

EUROPEAN PARLIAMENT

The case for a European Audit Office

Introduction by Heinrich Aigner
Vice-Chairman of the Committee on Budgets

**Foreword by
Cornelis Berkhouwer**
President
of the European Parliament

**Preface by
Georges Spénale**
Chairman
of the Committee on Budgets

Selected Documents

Secretariat
Directorate-General
for Research and Documentation

September 1973



Illustration on the cover:

Charles VII (1422-1461) presiding over a meeting of the Audit Chamber—from a French MS in the Bibliothèque Nationale, Paris.

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SECRETARIAT

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September 1973

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Liberal and Allies Group



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FOREWORD

The powers traditionally vested in a Parliament generally include control over budget administration by the executive.

The European Parliament acquired this power in conjunction with the Council when the treaties were revised in April 1970 and the Member States made the Community financially autonomous.

Faced with the task of exercising this new responsibility, Parliament's authorities very soon realized that if the Community's revenue and expenditure were to be scrutinized more closely, it was essential to set up a new body — an Audit Office — for the purpose.

The Community's accounts, it is true, are already subject to conscientious and competent scrutiny by an Audit Board but the Board lacks the authority and responsibilities usually associated with an Audit Office; it has no statute formally recognizing a special relationship with Parliament as the representative body of the peoples of the European Community.

The unflagging efforts made by the parliamentary Committee on Budgets, and particularly by its Vice-Chairman, Mr Heinrich Aigner, to resolve the problems of financial management conducted in a proper, legal manner and with a due sense of thrift, deserve the highest commendation. Cases of fraud have too often made the headlines, too patently to the detriment of the European ideal in general and the common agricultural policy in particular.

In authorizing publication of this collection of papers under the heading 'The case for a European Audit Office' the Bureau of the European Parliament has taken the view that in the institutional development of Europe, the Communities cannot be given financial autonomy and responsibilities unless they are also given the means with which to discharge them.

This too is what the Second Chamber of the Netherlands' States General had in mind when in a motion carried on 20 March 1973, it called on the government 'to take the necessary steps at the level of the European Communities leading to the setting up of a European Audit Office along those lines at an early juncture'.

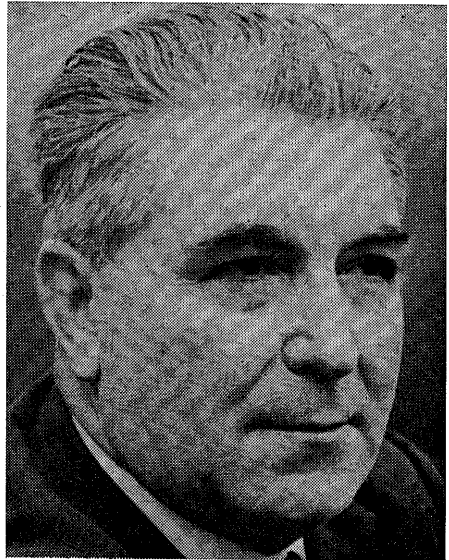
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Parliamentary Group: PS.

PREFACE

Under the treaty of 22 April 1970, certain budgetary powers were transferred from the Council to the European Parliament and further steps in this direction are to be taken by 1 January 1975.

Parliament has already published two reports¹ on its budgetary powers and how they have developed; others will doubtless follow, for Parliament's effective influence on Community revenue and expenditure will continue to rank high in its list of priorities as long as the institutional balance of the Communities fails to include, in this field at least, an acceptable measure of parliamentary democracy.

The Community cannot maintain for much longer its insistence on a parliamentary system in applicant countries if it does not itself adopt such a system for its own institutions.

This is the principal political issue but there is a second aspect which may be considered *equally important* from the *functional* point of view — I refer to the means of control actually available to Parliament to determine whether the Commission's financial management is sound and in keeping with its objectives.

The power to vote the budget assumes full significance only if it goes hand in hand with the authority — and the means — to control its implementation.

The means at present available to the budget authority seem singularly inadequate for the purpose and the European Parliament, through its Committee on Budgets, has taken the initiative in arranging a series of discussions with the Audit Offices in the Member States to devise a structure for and frame the statutes of the body which is to be responsible for external control of the Communities' budget and to determine what facilities should be placed at its disposal.

This selection of documents, which has been produced by Mr Heinrich Aigner, Vice-Chairman of the Committee on Budgets, reflects current progress and thinking in the matter.

In presenting the case for a European Audit Office, he argues both for stronger, effective control of Community finance and for greater authority for Parliament in the exercise of its recently acquired right of discharge in respect of the Commission's management.

¹ Abridged English edition published in a single volume in October 1972: 'The European Communities' own resources and the budgetary powers of the European Parliament'.

Parliament's suggestion for a European Audit Office is thus an expansion of its efforts to secure full recognition of its budgetary powers. I trust, therefore, that this new collection of selected documents will meet with the same response as its predecessors and help to create a greater awareness of Parliament's efforts to achieve a more satisfactory balance of institutional power and introduce genuine democracy into the life of the Community.

Georges SPÉNALE

Chairman of the Committee on Budgets

Contents

Introduction	15
Chapter I — The present situation	29
Section I — Size of the Communities' budget	29
1. The budget of the European Communities	30
(a) Revenue	30
(b) Expenditure	30
2. ECSC Operational Budget.	31
3. European Development Funds	33
(a) Development Fund for the overseas countries and territories	33
(b) Second European Development Fund	33
(c) Third European Development Fund	34
Section II — Supervisory bodies	35
1. Internal control	35
2. External control	38
(a) Audit Board	38
(b) The ECSC auditor	39
Section III — Outline of the main provisions governing the financing and control of the Communities' budget	40
1. General rules governing finance	42
(a) General provisions	43
(b) Presentation and structure of the budget	44
(c) Pluriannual forecasts	45
(d) Implementation of the budget.	46
(e) Rendering and auditing of accounts	46
2. Collection and auditing of own resources	47
(a) Recorded entitlements	48
(b) Financial control of own resources	48
(c) Valuation of goods for customs purposes	49
3. Financial rules of the EAGGF.	50
(a) The paying bodies	50
(b) Auditing of accounts	51
(c) Operations entailing intervention	51
(d) The rules applicable to the Guidance Section	52
(e) Control of EAGGF expenditure	53
(f) Checking for irregularities and the recovery of sums paid in error	53
(g) Other special provisions of the EAGGF Guarantee Section	54

