the EU budget) and the operations of the EU institutions (annual reports on the institutions and agencies), to checking the effectiveness of policy initiatives as a whole, to gauge how policy has fared (special reports).

The article analyses the political interests at stake in debates on accountability and the practical challenges inherent in the *performance of* performance audit. The main research question is: How can we explain the shift towards performance audit at the Court? Three sub-questions are: Which factors and circumstances explain the increased use of special reports? To what extent are special reports increasingly resembling evaluation studies? How does performance audit contribute to accountability? The focus is on the changing nature of audit as a discipline and approach, rather than on analyzing the institutional

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1 European Court of Auditors, *Strategy 2013-17* (2013), Luxembourg.

development of the Court *per se*, as has been done elsewhere.<sup>2 3</sup> Nonetheless, it demonstrates how the Court has come to perceive accountability and argues that its own interpretation has political implications and serves to further its institutional interests in the discursive battleground to define “accountability”, and therein denote responsibility.

The article draws on primary documents related to the Court’s ongoing internal reform process, including international peer review reports, hearings of the European Parliament’s Budgetary Control committee (CONT), and Court documents (work programmes, strategy documents and audit manuals). The second section examines the Court as the EU’s external auditor. The third section discusses the relationship between audit, evaluation and accountability in the EU policy process. The fourth section deals with the Court’s key instrument for performance audit, namely special reports. It analyses their focus, follow-up and impact, the institutional challenges raised, and their role in ensuring accountability of European governance.

## II. The Role of the European Court of Auditors

Article 287 TFEU requires the Court to audit the implementation of the EU budget and the European Development Fund as well as all other bodies, offices and agencies set up by the EU. The Court is not a “court” – it has no legal powers – nor is it a type of police – any suspicion of fraud is passed on to the Anti-Fraud Office (OLAF). It has a staff of over 900, of which about 550 are auditors, and is a collegiate body in the same way as the Commission, with one Member per member state, each with its own cabinet staff and archives.

The Court itself remains relatively unknown among citizens as well as scholars. Laffan called it an “enigma” – after a decade up and running it was merely “the other European Court in Luxembourg”, an advisory body with no legal powers.<sup>4</sup> She addressed its inter-institutional relations over time, considering it as an “agent” of other EU institutions and exploring its audit practice within the dynamics of financial accountability in the EU. Established as an independent body in 1977, following the dissolution of the Audit Board (1959-1977), the Court faced challenges accommodating Europe’s different auditing traditions, but

found a middle ground with its “no surprises” approach, keeping auditees informed of the process.<sup>5</sup> It forged its own approach to “sound financial management”, developing a specific methodology and audit culture that reconciles the traditional compliance approaches of the founding member states with Anglo-Saxon concerns for “value for money”. It had to “agree and establish an organizational structure, internal principles, processes and procedures for auditing, and relations with the bodies that it had to audit”.<sup>6</sup>

The Maastricht Treaty raised the Court’s status to official institution in 1993 while stressing its “complete independence” (art 45b), conferring with it new powers, and made its seat in Luxembourg permanent. As such, it can “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” (Art. 45c). Maastricht modified the provisions concerning the discharge procedure so that the Council and Parliament were formally required to consider special reports *in addition to* both the annual reports, and replies of the institutions to the observations of the Court.<sup>7</sup> This task expansion led to the Court giving a greater priority to performance audit. Most audits cover EU internal policies, including the CAP and structural expenditure, but some extend to external policies such as aid and development.

Maastricht also saw the introduction of the “Statement of Assurance” (commonly known as the DAS or *Déclaration d’Assurance*). The Court collects annual data on financial management and reports on the degree of error in various policy areas as its contri-

2 Brigid Laffan, “Becoming a ‘Living Institution’: The Evolution of the European Court of Auditors” 37(2) *Journal of Common Market Studies* (1999), pp. 251-268.

3 Paul Stephenson, “60 Years of Auditing Europe: a Historical Institutional Analysis”, conference paper presented at the biannual conference of the European Union Studies Association (EUSA), May 2013, Baltimore.

4 Chris Kok, “The Court of Auditors of the European Communities: ‘The other European Court in Luxembourg’”, 26(3) *Common Market Law Review* (1989), pp. 345-367.

5 Roger Levy, “Managing value for money audit in the European Union: the challenge of diversity” 43(4) *Journal of Common Market Studies* (1996), pp. 509-529.

6 Brigid Laffan, “Auditing and accountability in the European Union”, 10(5) *Journal of European Public Policy* (2003), pp. 762-777, here p. 797.

7 David O’Keeffe, “The Court of Auditors”, in D. Curtin/D. Heukels (eds.) *Institutional Dynamics of European Integration, Essays in Honour of Henry G. Schermers Vol. II* (Dordrecht: Martinus Nijhoff, 1994), pp. 177-194.

bution to the discharge procedure on the Commission's annual accounts. Its report to the Parliament and Council concerns the reliability of transactions carried out using the EU budget. The first DAS, delivered in November 1995 (for the year 1994), flagged up the weakness of accounting, in terms of management and control systems, within the multi-level administrations of the EU. It acknowledged that the information it received was often incorrect or incomplete – as such the Court extrapolates when it comes to providing “assurance”. Although the annual reports and their “attendant publicity” is still the Court's “main public event”, special reports play an increasingly role in its day-to-day activities.<sup>8</sup> Critics question the value of so many resources being used to deliver a single overall error rate per policy area, if there is no political consensus by the member states in favour of “blaming and shaming”.