4. Financial rules of the new Social Fund	55
(a) Approval of the Commission	55
(b) Aid from the Fund	56
(c) Financial control measures	56
5. The financial rules of Euratom	57
6. Control of the European Development Fund	59
7. The financial accounts of the EAEC	60
Chapter II — Problems raised by shortcomings in the control of Community finance	61
Section I — Shortcomings in the control of Community financing—the Audit Board's opinion	61
Section II — The European Parliament's reactions	63
1. Permanent control	63
2. Establishment of a Commission programme of action	63
3. Use of modern data-processing techniques	66
4. Control of the recovery of the Community's own resources	67
5. Rules governing the Audit Board.	68
(a) A European Audit Office	68
(b) Supplementary Controls	70
Section III — The Council's discharge	71
Chapter III — The prevention of frauds in agriculture	73
Section I — Expenditure of the European Agricultural Guidance and Guarantee Fund	74
Section II — The scale of frauds	75
1. Press comments	75
2. Written questions to the European Parliament on the problem of financial frauds involving the EAGGF	78
(a) The agricultural sectors concerned	78
(b) Fraudulent practices	78
(c) Interventions by Community authorities	79
(d) List of written questions	80
Section III — First reactions of the Commission of the Communities	82
1. Oral Question No 3, with debate, of 14 March 1967	82
2. The Commission's recommendations	83
3. Commission report to the Council	84
Section IV — Current rules on the financing of the Common Agricultural policy	87
1. Council Regulation No 729/70	87
2. Regulation concerning irregularities and the recovery of sums wrongly paid	88
3. Mutual assistance in connection with levies and the recovery of sums paid in error	91
(a) Explanatory memorandum	92
(b) Text of the proposed directive	92

Chapter IV — Control of the Communities' own resources	95
Section I — Budget revenue of the European Communities	96
1. The decision of 21 April 1970 creating the European Communities' own resources	96
2. Resources derived from new Member States	100
3. Other available resources	101
(a) The Treaty of 8 April 1965 establishing a single Council and a single Commission	101
(b) Regulation No 130/66 on the financing of the common agricultural policy	102
(c) Deductions made from the incomes of officials	102
(d) Re-entry of lapsed appropriations	102
(e) Miscellaneous revenue	102
Section II — Regulation implementing the decision of 21 April 1970	103
Section III — Provisions governing the control of own resources	108
1. The harmonization of customs laws	108
2. The agreement on mutual assistance between the customs authorities of the Six Member States	109
3. Community control	113
(a) Rights and obligations of officials appointed by the Commission	113
(b) The report of a parliamentary delegation	113
4. The recovery of debts	116
(a) The Commission's original proposal	116
(b) Mutual assistance in the recovery of debts	116
Chapter V — Rules of the Audit Board	117
Section I — Texts laying down the rules of the Audit Board	117
1. Article 206 of the EEC Treaty	118
2. Decision of 15 May 1969 establishing the rules of the Audit Board	118
3. Financial regulations establishing the procedure to be adopted for presenting and auditing accounts	120
(a) List of amendments	121
(b) The opinion of Parliament on the draft financial regulations	122
Section II — Practical procedures to be adopted by the Audit Board in the exercise of its control functions	125
1. Mr. Gerlach's analysis	126
2. The opinion of the Committee for Finance and Budgets	129
Chapter VI — Experience of external auditing in the Member States	131
Section I — Brief description of the bodies responsible for external auditing in the Member States	131
1. Federal Republic of Germany	131
2. France	137
3. United Kingdom	141

4. Belgium	144
5. Denmark	145
6. Ireland	147
7. Italy	148
8. Luxembourg	150
9. The Netherlands	151
Section II — The views of the Audit Offices of the Member States	152
1. Control of revenue	153
2. Control of expenditure	157
3. Cooperation between the Audit Offices and the national parliaments	161

List of abbreviations

AASM	Associated African States and Madagascar
CCT	Common Customs Tariff
Doc.	European Parliament Working Document
EAEC	European Atomic Energy Community
EAGGF	European Agricultural Guidance and Guarantee Fund
ECSC	European Coal and Steel Community
EDF	European Development Fund
EEC	European Economic Community
FRG	Federal Republic of Germany
GDR	German Democratic Republic
OJ	Official Journal of the European Communities
t.e.	token entry
u.a.	units of account

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INTRODUCTION

1. The European Community is there to serve its peoples and citizens who have a rightful claim to assurance that money paid into European coffers is spent wisely and in accordance with the principle of sound budget management.

It falls to the representatives of the peoples of Europe—and the Members of the European Parliament consider themselves as such—to be the guarantors of clear-cut and responsible financial management on the part of the European Community such as bears comparison with the standards obtaining in the Member States.

2. This requirement, however, is not adequately met by the Community's present system of financial control.

The auditing of Europe's finances is carried out more or less as a 'sideline occupation', a description which neatly sums up the present bleak situation as regards Community control of budgetary and financial affairs.

As matters stand at present,

- (a) the European Communities' budget has reached a figure of 4 200 m. u.a.¹
- (b) payments from the European Development Fund amount to 1 000 m. u.a.
- (c) the enlargement of the European Community to include Great Britain, Ireland and Denmark has become reality
- (d) with the creation of a monetary union, (European Monetary Fund) a further steep rise must be expected in the budget growth rate.

In this situation, control of the administration, whether external or by Parliament, is still in its infancy. While parliamentary control over public finance in the Member States is founded on national Audit Offices served by a professional staff whose activities cover an extremely wide field, the European Parliament is served by a body—the Audit Board—whose present statutes can hardly make it a satisfactory instrument for effective external, let alone parliamentary control.

3. The communications gap both between the Member States and between them and the European Community, the complexity of European legislation, particularly in the agricultural sector, poor coordination of the Member States' auditing activities, these are all factors which make it imperative to introduce a European system of financial control at an early date. The European Parliament's Committee on Budgets and I personally have been calling for this for a good many

¹ Budget estimates for 1973 run to 4 300 m. u.a. i.e. D.M. 15 300 m., FF 23 300 m., Fl. 15 200 m., Lire 2 625 000 m., BF 210 000 m., £ 1 747 m., Kr. 26 000 m.

years and our efforts have found a keen response in the national parliaments and auditing authorities.

The need for a European Audit Office also won broad acceptance during talks between the European Parliament's Committee for Finance and the Presidents of the national Audit Offices.

4. When it is recalled that cases of fraud involving the European Agricultural Guidance and Guarantee Fund are common knowledge and that the Community or the Member States make inconsistent and sometimes improper payments in this sector running into hundreds of million dollars annually which have done and still do so much to impair the Community's standing, it will be realized that action can no longer be postponed.

5. So far, the Council of the Communities has not gone beyond the stage of rhetoric; it has failed to take any initiative or action or when it has, the required effect has not been achieved. Following three years' discussion, the new—and long overdue—financial regulation is only now to be introduced.

As from 1975 the Community will enjoy full financial autonomy. Under the Council's decision of 21 April 1970, the Community will be self-financed from the following resources:

1. Customs revenue in its entirety (the figure for 1975 is estimated at approximately 2 200 m. u.a.)
2. All revenue from agricultural levies (the estimated figure for 1975 is approximately 900 m. u.a.)¹
3. If necessary, up to 1% of VAT from all Member States as from 1975 (estimated at 1 000 m. u.a.)²

This revenue will provide the basis on which the Community will operate. This in itself makes it necessary to ensure that it is brought under a satisfactory system of European financial control.

6. In as far as control over the use of these funds will not be exercised by the national parliaments, this responsibility must be assumed by a European Parliament with wider powers.

Since financial control requires smoothly functioning machinery the driving force behind the idea of a European Audit Office was, understandably enough, the Members of the European Parliament.

It will be a grave threat to European integration if the financial management and expenditure of a European bureaucracy more or less responsible only to itself is not brought under an adequate and independent control authority.