The Lisbon Treaty highlighted the Court's role in “promoting public accountability” and “assisting Parliament and Council in overseeing the implementation of the EU budget, improving financial management, and protecting the financial interests of citizens”. Yet, White and Hollingsworth claim the Court's “real contribution” to the proper use of Community resources is limited given the broader institutional framework and internal weaknesses: “it operates in an environment of ill-defined and complex patterns of accountability, in which it is struggling to define clearly the scope and purpose of its own activities and its relationship with other actors in the Community”.<sup>9</sup>

Indeed, in a system of multi-level governance, one might expect national audit offices (“supreme audit institutions” (SAIs)) to take responsibility for compliance audit, by controlling transactions made at street level. Historically, attempts at cooperation with national audit offices have met with resistance. The Contact Committee (1960) has been the main voluntary framework for coordination and exchange of best practice.

In 2004, the Court set out a number of general principles for internal control systems to operate in accordance with a “single audit” model, based on the idea that each level of control builds on the preced-

ing one (Opinion No 2/2004). The aim was to prevent the duplication of audit and reduce overall costs, while decreasing the administrative burden on auditees. Since 2007 the Commission increasingly relies on information provided by national audit bodies. However, the Court recognizes the challenges of relying on the results of audits carried out at lower levels.

In terms of accountability, a single audit would potentially provide a greater scrutiny role for national parliaments, which would issue national declarations of assurance based on the reports of national audit offices. In practice, the member states are unwilling to “sign off the accounts” at national level. However, a “single audit” would also potentially deprive the Court of its ability to perform random checks at all levels – thus it is in its own institutional interest, regarding the scope of its mandate, size and budget, to continue with compliance audit, be it in some future revised or reduced form.

### III. Audit, Evaluation and Accountability

#### 1. Audit and Evaluation

Audit has traditionally been about compliance, i.e. checking that rules have been respected and laws adhered to properly. It takes place *ex post*, whereas policy evaluation may also occur at the *ex ante* or *mid-term* stage. Auditors look into accounts, concerned also with financial control systems in place in public authorities, i.e. the financial beneficiaries that manage and disperse EU funds. Audit traditionally involves site visits, spot checks and random sampling. Legality and timing are a challenge: if actions are to be taken against those who use funds inappropriately there needs to be appropriate recourse to law and sanctions. If audit findings are to inform successive programming periods, they must be delivered to decision-makers before new laws (for example, the Regulation on the Structural Funds) are passed.

Performance audit is less concerned with “whether the sums add up” but rather, “whether money was spent on the right things”. It focuses on the *additionality* of EU policy and what has ultimately been delivered to the taxpayer; in this sense, it comes closer to the general notion of policy evaluation, given the focus on results and impacts. Performance audits usually include evaluative elements and address is-

8 Laffan, “Auditing and accountability in the European Union”, *supra* note 6, at p. 772.

9 Fidelma White and Kathryn Hollingsworth, *Audit, Accountability and Government* (Oxford: Clarendon Press, 1999), p. 169.

sues of the cost but also quality and in so doing addresses output legitimacy.

With governments under increasing pressure to deliver results, there has been “general recognition of the importance of performance measurement and a results-oriented focus for effective public management”.<sup>10</sup> The shift from inputs to outputs (and outcomes) is accompanied by an increased use of performance indicators and policy targets. It is understandable therefore why performance audit has developed so rapidly since the mid-1980s,<sup>11</sup> and come to resemble evaluation by probing the efficiency and effectiveness of public programmes.<sup>12</sup>

The concept of audit has thus “broken loose from its moorings” in finance and accounting: its own expanded presence gives it the power of a descriptor seemingly applicable to all kinds of reckonings, evaluations and measurements”.<sup>13</sup> From an anthropological perspective, one might traditionally consider audit as “rituals of verification”, recognizing that “procedures and assessment have social consequences, locking up time, personnel and resources, as well as locking into the moralities of public management”.<sup>14</sup> However performance brings a normative dimension to the question of verification. Moreover, audit practices may often seem “mundane, inevitable parts of a bureaucratic process”, but taken together and over time, they are in arguably part of a distinct cultural (and therein politico-administrative) *artefact*. Political ideology, legal traditions and bureaucratic/administrative culture all influence the approach to audit practice.

Like audit, the function of evaluation is to enable accountability but there is also an emphasis on collective learning. However, guaranteeing both can “run into diverse complications when applied in complex multi-actor policy processes”.<sup>15</sup> Evaluation in the EU is often conducted externally, tendered out to various consortia of academics, researchers and consultants who respond to calls for tender to assess the performance of policy programmes. Various multi-level stakeholders will conduct their own evaluations and choose from a mix of qualitative and quantitative data.