7. The auditors and the chairman of the Audit Board provided for in Article 206 of the EEC Treaty, Article 78 of the ECSC Treaty, and Article 180 of the EAEC Treaty do not exercise their duties on a full-time basis, hence the observation made at the beginning of this introduction.

¹ Including the 'sugar' contributions and the financial countervailing charges.

² Source: forecasts covering several years submitted by the Commission, 15 November 1972, Doc. 257/72. The figures are for the 6 original Member States. The share of the new Member States should amount to approximately 750 million u.a. in 1975.

Although the auditors are assisted by officials (at present 26 approved posts), there are not enough of them to ensure continuity and independence as in the case of the Audit Offices in the Member States, which have often been described as the fourth power in the State.

8. Such are the reasons which have prompted me, on behalf of the Bureau of the European Parliament and the Committee on Budgets, to give wide publication to this collection of documents. Our aim must be to set up a European Audit Office.

The European Parliament in general and the members of its Committee for Finance and Budgets in particular have taken numerous initiatives in this field in response to the recognized needs of a Community guided by the principles of parliamentary democracy.

The avenues of approach to a European system of financial control which I have outlined in these introductory remarks are based on an analysis of the present situation; at the same time they are designed to serve as a basis of discussion for the ad hoc Working Party set up by the European Parliament with representatives from the national Audit Offices and the other Community institutions.

A. Financial control under Community law

External and internal financial control

9. The three treaties¹ provide for two forms of financial control. The first is external control. It is carried out by an outside body, the Audit Board, set up specially for the purpose and acting independently of the authorities subject to its control. It is further a retrospective form of control, consisting, in accordance with the three Treaties,² first in examining the accounts of all revenue and expenditure on the basis of records, and, if necessary, on the spot, to establish that they have been received or incurred in a lawful and regular manner and in accordance with the principles of sound financial management and secondly, in drawing up a report after the close of each financial year.

10. The three Treaties make provision for but do not further specify the other form of financial control. Article 78(f) of the ECSC Treaty, Article 209 of the EEC Treaty and Article 183 of the Euratom Treaty simply instruct the Council and Commission to lay down arrangements for this form of financial control: the instruction is contained in the provision that the Council shall, acting unanimously on a proposal from the Commission, lay down rules concerning the responsibility of authorizing officers and accounting officers and concerning appropriate arrangements for inspection.

11. In pursuance of this instruction, the various financial regulations provide for preliminary internal control on the model of the 'advance control procedure' that is applied to a greater or lesser degree in the Member State and has been developed in a number of international organiza-

¹ Treaty establishing the European Coal and Steel Community (ECSC), Treaty establishing the European Economic Community (EEC) Treaty establishing the European Atomic Energy Community (EAEC).

² Article 78 (e), ECSC Treaty; Article 206, EEC Treaty; Article 180, EAEC Treaty.

tions. In each of the four Community institutions, this form of control is the responsibility of a financial controller appointed by the institution to perform his duties independently. His advance endorsement is required not only for individual payment orders but also for any measure which may result in a charge on the budget. The financial regulations thus ensure that he can query any irregular expenditure far enough in advance. The financial controller queries expenditure by withholding his endorsement and stating his reasons. In such cases the expenditure is not effected unless by a reasoned decision the Commission overrides the financial controller's refusal to endorse it.

Disadvantages of external financial control

12. Both preliminary internal control and retrospective external control have their weaknesses. The disadvantage of any form of retrospective control is that expenditure is queried after the event. The query is thus pointless save in cases where the item of expenditure is likely to recur in the same circumstances, which does not always happen. This disadvantage increases with the time lapse between the date on which expenditure is made and that on which it is queried. Experience has shown that it frequently takes a long time for the Audit Board's report to reach or be discussed by Parliament and the Council. For example, the discharge in respect of the 1970 financial year will not be given by Parliament until 1973.

13. A further disadvantage of retrospective external control is that a separate control body cannot be as familiar as would be desirable with the procedures applied by the departments subject to its control. While the Audit Board has access to all Commission documents, there are so many items of expenditure that each transaction cannot possibly be fully scrutinized on the basis of records. The auditor must therefore possess an intuitive sense if he is to begin his inspection at the point where it is likely to be most useful. Intuition of this sort, however, is not a matter of sixth sense, meaning that it is more likely to be found in greater measure in an auditor familiar with the internal workings of the department to be inspected than in an outsider.

Disadvantages of internal control

14. The disadvantages of internal control lie in the position of dependence in which the financial controller finds himself to some extent although, following the merger of the executives of the three Communities, the post was graded at the highest level.

15. A further weakness of internal financial control is that the Commission can easily override the financial controller's refusal to endorse expenditure. The requirement on the Commission to state its reasons is unlikely to have much of an inhibiting effect. The Court of Justice has repeatedly noted that the reasons given by the Commission for its decisions are generally somewhat slender and it would be unreasonable to expect the Commission, which is faced with so many more important decisions, to take special pains to justify decisions overriding those of the internal financial controller.

The advantages of a system of internal and external control

16. These weaknesses in external retrospective control and preliminary internal control explain why both forms are provided for in Community law. There is no justification in the argument that this is making too much of financial control, for it is only by combining both forms that the weaknesses of each when carried out alone can be remedied to any substantial extent. The official responsible for internal preliminary control is stronger in the knowledge that expenditure open to doubt will be scrutinized by a further authority, for the Audit Board's censure is essentially directed against him in cases where he has given his endorsement. Furthermore, the Commission would be less tempted to override the financial controller's decision to withhold his endorsement knowing that a report by the authority responsible for retrospective control would be submitted to Parliament and the Council stating that despite warning from the financial controller, it (the Commission) had effected expenditure that was not in order. The external auditing body, too, would find it easier to concentrate on critical areas if it could work from the opinions and reports drawn up by the internal, preliminary financial control authority.

17. To be more effective, the Audit Board must be given more extensive and clearly-defined rights and powers over the departments subject to its inspection. The Council and the Parliament's Committee for Budgets have already developed clear conceptions in this matter and these have been incorporated in the new Financial Regulation.

Under Community law the Audit Board is primarily responsible for conducting retrospective control. If the administration provides the Board with too much information, this might blur the lines of demarcation of responsibilities;¹ although this danger should not be overlooked, information of this nature cannot be dispensed with if rational cooperation between the Audit Board and internal financial control is to produce optimum results.

18. Finally, in connection with the membership of the Audit Board, a development has occurred which would seem to give cause for concern. Formerly, the Board's members were professors and members of the Audit Offices or similar bodies in the Member States carrying out independent financial control; since 1969, a few Member States have been nominating officials from their Ministries of Finance. With all due respect for the personal integrity and independence of Ministry of Finance officials, the danger is that the Communities' Audit Board will gradually come to resemble the committees of the Council of Ministers. This would hardly be in keeping with the role assigned to the Audit Board in the Treaties, especially with the requirement for independence.