Evaluation is also a key element of the Commission’s internal control system, considered as the “judgement of interventions according to their results, impacts and needs they aim to satisfy. For the executive, its main purposes are: to contribute to the design of interventions, including providing input

for setting political priorities; to assist in the efficient allocation of resources; to improve the quality of the intervention; and to report on the achievements of the intervention (i.e. accountability).<sup>16</sup> This presumes feedback in the policy cycle, though theory does not always extend to practice. As recent legislation on “smart regulation” stipulates, evaluations should be used more as a starting point, offering information to *ex ante* appraisals of policies in new funding rounds and policy cycles.<sup>17</sup> The Commission is aware that stakeholders want more transparent and accessible evaluation systems, with clearer planning and consistent analysis, to provide timely and relevant feedback.

Audit is thus an essential *part* of evaluation in the EU, contributing to the delivery of financial accountability (annual report on the budget), but moreover, upholding the institutional legitimacy of the policy-making system (annual reports on the EU institutions and agencies). At the same time, audits can be conducted to check policy evaluation processes, for example, regarding the procedures followed to award tenders and contracts to third parties formally engaged in the evaluation of EU, given the sizeable budgets for evaluation and monitoring of policy programmes. In short, audit and evaluation are both key elements in the democratic accountability process, but the question of *what* is being accounted for and *to whom* one is accounting is central to the debate and, in the EU, the institutional political battle ground.

10 Peter van der Knaap, “Responsive Evaluation and Performance Management: Overcoming the Downsides of Policy Objectives and Performance Indicators”, 12(3) *Evaluation* (2006), pp. 278–293.

11 Carlos Mendez and John Bachtler, “Administrative Reform and unintended consequences: an assessment of the EU cohesion policy ‘audit explosion’”, 18(5) *Journal of European Public Policy* (2011), pp. 746–765.

12 Michael Barzelay, “Central audit institutions and performance auditing: a comparative analysis of organizational strategies in the OECD”, 10(3) *Governance* (1997), pp. 235–60.

13 Marilyn Strathern (ed.), *Audit Cultures – Anthropological studies in accountability, ethics and the academy* (London: Routledge, 2000).

14 *Ibid.*, at p. 2.

15 Frans-Bauke Van der Meer and Jurian Edelenbos, “Evaluation in multi-actor policy process: Accountability, learning and co-operation” 12(2) *Evaluation* (2006), pp. 201–218

16 European Court of Auditors, *Performance Audit Manual* (2010), Luxembourg. Retrieved at: [http://www.eca.europa.eu/Lists/ECADocuments/PERF\\_AUDIT\\_MANUAL/PERF\\_AUDIT\\_MANUAL\\_GA.PDF](http://www.eca.europa.eu/Lists/ECADocuments/PERF_AUDIT_MANUAL/PERF_AUDIT_MANUAL_GA.PDF)

17 European Commission, *Strengthening the foundations of Smart Regulation – improving evaluation*, COM(2013) 686 final.

## 2. Performance and Accountability

This concern with performance issues and evaluation more broadly can be seen in the Parliament and Commission, which have sought to strengthen their organizational capacity to perform better, by increasing resources for research and placing greater emphasis on results and impact assessment. This can be understood as the corollary to a number of factors: administrative reform, smart regulation, the financial and crisis and recession, citizen discontent over European integration, drawn out negotiations over the EU budget, and the need to demonstrate the added-value of the EU and make its own contribution accountable to the taxpayer.

In a formal sense, citizens can hold the legislature and executive of the EU “to account”. Democratic representation started on the basis of the credo “no taxation without representation”. In practice, however, the provisions are insufficient.<sup>18</sup> White and Hollingsworth explicitly link audit, accountabil-

ity and government, asserting that “poor control, inadequate accountability, waste and fraud are favourite themes of those hostile to the European Union”.<sup>19</sup>

Much of the accountability literature itself examines governance issues, be it decision-making and delegation, the policy- and rule-making machinery of the EU, the regulatory state, multi-level governance, executive power and bureaucracy.<sup>20</sup> Financial accountability is at the heart of political accountability, and yet, financial management issues have been marginalized in scholarly discussions of the EU.<sup>21</sup> Cipriani, a senior Court auditor, has debated questions of accountability versus responsibility regarding the EU budget.<sup>22</sup>

Accountability has been considered normatively as a “virtue”, but also as a “mechanism”.<sup>23</sup> In the first instance, accountability is a norm, the claims to which are socially constructed by actors and individuals and various jurisdictions with vested interests around their own legitimacy, here the EU institutions. In the context of the EU budget, we might consider the most virtuous auditees to be those whose accounts are “error-free” (probably not many given the complexities and demands of EU administration). The second, more functional, interpretation of accountability as a “mechanism” is more useful for institutional analysis since it is concerned with social relations and the obligations upon actors to explain and justify conduct<sup>24</sup> – i.e. a performative process in which institutions are “accounting for performance”, which brings us closer to the idea of evaluation.<sup>25</sup>

As Lonsdale and Bemelmans-Videc<sup>26</sup> point out (after Behn<sup>27</sup>), “linear, hierarchical, uni-directional, holder-holdee accountability” has been replaced with a more “multi-directional” form of accountability in many modern organizations, given multiple stakeholders. With changing and political contexts, accountability relations are “played out” in complex systems where relations, responsibilities and accountabilities are less clear.<sup>28</sup> As such accountability is “a mechanism that makes powerful institutions responsive to their particular publics”.<sup>29</sup> Public institutions and authorities render public account for the use of their mandates, *as well as* for how they [or others] use public resources.<sup>30</sup>

In peer accountability processes, the risk is that network participants become primarily accountable to their network partners in soft and horizontal ac-

18 Sverker Gustavsson, Christer Karlsson and Thomas Persson, *The Illusion of Accountability in the EU* (London: Routledge, 2009), at p. 171.

19 White and Hollingsworth, *Audit, Accountability and Government*, *supra* note 9, at p. 167.

20 See multiple authors in the 2010 special issue of *West European Politics* 33(5).

21 Michael Bauer, “The EU ‘Partnership Principle’: Still a Sustainable Governance Device Across Multiple Administrative Arenas?”, 80(4) *Public Administration* (2002), pp. 769-789.

22 Gabriele Cipriani, *The EU Budget – Responsibility without accountability?* (Brussels: The Centre for European Policy Studies, 2010).

23 Mark Bovens, “Two concepts of accountability: Accountability as a Virtue and as a Mechanism”, 33(5) *West European Politics* (2010), pp. 946-967.

24 Mark Bovens, “Analysing and assessing public accountability. A conceptual framework”, 13(4) *European Law Journal* (2007), pp. 447-468.

25 Jeremy Lonsdale and Marie-Louise Bemelmans-Videc, “Chapter 1” in Marie-Louise Bemelmans-Videc, Jeremy Lonsdale and Burt Perrin (eds.), *Making Accountability Work – Dilemmas for Evaluation and for Audit*, Comparative Policy Evaluation, Vol. 14 (New Brunswick: Transaction, 20007), at p. 3.

26 *Ibid.*, at p. 4.

27 Robert Behn, *Rethinking Democratic Accountability* (Washington, Brookings, 2001).

28 Lonsdale and Bemelmans-Videc, *Making Accountability Work*, *supra* note 25, at p. 5.

29 Richard Mulgan, *Holding Power to Account: Accountability in Modern Democracies* (Basingstoke, Palgrave 2003), p. 966.

30 Deirdre Curtin, Peter Mair and Yannis Papadopoulos, ‘Positioning Accountability in European Governance: An Introduction’, 33(5) *West European Politics* (2010), pp. 929-930.

countability mechanisms.<sup>31</sup> By extension, actors may perform accountability exercises that have high internal network visibility (among elites) but little external visibility (to citizens) and do little to improve democracy. This is important to consider when analyzing inter-institutional power relations in audit at the supranational level and the low public visibility of both the Court and the EP's committees.

It is essential to distinguish between three questions of accountability: the Court's own accountability as an EU institution, the accountability of the EU's broader institutional architecture within a multi-level EU, and the accountability of the EU budget. This tension that lies at the heart of what are sometimes confused debates on audit and accountability. It can help us explain how self-interested EU institutions act discursively in their attempts to shift the accountability "burden". Questions over the systemic legitimacy (accountability) of the Court and the EU itself tend to distract attention away from the accountability of the EU budget.

### 3. The Court's Interpretation of Accountability

The Court stresses the role of the Parliament to actively engage in the accountability process by examining the Court's reports, rather than accountability being derived through transparency, given the public availability of all its reports. The auditor checks that funds are actually expended for stipulated purposes, that programmes are carried out as intended, and that funds are not spent on unauthorized activities.<sup>32</sup> It considers that its audits provide the raw material for budgetary control committees in national and European parliaments (scrutiny). Similarly, the Court does not recognize that the purpose of its performance audits is to deliver comprehensive evaluations of Community activities – this is the responsibility of the Commission, Member States and other managers of Community activities.

In its landscape review of October 2014<sup>33</sup> the Court explicitly takes up Bovens et al.'s model of accountability<sup>34</sup>, advocating it to be "the relation between 'actors' and a 'forum', in which actors inform the forum about their conduct and performance". As such, the Court considers that it "accounts" for the performance of the EU budget vis-à-vis the Parliament's Budgetary Control Committee. By recognizing that

"the forum is vested with the authority to judge the actors and requires them to take corrective actions if necessary", the Court places the onus for further action or mandate on the Parliament.

Moreover, the Court distinguishes clearly between *public audit* as the "financial and performance audits of policies and related public funds and their link to the accountability process", and *accountability* as referring "mainly to democratic (especially parliamentary) oversight of policies and activities of public bodies".<sup>35</sup> In the first, we see the researching, drafting and publication of various types of audits, whereas in the second, those elected officials (MEPs/MPs) scrutinizing the use of funds can refer to audit findings (and *ex post* evaluation reports) but must then act in a timely manner based on the conclusions. The two are separate but mutually dependent.

The Court has the confidence to choose and promote such definitions because it can look to the International Organisation of Supreme Audit Institutions (INTOSAI) and the set of international standards that provide the normative framework and set of rules for auditing worldwide. ISSAI standard 12<sup>36</sup>, which it cites in the review, reads:

"Public sector auditing is an important factor in making a difference to the lives of citizens. The auditing of government has a positive impact on trust in society because it focuses the minds of the custodians of public resources on how well they use those resources. Such awareness supports desirable values and underpins accountability mechanisms, which in turn lead to improved decisions. Once SAI's audit results have been made public, citizens are able to hold the custodians of public

31 Yannis Papadopoulos, 'Accountability and Multi-level Governance: More Accountability, Less Democracy?', 33(5) *West European Politics* (2010), p. 1040.