19. One of the provisions in the Financial Regulation which guarantees independent internal financial control is that all measures relating to the appointment and promotion of the financial controller, to disciplinary action, transfer, interruption of service or termination of appointment must be laid down in reasoned decisions forwarded to the Council for information. The financial controller may appeal against such decisions to the Court of Justice. In other words the financial controller can only be removed from office by a reasoned decision of the Commission which must be notified to the Council and is subject to full judicial investigation. Since Parliament and Council together now constitute the budgetary authority, provision must be made to notify both of decisions concerning the financial controller. The provisions contained in the Financial Regula-

¹ In accordance with Article 205 of the EEC Treaty the Commission implements the budget on its own responsibility.

tion on internal financial control are open to improvement in this respect. The budget authority should have a say in the selection of the financial controllers. Furthermore, the budget authority or even the Audit Board should be empowered to render the financial controller liable to disciplinary action, as provided for in the Financial Regulation, when he improperly endorses expenditure. This would certainly strengthen the financial controller's hand for under current staff regulations, only the Commission can take disciplinary action against him. This is hardly likely to happen if the endorsement improperly given is for an item of expenditure which the Commission itself wished to incur.

Finally, it is essential to extend internal preliminary financial control to all Commission expenditure and revenue. As matters stand, there are still a few important areas left uncovered. This is especially surprising in the case of the European Development Fund.

20. The reason advanced for excluding Development Fund payments made by the relevant Directorate-General from financial control is that the Directorate-General for Development Aid has built up a satisfactory financial control system of its own. This is self-contradictory since the whole spirit of financial control is impugned if it is carried out by the same department whose expenditure is to be scrutinized. The Directorate-General for Development Aid has not only assumed sole responsibility for financial control, but also for accounting. Furthermore, financial control is performed on the spot by so-called 'commissioned controllers' who acting as a sort of 'Jack-of-all-trades' represent the Commission's interests in the implementation of projects financed by the Development Fund in overseas countries.

It would thus appear that where the expenditure of the European Development Fund is concerned, the principle of independent financial control is not observed, nor is the principle, likewise written into the Financial Regulation, whereby the duties of authorizing officer, financial controller and accounting officer should be kept separate.

21. The biggest improvement which can be made to financial control in future lies in a better exchange of information between internal preliminary control and external retrospective control by the Audit Office.

The two forms of control should not be partitioned off from each other. Preliminary internal control should be required to take account of the observations made by the Audit Board and approved by the budget authorities.

B. Control of Community revenue and expenditure handled by the States' authorities

Rules for a procedure to control this revenue and expenditure

22. It is essential that all such revenue and expenditure should be controlled by the Communities since they are the Communities' own resources and are simply handled by the Member States under administrative delegation—just as in federal states the provincial authorities discharge certain responsibilities on behalf of the central government. This is a major task for the Community's future financial control department.

As long as the Member States collect revenue and effect expenditure for the account of the Communities, there can obviously be no question of applying a system of preliminary control in which the financial controller of the Commission endorses the acts of the Member States' authorities recording and collecting Community claims for payment of customs duties and agricultural levies or concerning, say, the substantiation and implementation of commitments under the Agricultural Fund.

23. Member States' officials responsible for actually receiving and disbursing Community funds do not apply directly the Community's agricultural and customs regulations but follow implementing rules which are detailed in the extreme. In these rules, which are drafted by higher authority in the Member States, and by the central authorities in particular, Community law—although basically self-executing in the Member States—is interpreted for the use of the officials concerned in the form of readily understandable service instructions. This means that for effective control of Community revenue and expenditure handled by the Member States, these implementing rules should be scrutinized; in other words, it is not enough for the Community's control service or joint committees consisting of officials from various Member States to proceed to the frontier and observe how, in specific cases, the local customs authorities collect duties or agricultural levies on imports and pay refunds on exports. This would also be more closely in line with the allocation of responsibilities under Community law between the Member States and the Community for the handling of own revenue and expenditure.

24. The implementing rules issued by the Member States can be scrutinized from two angles. First it can be ascertained whether they conform to applicable Community law, in other words whether they represent a correct and consistent interpretation of this law.

Secondly they must be checked for their adequacy in the prevention of frauds which have done so much to harm, and continue to harm, the Community's reputation.

Rules of implementation which resulted in higher export refunds or lower import levies than under a proper interpretation of Community law would apply to an unlimited number of import or export transactions whereas frauds by importers or exporters occur only in individual cases or in a limited number of cases.

25. The control of Community revenue and expenditure handled by the Member States should therefore include comprehensive and systematic supervision by Community bodies of Member States' rules of implementation; but it is essential that this should be supplemented by on-the-spot controls. In the performance of their duties, Member States' officials responsible for collecting duties or making payments for the account of the Communities are not always guided by detailed implementing rules. Administrations have also adopted certain practices which, though not set down in writing, have through constant repetition the same effect as rules of implementation. These can only be brought to light through on-the-spot controls carried out for this specific purpose and not primarily to check a specified import or export transaction. Controls of this kind should be carried out not only by Community officials but also by joint committees of experts from the various Member States.

26. A solution along those lines to this problem of control is foreshadowed in those provisions of Community law which require Member States to notify the Commission of their implementing rules. Unfortunately, the only one which is entirely satisfactory is that applicable to Community expenditure effected by the Member States. This is Article 9, paragraph 1, subparagraph 2 of

Council Regulation No 729/70 of 21 April 1970 on the financing of the Common Agricultural Policy, under which Member States are required to notify the Commission of legal and administrative provisions relating to the Common Agricultural Policy in as far as these have financial implications for the Agricultural Fund. Oddly enough, there is no similar provision governing Community revenue collected by the Member States. Under Article 4, paragraph 1(b) of Council Regulation No 2/71 of 2 January 1971 on the replacement of the financial contributions of Member States by the Community's own resources, the Member States are required to notify the Commission of general legal and administrative accounting regulations which relate to the establishment and making available of own resources.

27. The receiver of a payment in settlement of a claim by a third party and on the latter's behalf is always required to render account. By virtue of this generally recognised legal principle, no Member State can refuse to notify the Commission of administrative regulations which affect the amount of the duties collected for the account of the Communities. There is probably little likelihood of such a refusal being given but if it should, the Commission could confidently refer the matter to the Court of Justice.

Appropriate regulations should be issued allowing the Community's external control authority to assess the effectiveness of the control procedures described above. Steps should therefore be taken to institutionalize close cooperation, the sharing of responsibilities and coordination between the Audit Board, developed into a European Audit Office, and the Audit Offices in the Member States.

*Responsibility for the control of Community revenue and
expenditure handled by the Member States' authorities*

28. The following question has still to be answered: which body and which department should exercise control over Community revenue and expenditure handled by the Member States by what is virtually administrative delegation? Should this fall within the competence of the Audit Board (European Audit Office) or the Commission and if the latter, which department should be responsible, internal financial control or another?

It is clearly beyond doubt that the role of the Audit Board in this control process cannot be conceived in complete separation from that of the Commission's internal financial control department.

Initial attempts to answer the question of which body and which department in the Community should be authorized to control Community revenue and expenditure handled by the Member States and to check, for this purpose, the latter's implementing rules and administrative practices are bedevilled by the large number of Commission departments which would appear suitable. In order to obtain any sort of general picture, a subdivision into three categories is essential.