32 Naomi Caiden, "Budgetary processes", in Mary Hawkesworth and Maurice Kogan (eds.), *Encyclopedia of Government and Politics* (London: Routledge, 1992), pp. 805-820.

33 European Court of Auditors, *Landscape Review* (2014, Luxembourg).

34 Mark Bovens, Deirdre Curtin and Paul 't Hart, *The Real World of EU Accountability? What Deficit?* (Oxford, Oxford University Press, 2010), p. 41.

35 about the achievement of policy objectives (financial and performance reporting Press, 2010), p. 41. ions of necessary" those eleEuropean Court of Auditors, *Landscape Review*, *supra* note 33, at p. 6.

36 ISSAI 12: The value and benefits of Supreme Audit Institutions – making a difference to the lives of citizens, preamble, paragraph 1, adopted 2013, in *European Court of Auditors, Landscape Review* 2014, p. 15.

resources accountable. In this way SAIs promote the efficiency, accountability, effectiveness and transparency of public administration. An independent, effective and credible SAI is therefore an essential component in a democratic system where accountability, transparency and integrity are indispensable parts of a stable democracy”

If we look at what the Court advocates as six elements for a “strong accountability and audit chain”, the focus is explicitly on the actor/forum as the performer of “accountable practices”. It recognizes: a clear definition of roles and responsibilities; management assurance about the achievement of policy objectives (financial and performance reporting); full democratic oversight; the existence of feedback loops to allow for corrective action/improvements; a strong mandate for independent external audit to verify accounts, compliance and performance; and the implementation of audit recommendations and audit follow up. Indeed, it calls this a “blueprint” for testing new accountability and audit arrangements in the future.<sup>37</sup>

In short, the Court is engaged in a discursive battle to define the relationship between audit and accountability. In its “framing” of accountability, it draws our attention to precisely those issues that, if addressed, would reinforce its own institutional capacity vis-à-vis others in the complex hierarchy of the EU. It underlines the challenges parliaments (i.e. national and European Parliament) face: the challenge of multi-party or multi-executive structures – the problem of “many hands”; and where to place the emphasis – on financial inputs, or results and impacts.<sup>38</sup>

37 European Court of Auditors, *Landscape Review*, *supra* note 33, at pp. 7-8.

38 *Ibid.*, at p. 14.

39 George Karakatsanis and Brigid Laffan, “Financial Control: the Court of Auditors and OLAF”, chapter 11 in John Peterson and Michael Shackleton, *The Institutions of the European Union* (Oxford: Oxford University Press, 2012), pp. 242-261.

40 European Court of Auditors, *Landscape Review*, *supra* note 33, at p. 7.

41 Karakatsanis and Laffan, “Financial Control: the Court of Auditors and OLAF”, *supra* note 39, at p. 249.

42 Laffan, “Auditing and accountability in the European Union”, *supra* note 6, at p. 772.

43 O’Keefe, “The Court of Auditors”, *supra* note 7, at p. 183.

44 European Court of Auditors, *Peer Review* (2008, Luxembourg), at p. 4.

45 *Ibid.*, at p. 20.

## IV. Towards Greater Performance Audit at the Court

### 1. Focus and Content

Special reports are not new. Since 1977 the Court has produced “a myriad of special reports on policy programmes or financial procedures”.<sup>39</sup> In its first 20 years, the Court published 102 special reports and studies (1977-1996), followed by 112 special reports in the following seven years alone (1997-2004) and 71 in the following five years (2005-2010). The Court claims that special reports “provide a means to focus on specific topics reflecting a high-level of risk and public interest, in particular performance issues”.<sup>40</sup> A House of Lords report (2001) found special reports to be of a “generally greater value than the Annual Reports”, while recognising variations in quality.<sup>41</sup> Reports examined the effectiveness of internal programme expenditure (e.g. ERDF assistance, energy programmes, fisheries), external expenditure (e.g. development aid, Phare and Tacis, nuclear safety in the CEECs), customs union/revenue (e.g. risk analysis in customs control, protection of EC financial interests, assessment of VAT and GNP) and EU institutions (allowances of MEPs, the added value of EU agencies).<sup>42</sup> Less dense than the annual reports, special reports could make “arresting reading” and provided general conclusions.<sup>43</sup>

A first international peer review (2008) criticised the range, level and usefulness of reporting.<sup>44</sup> It advocated the Court focus on “areas of greater relevance, significance or risk”. In its special reports for 2008-2012, the Court frequently focused on EU programmes, largely examining compliance, to some extent *effectiveness*, but less frequently *economy* and *efficiency*.<sup>45</sup> However, it rarely audited the management of EU institutions, e.g. in the fields of procurement, organisations structures, facility management and human resources management. Despite considerable fieldwork, the Court was criticized over its choice of sample countries, which did not always provide a representative view – no special report sampled covered all member states, and rarely did field work focus on a single member state. Its choices often depended on the limited language skills available.