1. The first category includes those departments whose task it is to draft and further develop Community customs and agricultural legislation and to institute proceedings when infringements of this legislation occur. These are
 - (a) the 'Administration of the Customs Union' directly responsible to the Commission, and

- (b) the three Directorates in the General Directorate for Agriculture which are responsible for the organization of markets in crop products, livestock products and specialized crops, fishing and forestry.
2. The second category includes the departments which authorize Community revenue and expenditure handled by the Member States.
 - (a) For revenue, i.e. customs duties and agricultural levies, this is the Directorate-General for the Budget and Administration,
 - (b) For expenditure, i.e. under the guarantee section of the Agricultural Fund, this is the 'European Agricultural Guidance and Guarantee Fund' Directorate in the General-Directorate for Agriculture.
 3. The third category consists of the General-Directorate for Financial Control.

29. What is particularly striking in this inventory is that the Commission has assigned to different departments the task of drafting, further developing and ensuring implementation of Community customs and agricultural legislation and that of authorizing Community receipts from duties and agricultural levies as well as expenditure under the Agricultural Fund. Both tasks have thus been kept strictly separate up to the highest level.

This situation attracts attention because at first glance it would seem more natural and expedient to leave both tasks in the hands of a single authority; after all the task of authorizing receipts and expenditure is concerned with the proper application of Community law. But while it may seem strange at first sight, this separation becomes clearer with reference to actual practice. The departments responsible for drafting and further developing Community customs and agricultural legislation work in extremely close cooperation with the Member States' customs and agricultural administrations in framing Commission proposals for regulations and consult with the Council's committees once these proposals are forwarded to the Council.

30. This is difficult to reconcile with the role of financial administration which is responsible for Community revenue and expenditure and the balancing of the European budget. The Community's customs and agricultural policy is at once economic policy, social policy, structural policy, regional policy, conjunctural policy, as well as commercial and external policy. It is also financial policy but this aspect must not be allowed to occupy the centre of the stage. There is also a further consideration involved; free from the taint attaching to the tax-collector and secure in the knowledge that differences of opinion on future Community legislation cannot be exacerbated by differences of opinion on what the Member States owe the Communities or the Communities the Member States under existing Community legislation, the Commission's departments responsible for drafting and further developing Community customs and agricultural legislation will find it easier to negotiate with the Member States' administrations and the Council's committees. Furthermore, proceedings for infringement of Community law are governed by other principles and criteria than measures taken to ensure that revenue is received in full and that all Community expenditure is properly effected. The procedure provided for in the treaties in the case of breaches of those treaties is a formal procedure in which a Member State is put in the dock, so to speak, and is liable to censure by the Court of Justice of the Communities. For this reason, the treaty provisions governing the referral of breaches thereof to the Court of Justice are not binding and the Commission invokes them only in cases of such importance for the operation of the Community as warrants recourse to the procedure involved. In most cases,

moreover, the Commission is content to ensure that there will be no recurrence of the infringement in question. If a Member State has misapplied Community law and paid out too much in the way of export refunds or collected too little in the way of agricultural levies, and then takes steps to ensure that this does not recur, the error cannot be quietly overlooked when its accounts of receipts and expenditure are settled; this would be tantamount to the Commission paying unauthorized export subsidies out of the Agricultural Fund or foregoing the full amount of duties owing to the Community.

This explains why the Commission departments whose task it is to draft and further develop Community customs and agricultural legislation and to ensure the enforcement thereof have quite rightly not been made responsible for collecting Community revenue and making Community expenditure under this legislation. It also explains why those departments are even less suited to undertake financial control of this revenue and expenditure.

31. The question remains of whether the Commission's 'authorizing' departments which collect Community revenue from customs duties and agricultural levies and effect expenditure from the Agricultural Fund should not have the additional responsibility of controlling the said revenue and expenditure and, as part of this control, of scrutinizing the Member States' implementing rules and administrative practices.

It is a generally recognized financial principle—which has been written into the Community's Financial Regulation—that the duties of authorizing officer are incompatible with those of financial controller. This principle is based on the consideration that departments whose task it is to secure adequate revenue or to prepare and implement projects generating expenditure do not possess the detachment required for impartial financial control. This principle can be applied with equal justification to relations between the authorizing officers in the Commission and those in the Member States since the Commission departments concerned are responsible for a balanced Community budget and for the market support and other measures financed out of the Agricultural Fund.

32. The role of preliminary internal financial control should be to refuse endorsement of a statement of levies collected by a Member State for the account of the Communities if it is found from examination of the implementing rules and administrative practices of the Member State concerned or from another source that the levies due to the Communities have not been collected or not collected in full. Preliminary financial control should also refuse to endorse a payment order for the reimbursement of a Member State's expenditure, e.g. for the account of the Agricultural Fund, if it is known that part of the expenditure involved covers export refunds which are not in accordance with Community law. The Audit Board too must enter an objection if the Commission, with or without the financial controller's endorsement, effects such expenditure from the Agricultural Fund or if the Commission's financial controller does not sufficiently check the Member States' implementing rules and administrative practices to ascertain that such expenditure has occurred.

If the financial controller of the Commission exercises this form of control and if there is close cooperation between preliminary internal control and retrospective control by the Audit Board, this will be the surest guarantee that Parliament will be able to fulfill its control responsibilities and its financial role as budget authority.

33. As Community financial control is developed, care should be taken to ensure that the departments directly concerned, either with the agricultural sector or the European Development Fund or the Social Fund do not control their own finances.

This would be in contradiction with basic financial principles. Financial control implies that the controller and the controlled should not be the same person and this applies at all levels.

No matter who is made responsible for the control of revenue and expenditure, it is vital that a clear decision should be taken at an early date. Control must be vested in a single central department for if responsibility were shared among several departments, its effectiveness would be inhibited and this would be unreasonable from the point of view of the Member States. Inasmuch as responsibility for the revenue and expenditure in question lies with a single administration in the Member States, it should have as its counterpart a single control department at Commission level. Besides this, sharing responsibility among several departments means doubling staff requirements.

This applies especially to the agricultural sector which still accounts for 80 per cent of the total expenditure of the European Communities.

Permanent cross-fertilization of ideas suggested by experience must therefore be a prime consideration in the framing and further development of agricultural market regulations and the legislative authorities must also be quick to react to mispractices.

C. The setting up of a European Audit Office

34. It will be perfectly clear from what has been said that even assuming a liberal interpretation of Article 206 of the EEC Treaty, the Audit Board is not in a position to ensure adequate external control of Community finances. Many arguments can be advanced for transforming the Audit Board into a European Audit Office. One general observation of relevance here is that the Community budget has now reached a size that requires external control on a different scale.

Furthermore, the problems caused not only by the division of the Community into Member States but also by the different historical development of financial, budget and control procedures make harmonization essential. For this reason, the basic statutes of a future European Audit Office should be developed from Article 206 of the EEC Treaty.

35. The ultimate aim should be to set up the European Audit Office as a genuine independent Community body separate from the Assembly, the Council, the Commission and the Court of Justice since this is the only way to guarantee its full independence, including organizational independence. In the initial stages of development, it will not be possible to take such a broad view for it would require changes to the treaties. Such changes could not be made easily and would in any case be subject to a time-consuming ratification procedure.