A second peer review (2014) advised the need for what INTOSAI defines as “problem orientated performance audits”, and to study more closely the causes of problems and their consequences as a basis for

recommendations. It found fault with the Court's bottom-up approach. Auditors of the four vertical chambers, acting under the oversight of their Director, compiled an initial portfolio of potential audit tasks. Proposals were evaluated according to the four criteria: risk, materiality, relevance and coverage. They were subsequently prioritized using three levels of assessment: low, medium, high.<sup>46</sup> Yet, while the chambers were aware of audit requests and issues of major interest, especially for the Parliament, and included them in their work plans, they were "neither collected in a structured way nor treated preferentially".<sup>47</sup>

The Court planned to publish 24 special reports in 2014 – a challenge given it must also produce 53 annual (compliance) reports for all EU agencies, decentralised bodies and other institutions.<sup>48</sup> Special reports are now framed according to five umbrella themes: "smart and inclusive growth" (airports, e-commerce, renewable energy, urban transport, biodiversity, business incubation centres); "sustainable growth/natural resources" (wine, reforestation); "Global Europe" (EU support to Haiti, EU pre-accession assistance to Serbia, the European External Action Service); "security and citizenship" (effectiveness of the implementation of the External Borders Fund); "administration" (effectiveness of EU institutions in reducing the carbon footprint); as well as "other" (Has the implementation of the Balance of Payments support (BOP) and European Financial Stability Mechanism (EFSM) been managed appropriately by the Commission?).<sup>49</sup>

## 2. Timing, Follow-Up and Impact

Special reports are often delivered too late for their findings to influence policy decisions concerning the subsequent programming period. In theory, decision-makers learn lessons and bring about policy change. In practice, the reports may inform internal discussions within the Parliament and Commission (special reports are also sent to the Council) but the "adversarial procedure", whereby the Commission responds to audit findings and criticism, can cause delays.

The Court's policies indicate a standard maximum time frame of 18 months from approval of the performance audit to its official publication. In practice, reports have taken as long as 39 months. Of nine re-

ports assessed by international reviewers, the average took 29 months. Organisational factors contributed to delays: the reallocation of resources to complete the DAS compliance audit, the scope of the audit, and lengthy timeframes for drafting. External factors included delays in validating the factual accuracy of draft reports and receiving responses from stakeholders.<sup>50</sup>

The Court has acknowledged the difficulty in determining which of its work is taken up by the media. Auditors may enthuse about a report on a seemingly salient topic, such as EU financing of climate change prevention mechanisms,<sup>51</sup> but there is no guarantee that it will be seized upon by politicians and/or the press. A special report that received good media coverage in recent years had a clear human dimension, examining the effectiveness of free school milk and fruit schemes (in fact an audit of the CAP).<sup>52</sup> With its own interests at heart, the Court produced a special report on the "single audit", identifying the weakness of multi-level cooperation in audit with the Commission's reliance on national audit authorities in different policy areas.<sup>53</sup>

Concerned by the impact of its work on the executive, the Court produced a special report on the follow-up of its own special reports.<sup>54</sup> The overall question was: "does the Commission adequately follow up audit recommendations made by the Court in its

46 European Court of Auditors, *Peer Review* (2014, Luxembourg), at p. 17.

47 *Ibid.*, at pp. 13 and 17.

48 European Court of Auditors, *Work Programme* (2014, Luxembourg).

49 *Ibid.*, at pp. 4-12.

50 European Court of Auditors, *Performance Audit Manual* (2010, Luxembourg).

51 European Court of Auditors, "EU climate finance in the context of external aid", Special Report 17/2013, Luxembourg. Retrieved at: [http://www.eca.europa.eu/Lists/ECADocuments/SR13\\_17/SR13\\_17\\_EN.pdf](http://www.eca.europa.eu/Lists/ECADocuments/SR13_17/SR13_17_EN.pdf)

52 European Court of Auditors, "Are the school milk and school fruit schemes effective?", Special Report 10/2011, Luxembourg. Retrieved at: [http://www.eca.europa.eu/Lists/ECADocuments/SR11\\_10/SR11\\_10\\_EN.PDF](http://www.eca.europa.eu/Lists/ECADocuments/SR11_10/SR11_10_EN.PDF)

53 European Court of Auditors, "Taking stock of 'single audit' and the Commission's reliance on the work of national audit authorities in Cohesion", Special Report 16/2013, Luxembourg. Retrieved at: [http://www.eca.europa.eu/lists/ecadocuments/sr13\\_16/sr13\\_16\\_en.pdf](http://www.eca.europa.eu/lists/ecadocuments/sr13_16/sr13_16_en.pdf)

54 European Court of Auditors, "2012 report on the follow-up of the European Court of Auditors' Special Reports", Special Report 19/2013, Luxembourg. Retrieved at: [http://www.eca.europa.eu/Lists/ECADocuments/SR13\\_19/QJAB14019ENC.pdf](http://www.eca.europa.eu/Lists/ECADocuments/SR13_19/QJAB14019ENC.pdf)



special reports?” This was broken down into two sub-questions: “Has the Commission established proper guidelines and procedures for follow-up activities?” and “Has the Commission adequate and reliable management information on audit recommendations and their state of implementation?”

The Court examined the Commission’s follow-up of a sample of 62 recommendations in 10 special reports from the period 2006-10. It assessed what had been implemented and how information (recommendations) were managed by scrutinizing the relevant procedures of the directorates-general (DGs), as well as their manuals, guidelines, plans and published reports, with a particular focus on the RAD application (recommendation, action, discharge) – the Commission’s IT tool used to monitor how it follows up audit recommendations. The Court concluded that the Commission had implemented 83 per cent of recommendations, either fully or in most respects.<sup>55</sup>

As for the Parliament, the Budgetary Control committee (CONT) deliberates on audit findings. In its 2012 report on the future role of the Court, the committee held that the Court was in a “pre-eminent position” to provide it with valuable opinions on results achieved by the Union’s policies, in order to “improve the performance and effectiveness of Union-financed activities, identify economies of scale and scope, as well as spillover effects among national policies of Member States” as well as provide it with external assessments of the Commission’s evaluation of public finances in the Member States.<sup>56</sup>

Yet, a single committee does not arguably have the resources (staff, expertise) to properly review and then act fully upon all audit findings, particularly in

increasingly complex issue areas. CONT is the weaker sister of the two budgetary committees, the other being BUDG, responsible for setting the budget. The former is not engaged in legislative activity – it does not shape policy – yet has over time carved out its role as parliamentary gatekeeper. Seeking direct access to all sectoral policy committees would enhance accountability, but also the external profile of the Court. Likewise, maximising the impact of audits depends on national parliaments delivering reports to specialists outside the European Affairs Committees.

Finally, as for final beneficiaries, the accountability objective of performance audit may confine the possibilities to (even “puts up barriers to”) contribute to learning.<sup>57</sup> De Bondt argues that audit framed as part of an “accountability framework” – i.e. as a mechanism – can make auditees hostile and resistant to the process.<sup>58</sup> Likewise, if one looks to evaluations performed by external evaluators, final beneficiaries may be defensive and refuse to question their actions, knowing that the evaluation report will be made public, in so doing limiting opportunities for learning.<sup>59</sup> There are arguments in favour of reorienting performance audits, to refer more explicitly to “policy learning” rather than “accountability”. If special reports were seen as feedback tools on how to improve processes that would lead to lesson-learning and more effective governance, rather than being seen as definitive verdicts on whether a policy was effective – yes or no – greater value for money might be achieved in the longer term.

### 3. Institutional Challenges

Performance auditing is “a knowledge-based activity” and that owing to its “special features” it requires “special competences”. It is an “investigatory discipline that requires flexibility, imagination and analytical skills. Excessively detailed procedures, methods and standards may hamper the effective functioning of performance auditing”.<sup>60</sup> Auditors traditionally have experience in public and private sector financial/compliance auditing but are not familiar with the appropriate methodologies for performance/value-for-money auditing. The Court’s management has been obliged to support the training of staff through professional education in performance auditing, for both auditors and members by developing a professional diploma course in public-sector au-

55 *Ibid.*, at pp. 6, 10 and 14.

56 European Parliament, Committee on Budgetary Control, “Future Role of the European Court of Auditors: Challenges Ahead and Possible Reform”, Rapporteur: Inés Ayala Sender. Public Hearing 30 May 2012, Brussels.

57 Jeremy Lonsdale and Elena Bechberger, “Chapter 13”, in Jeremy Lonsdale, Peter Wilkins and Tom Ling (eds.), *Performance Auditing Contributing to Accountability in Democratic Government* (Cheltenham, Edward Elgar, 2011), pp. 268-288.

58 Anthony De Bondt, “Performance Audit by the European Court of Auditors: Time for a Rebalancing?”, Master Thesis, University of Luxembourg (2014). Retrievable at: [http://www.academia.edu/7350617/Performance\\_audits\\_by\\_the\\_European\\_Court\\_of\\_Auditors\\_Time\\_for\\_a\\_rebalancing](http://www.academia.edu/7350617/Performance_audits_by_the_European_Court_of_Auditors_Time_for_a_rebalancing)

59 Frans-Bauke Van der Meer and Jurian Edelenbos, “Evaluation in multi-actor policy process: Accountability, learning and co-operation” 12(2) *Evaluation* (2006), pp. 201-218.

60 European Court of Auditors, *Peer Review 2008*, *supra* note 44, at pp. 12 and 24.

ditng, finance and accounting as a qualifying tool.<sup>61</sup> The Court is now hiring auditors from a variety of academic disciplines. Beyond accountants, economists and lawyers, its staff increasingly includes psychologists, linguists, social scientists, geographers and medics – policy expertise in performance audit requires professional qualification in, and in-depth practical knowledge of, a range of policy areas.

The 2004 and 2007 enlargements had a critical impact on the Court's audit practice. Decision-making was paralysed. The number of special reports published each year fell from 15 to six. Under political pressure, the Court underwent a critical self-assessment exercise, followed up by the first external peer review exercise.<sup>62</sup> It pushed through internal restructuring, creating vertical chambers with decision-making powers delegated to them away from the College. Each chamber, led by five to six members, could launch and produce special reports. This brought efficiency gains but resulted in "silo-ing" with each chamber insulating itself, competing to out-perform the other in producing special reports. It also placed greater pressure on – and meant a more demanding role for – each new Court Member as the knowledge and expertise of more experienced members in other chambers was less available. Current reforms look to abolish the vertical chambers and create a flat and flexible "pool" of auditors whose role will become more akin to "policy experts".<sup>63</sup>

The Court is now much more conscious of its external profile. A communications department was created around the president to "professionalise" and actively promote the Court's recommendations, with greater attention paid to presentation. Adopting private sector norms, the Court now talks of disseminating its "products" to its "clients" or "stakeholders". Compliance audit work will likely always receive a bad press, its impact hard to ascertain in terms of improved accountability. Much of the Court's management believes it must "clearly shift towards special reports".<sup>64</sup>

"the results that it obtains in the form of error rates will have very limited added value from a political perspective. Politicians need to know specifically what has gone wrong and where; the Court of Auditors does not provide enough information on this. On the political side, be it at the Commission, the Parliament or the Council, it is extremely difficult to do anything sensible just with error rates. On the other hand, it is very helpful that spe-

cial reports deal with substantive issues, draw substantive conclusions and put forward solutions."