36. However, a European Audit Office on the following outline model could be set up on the basis of Article 206 of the EEC Treaty.

(a) *Responsibilities and authority*

The European Audit Office would be authorized as of right to verify that the budgetary and financial management of the Communities is conducted properly and with due regard for economy; this includes all decisions taken in organizational and staffing matters and other measures with possible financial implications. It would also be authorized to conduct local investigations with the Member States' administrations and would be free to circumscribe its audits as it saw fit or leave entire areas unaudited. By joint decision of the European Parliament and the Council it could be requested to conduct special inquiries into specific problems.

The European Audit Office would have the right to be represented by a member at all meetings of the Parliament's and Council's budget committees.

It would be able to take the initiative in submitting proposals to the Council, the Parliament, and the Commission on all matters of financial management. In the performance of its duties it would be able to call on the services of experts and commission expert reports.

(b) *Members*

The European Audit Office would consist of nine full-time members—one from each country of the Community—possessing judicial independence and free to conduct audit operations as they saw fit. The members of the European Audit Office would be required to have many years' experience in the control of public accounts and would be nominated by Parliament and appointed for six years by the Council. The Parliament would make nominations on the basis of a triple list drawn up by the national audit offices. Members would be eligible for re-appointment for one further term of office. In order to ensure work continuity, the first members would be appointed in groups of three for three, five or seven years, those various periods of office to be drawn by lot among the nine Member States.

(c) *President*

The nine members would elect from among their own numbers a 'primus inter pares' to be President of the European Audit Office for a period of two years. He would represent the European Audit Office in its relations with outside bodies and would supervise the work of its staff.

(d) *Administrative director*

The Director of the European Audit Office would be responsible for organization and administration. He would take decisions, under the authority of and, in personnel matters, where necessary, on the instructions of the President.

(e) *Structure, allocation of responsibilities*

The European Audit Office would be divided into audit areas each directed by one member assisted by the necessary staff. The nine members acting collectively would decide autonomously

for six-year periods on the allocation of the Audit Office's responsibilities in the various audit areas. As far as possible, account should be taken here of the organization of the Commission and the focal points of Community expenditure.

(f) *Decision-making bodies of the European Audit Office*

- (1) Divisions would be formed, each covering three audit areas. Each division would take decisions in auditing matters by a majority vote on the basis of a report by whichever member is responsible. Decisions by individual members would not be permissible since they would offend the principle of collective responsibility for the decisions of the European Audit Office and stand in conflict with the efforts being made to achieve integration.
- (2) The three divisions with all their members would together form the Senate of the European Audit Office. The Senate would be responsible for the report on the accounts for a given financial year and for coordinating decision-making and auditing practice in the European Audit Office.

(g) *Disciplinary authority of the European Audit Office*

The European Audit Office would be able to take disciplinary action in respect of infringements of financial regulations by accountants and officials in the Commission's internal financial control department. It would have full right to information on all procedures applied within the internal financial control department. The opinions of the European Audit Office in budget matters would be binding on the Commission's internal financial control department but should not be allowed to interfere with the responsibilities of the Commission.

(h) *Requests for audit made to national auditing authorities*

The Senate of the European Audit Office would be able to request any or all of the auditing authorities in the nine Member States to conduct inspections in specific matters. Where national auditing authorities are not requested to make inspections or where such requests cannot be met within a reasonable time or in a reasonable manner, the European Audit Office must itself assume the task.

Common criteria applicable to all countries should be laid down in advance for auditing projects and should also specify how stringent the audits should be. Acting in conformity with these criteria, the national auditing authorities would carry out the requested audits on their own responsibility. They would submit their findings direct to the European Audit Office but would be free to inform their own governments or other departments concerned.

(i) *Joint Senate*

A joint Senate with an advisory function would be set up within the European Audit Office. In addition to the nine members of the European Audit Office it would include a member from each of the auditing authorities in the Member States. The joint Senate would be consulted prior

to decisions by the European Audit Office to submit audit requests to the national auditing authorities. Being represented in the joint Senate, the national auditing authorities would be able to coordinate their national auditing tasks with those of the European Audit Office.

In addition to the rules outlined above, there are undoubtedly many other details to be clarified and incorporated partly in the statutes of the European Audit Office and partly in its internal rules of procedure.

D. The creation of a corps of Community auditors

37. In order to campaign effectively against frauds in the agricultural sector and to ensure that the Community's own resources, particularly agricultural levies and common customs tariff duties are collected in accordance with uniform procedures in all Member States, it might be useful to set up a Community inspection department as a sort of 'flying squad' with the task of carrying out random controls unannounced and on the spot, particularly at the Community's external frontiers. The creation of a 'flying squad' on those lines presupposes a special Community training centre for customs officials selected for the purpose. The psychological effect of an auditors' corps capable of working at any time and in any place would assuredly make itself felt in the Member States' administrations which collect revenue or effect expenditure for the Community by administrative delegation and would certainly act as a deterrent to potential 'agricultural defrauders'.

This corps should come under the Commission and enjoy a fairly wide measure of independence. The Community Audit Board/European Audit Office would have to be kept constantly informed of the results of its activities.

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These selected documents were prepared with the assistance of Mr Duren and Mr Giraud in the Directorate-General of Research and Documentation, and of Mr Reister in the Directorate-General for Committees and Parliamentary Delegations.

CHAPTER I

THE PRESENT SITUATION

The first chapter of this collection of documents is intended as an introduction, its aim being:

- I — to indicate the size of the Communities' budgetary resources, and
- II — to describe the bodies responsible for controlling the use to which these resources are put.

To complete the overall picture of the present situation, there will be a third section:

- III — an outline of the main financial provisions for the collecting and use of the Communities' resources.

Section I — Size of the Communities' Budget

When the Treaty establishing a Single Council and a Single Commission of the European Communities (*OJ* No 152, 13 July 1967) came into effect on 1 July 1967, the separate budgets of the European Economic Community (EEC), Euratom and the European Coal and Steel Community (ECSC) were merged into a single budget covering all the revenue and expenditure of the Parliament, the Council, the Commission and the Court of Justice.

To the figures appearing in this budget, however, must be added the revenue and operational expenditure of the ECSC, since only administrative expenditure is included in the general budget.

Finally, it should be noted that considerable sums are made available to the Associated African States and Madagascar and also to the overseas countries and territories, and that these sums are not included in the budget.

Amounts are expressed in units of account (u.a.).

One u.a. = 50 B.fr. or Lux. fr., 3.66 DM, 5.55 F.fr., 625 lira, 3.62 florins.

1. The budget of the European Communities

When this collection of documents was drawn up, the budget for the financial year 1973 had not yet been published in the Official Journal of the European Communities.

The figures given below are taken from the draft budget drawn up by the Council which made only minor changes on the final reading.

(a) Revenue

The Communities' revenue is estimated as follows:

Nature of revenue	Revenue for financial year u.a.	
	1973	1972
European Communities' own resources	2 571 474 494	1 851 750 000
Available surplus	token entry	token entry
Portion of ECSC levies paid in accordance with Article 20 of the Treaty of 8 April 1965 (administrative expenditure)	18 000 000	18 000 000
Revenue derived from tax on salaries, wages and emoluments of Community personnel	17 126 120	13 664 470
Contributions of Member States	1 823 912 675	2 282 487 518
Various items	8 838 820	11 537 730
Total	4 439 352 109	4 177 439 718

Chapter IV gives more detailed information on the sources of revenue for the Communities' budget.

(b) Expenditure

The expenditure authorized for the individual institutions in 1973 is as follows:

	u.a.
Section I: Assembly	23 988 175
Section II: Council	33 175 915
Section III: Commission	4 375 514 779
Section IV: Court of Justice	6 673 240
Total	4 439 352 109

The number of staff whose salaries may be paid from the personnel appropriations in 1973 is limited to the following:

Institution	Maximum No of Staff	
	permanent	temporary
Assembly	1 016	70
Council	1 212	6
Economic & Social Committee	252	—
Audit Board	26	—
ECSC Auditor	5	—
Commission		
Administration	6 729	178
Court of Justice	223	—

The expenditure of the Commission of the European Communities for 1973 amounts to 4 375 million u.a. made up as follows:

Titles	Nature of expenditure	u.a.		
		appropriations 1973	appropriations 1972	expenditure 1971
Title 1	Expenditure on staff of institution	113 657 830	95 262 930	73 278 285
Title 2	Buildings, equipment and miscellaneous operating costs	308 677 724	215 564 100	155 400 057
Title 3	Expenditure incurred in the performance of specific tasks	26 276 401	79 516 743	66 900 986
Title 4	Aid, subsidies and contributions	9 379 730	8 632 650	10 414 414
Title 5	European Social Fund	240 750 000	97 750 000	56 472 770
Titles 6 and 7	European Agricultural Guidance and Guarantee Fund—Guarantee Section	3 147 400 000	2 697 000 000	2 008 273 763
Title 8	European Agricultural Guidance and Guarantee Fund—Guidance Section	310 000 000	839 551 300	203 279 217
Title 9	Food aid and other expenses	219 373 094	109 304 000	13 177 000
	Total	4 375 514 779	4 132 581 723	2 587 196 492

2. ECSC operational budget

The Commission published the operational budget for the financial year 1973 in Official Journal No L 297 of 30 December 1972.

ECSC operational budget for the financial year 1973

Requirements (in million u.a.)	Rate 0.29	Resources (in million u.a.)	Rate 0.29
A — Operations to be financed from current resources (not repayable)		A — Current resources	
1. Administrative expenditure	18.—	1. Income from levies (rounded off)	63.80
2. Aid for readaptation	40.—	2. Interest on investments and loans on unborrowed funds	10.—
3. Research aid	16.—	3. Miscellaneous	0.20
(a) Steel 8.—		Total	74.—
(b) Coal 4.—			
(c) Social 4.—		B — Source of unborrowed funds	
Total	74.—	4. Depreciation on low-cost housing loans	4.80
B — Operations financed by loans on unborrowed funds		5. Part of ex-ECSC Pension Fund	5.20
4. Loans by mixing funds under Articles 54 and 56	19.20	6. Contribution of new members to ECSC funds	19.20
5. Special reserve (low-cost housing)	10.—		

This budget gives only a partial view of the financial activities of the ECSC. Its financial balance-sheet needs to be added. The following table is taken from the auditor's report for the year 1971. It gives some idea of the way in which the activities of the coal and steel industry are being financed.

**Financial situation of the European Coal and Steel Community
as of 31 December 1971 (balance-sheet)**

<i>ASSETS</i>	u.a.	<i>LIABILITIES</i>	u.a.
I — Current loans granted	836 184 343	I — Loans raised	801 706 707
II — Cash on hand and bank accounts	209 040 373	II — Reserves	
III — Securities	64 852 757	(a) Guarantee Fund	100 000 000
IV — Buildings	228 678	(b) Special reserve	87 000 000
V — Recoverable issue costs	14 844 317	III — Allowances (retraining, research, bonuses)	117 680 264
VI — Various	20 302 112	IV — ex-pension-fund	25 651 446
VII — Equalisation accounts, assets	22 187 465	V — Other	17 004 878
Total	1 167 640 045	VI — Equalisation accounts, liabilities	17 882 855
		VII — Balance not allocated	713 895
		Total	1 167 640 045

3. *European Development Funds*

Since the EEC was established on 1 January 1958, three funds have been set up, the first by the Treaty itself, and the next two under the Yaoundé Convention. The following information is taken from the Report of the Audit Board for the financial year 1971 (Doc. 206/72).

(a) *Development Fund for the overseas countries and territories*

'The Development Fund for the overseas countries and territories (1st EDF) was set up by the implementing convention relating to the association between the overseas countries and territories and the Community provided for in Article 136 of the EEC Treaty and annexed to it.

The implementing convention, drawn up for a period of five years (1958-1962), provided for the payment of contributions by Member States amounting to 581 250 000 u.a. for social and economic investments. Although the five-year period has long since expired, it is clear that the financing operations of the Fund will not be completed for some time.'

At 31 December 1971 the balance-sheet was as follows:

CREDIT	u.a.
Financing operations	535 298 486
Financial costs	886 490
Advance to 2nd Fund	45 335 090
	<hr/>
	581 520 066
DEBIT	
Contributions 1958-1962	581 250 000
Other yields and interests	270 066
	<hr/>
	581 520 066

(b) *Second European Development Fund*

The association convention, valid for a period of five years, was signed at Yaoundé on 20 July 1963 between the EEC and the Associated African States and Madagascar. It came into force on 1 June 1964.

Under this convention and the internal agreement, the EEC Member States make 730 000 000 u.a. available to the European Development Fund (2nd EDF); to this is added a total sum of 70 000 000 u.a. in loans granted by the European Investment Bank from its own funds.

The resources of the Fund are used in the form of non-repayable aid and loans to the Associated African States and Madagascar, the overseas countries and territories and the overseas depart-

ments for economic and social investments, technical aid and cooperation, and aid for production and diversification.

The balance-sheet of the European Development Fund stood as follows at 31 December 1971:

CREDIT	u.a.
Financing operations	474 055 187
Loans on special terms	27 443 885
Working capital of the Agence Européenne de Coopération	9 154 440
Current and realizable assets	
— available	31 785 046
— secured advances	3 391 198
— Member States	205 678 000
— credits on 3rd Fund	22 603 204
Financial and administrative costs	2 105 279
Operations in process of equalization	2 162 298
	778 378 537
DEBIT	u.a.
Contributions	730 000 000
— paid up	524 322 000
— to be called in	205 678 000
Liabilities to 1st Fund	45 335 090
Other	3 043 447
	778 378 537

(c) *Third European Development Fund*

The convention relating to the Third Development Fund, valid for a period of five years up to 31 January 1975, was signed at Yaoundé on 29 July 1969 between the EEC and the Associated African States and Madagascar and came into force, after ratification, on 1 January 1971.