## V. Conclusion

Audit and evaluation involve the examination of policy design, implementation processes and their consequences to provide an assessment of economy, efficiency and effectiveness of an entity or activity. The main difference traditionally has been the context in which they take place and the purpose of each: while audit was performed with a view to the correctness of expenditure, without necessarily considering the aims and objectives but looking for error, evaluation sought to appraise the results and inform the policy cycle. Performance audit implicitly considers policy aims and objectives in its quest to determine if policy was effective and whether it represents value for money. It means indirectly evaluating the decision-makers at the administrative and political level and making value judgements on how policy fared.

While in theory the Court refrains from questioning the merits of policy objectives unless an opinion is formally requested, in practice it is difficult to distinguish between "policy implementation" and "the merits of policy design", since weak results may be directly related. Special reports are not dissimilar to *ex post* evaluations in appearance but are more "macro", adopting a bird's eye view and drawing primarily on financial data. Special reports tend to audit a policy or Community initiative as a whole, rather than looking at thematic priorities at programme and project level.

Audit and evaluation require specialist knowledge, skills and experience and may involve similar methods for collecting and analysing data. However, performance audit differs from evaluation insofar as auditors have privileged access to financial information concerning budgets and transactions at programme and project level, which external third par-

61 *Ibid.*

62 *Ibid.*

63 European Court of Auditors 2014. Internal working document, unpublished.

64 Interview with German Member, Klaus-Heiner Lehne, former MEP in the Committee on Legal Affairs, in the European Court of Auditors monthly journal, May 2014. Issues retrievable at: <http://www.eca.europa.eu/en/Pages/Journal.aspx>

ties do not. The Court can aggregate individual audits, or uses samples, to draw broader conclusions about the “value for money” of interventions in a policy area. With accounting expertise and access to financial data, the approach of auditors is different to that of evaluators who may use qualitative methods, including document analysis (activity reports, communications deliverables), interviews and anecdotal evidence to gauge the experience of a range of multi-level stakeholders.<sup>65</sup> The audit community is also well organized internationally with commonly agreed rules and norms to guide their work.

The Court enjoys perceived legitimacy through expertise and its legal mandate. The shift towards special reports makes it less of an accountancy body in the technical sense, since it engages in policy analysis. It may even increasingly resemble a think-tank since it now puts forwards policy recommendations. The Court clearly has a vested interest in broadening its role, having traditionally been the (supposedly) apolitical agent of its principal, the Parliament, itself a political and directly elected body. That the Parliament occasionally requests external audits of the Commission’s own evaluations implies, not only that performance audit is being carried out to “evaluate evaluations”, but that the Parliament is endorsing a “meta-auditing” of those executive bodies responsible for implementation at both supranational and national level. In this sense, the Court performs its role of agent.

Performance and accountability processes engage actors socially in forums. From a sociological and discursive institutionalist perspective, accountability is “performed” by EU institutions, on paper and in meetings, each seeking to define what accountabili-

ty stands for. Special reports provide an opportunity to “give account” of EU policy, and in so doing, “account for” the implementation success or failure of the Commission and member states. The Court is transparent in the delivery of reports, publishing them online, freely accessible to stakeholders and citizens. However, it perceives accountability not as merely about visibility or transparency, but as ultimately resting on parliamentary scrutiny and action, i.e. legislative responsibility underpins democracy.

At the supranational level there is a “triangle of accountability” between the European Court of Auditors (external controller), European Parliament (principal, scrutiniser, democratically accountable) and European Commission (auditee, non-elected, jointly responsible for managing and implementing EU funds). There is no clear-cut hierarchy among the institutions. To talk of a “chain of accountability” is to employ an easy metaphor. In reality, multi-level institutional linkages with SAIs need further strengthening, as do the Court’s relations with the other EU institutions. Furthermore, the approach to, and practice of, audit across member states continues to require harmonization and the adoption of common standards. The soundness and value of parliamentary scrutiny remains open to question, in terms of both recouping funds and influencing policy redesign. Nonetheless, performance audit itself, as a process of “accounting for” budgetary implementation, follows a clear logic of decision-making, research, analysis, drafting and reporting, thus constituting a series of sub-processes.

Policy-makers are increasingly focused on issues of performance in audit, given budgetary constraints and the financial and political implications of audit for future policy. “Performance”, though evidence-based and drawing on quantitative data, is about framing and institutional discourse, ultimately value-driven and normative.

65 Julian Hoerner and Paul Stephenson, P., “Theoretical Perspectives on Approaches to Policy Evaluation in the EU: the Case of Cohesion Policy” 90(3) *Public Administration* (2012), pp. 699-715.