Under this convention and an internal agreement also signed at Yaoundé, the Member States of the EEC place at the disposal of the European Development Fund (third EDF) an amount of 900 000 000 units of account to which is added a loan of 100 000 000 u.a. from the European Investment Bank.

With this new Yaoundé Convention production aid in the form of price maintenance is discontinued and a reserve fund is set up to offset a possible future drop in world prices and natural disasters. In addition to financing investment projects in the spheres already covered by the first Yaoundé Convention, it provides for aid to promote trade and marketing and also the industrial development of the Associated States.

The balance sheet and management accounts were submitted unofficially to the Audit Board on 23 May 1972. These documents show the following results:

CREDIT	u.a.
Financing operations	22 603 204
Credits on Member States	900 000 000
	<hr/>
	922 603 204
DEBIT	
Contributions from Member States	900 000 000
Debts to 2nd EDF	22 603 204
	<hr/>
Total	922 603 204

No contribution has been called for yet and the third EDF is still being financed by the earlier funds.

Section II — Supervisory bodies

In the public finance sector there are generally two kinds of financial control. The first is organized *internally* by the Institution concerned. It is carried out at the time that operations are transacted. The financial controller must endorse documents not only as and when expenditure is committed or an order to collect issued, but later, too, on payment or recovery of debts.

The second type of control is *external*. It is generally carried out a posteriori, after the operation or even only at the end of the financial year. This control is the responsibility of a separate and independent body, which is accountable to the Parliament either directly or through the Executive.

Chapter IV describes the activities of the Audit Office—or the body acting as such—in each Member State.

This double system of internal and external control has also been adopted in the European Communities.

1. *Internal Control*

In the Commission, the institution responsible for implementation of the budget, internal control is the responsibility of *Mr Cheysson*, who is in charge of the corresponding 'Directorate-General XX—financial control.'

According to the new financial regulation now being prepared (i.e. the Commission's proposal of 28 November 1972—Doc. 247/72) the duties of the financial controller may be described as follows.

- (a) Each Institution appoints a financial controller responsible for making sure that all expenditure is correctly committed and authorized. As the Communities have had their own resources since 1 January 1971, the financial controller is now also responsible for all revenue (Article 19);
- (b) The duties of the financial controller are incompatible with those of authorizing officer (Article 17);
- (c) The essential task of the financial controller is to give his endorsement authorizing:
 - (i) entering of credits. The purpose of the endorsement is to certify that the credit has been properly allocated to the budget and accords with current regulations as well as with the principles of sound financial management (Article 23);
 - (ii) commitment of expenditure and payment thereof. The purpose of the endorsement is to certify that the appropriations are available and that the entries have been properly allocated to the budget and accord with current regulations as well as with the principles of sound financial management (Articles 41-43, 50-52).

The draft regulation makes an innovation in that if the financial controller refuses his endorsement and the institution ignores his refusal, decisions to proceed taken by the higher authority which 'replace' the controller's endorsement will be 'periodically' made known to the Audit Board. At present, the institution may require the financial controller to give his endorsement and the Audit Board is not informed.

The draft also makes an innovation in regard to the scope of the control which now includes control of sound financial management.

- (d) The financial controller also intervenes in respect of *transfers* (Article 21) to certify that appropriations are available. He is notified when revenue is not collected (Article 24), when credit documents are not made out (Article 23), when an advance is paid (Article 50) and when payment is suspended (Article 55). He attends the meetings of the 'Consultative Committee on Purchasing and Contracts' (Articles 62 and 63) as an observer. His endorsement is required for transactions concerned with movable assets and real estate (Article 69);
- (e) The financial controller will in future concern himself with the drawing up of annual accounts. The general monthly balance-sheet is submitted to him, as is the yearly management account (Articles 72 and 75);
- (f) The financial controller commits his disciplinary and, if necessary, pecuniary authority in the discharge of his duties, notably when authorizing transactions in excess of budget appropriations.

The financial controller supervises the accounts of the Directorates-General under his responsibility and is answerable to the superior authority of the Institution.

This financial control is particularly important in the case of the Commission of the European Communities whose estimates are the largest because of the activities of the Agricultural, Social and Development Funds.

In this institution, financial control was organized as follows on 1 February 1973:

Directorate-General XX—financial control

The Director-General (A/1) is assisted by an adviser (A/2) and two officials (A/5-4 and B).

The Directorate-General is divided into 5 sections and a special service for the European Agricultural Guidance and Guarantee Fund.

Division 1—personnel expenditure has two grade A and 4 grade B officials;

Division 2—Administrative expenditure (other than personnel expenditure) has two grade A and 5 grade B officials;

Division 3 — EDF, EEC Social Fund, retraining of ECSC workers, promotion of ECSC research, operational expenditure of the research budget administered at headquarters — has four grade A and three grade B officials;

Division 4 — Joint Research Centre — has three grade A and two grade B officials;

Division 5 — Publications Office and administrative expenditure managed at Luxembourg — has one grade A and one grade B official;

Special Department 6—EAGGF, revenue and assets management—has six grade A and two grade B officials.

The internal control operations described above are additional to other checks for which the *authorizing officers* and *accounting officers* are responsible.

Clearance of expenditure by the authorizing officer involves making sure that the creditor's claim is proper, and verifying that the amount claimed is correct and the conditions of payment respected. After clearance, the authorizing officer gives the accounting officer the order to pay. This officer, in turn, before making the payment, must make sure that no material error has been made, that the validity of the discharge is not in doubt and that the provisions of the financial regulation have been complied with.

All these checks may sometimes require local visits by the *authorizing officers* in cases involving own resources (customs duties and levies) or expenditure incurred through the agency of national bodies and met by the various Funds.

It should be stressed that, while the Commission of the Communities is generally responsible to Parliament for the management of its affairs, the Parliament—according to the new general financial regulation—will be informed of difficulties arising in administration of the budget under the new provisions for withholding the financial controller's endorsement.

In view of this arrangement, it must be a matter of concern to the Parliament whether it is the authorizing officer or accounting officer who carries out the local checks.

2. External Control

Two bodies are responsible for external control. For the accounts as a whole, an Audit Board has been set up under Article 206 of the EEC Treaty, Article 180 of the Euratom Treaty and Article 78d of the ECSC Treaty.

For the operational revenue and expenditure of the ECSC, Article 78e stipulates that the accounts shall be examined by an auditor.

The functions of these two bodies are described below and a list is given of the staff available to them.

(a) *Audit Board*

External control of the financial management of the Communities is effected by the Audit Board of the European Communities, which—under the terms of Article 206 of the Treaty establishing the European Economic Communities, Article 180 of the Treaty establishing Euratom and Article 78 (d) of the revised ECSC Treaty—is responsible for establishing ‘that all revenue has been received and all expenditure incurred in a lawful and regular manner and that the financial management has been sound’.

The Audit Board’s checks are concerned with all the financial operations carried out by the Communities’ Institutions (revenue, administrative operating expenditure of the Institutions, Euratom research and investment expenditure, European Agricultural Guidance and Guarantee Fund, European Social Fund, European Development Fund, Food aid, etc.) with the exception of operations relating to the ‘Operational budget of the ECSC’ and to that of the European Investment Bank, which are controlled by special external auditing bodies.

Since the enlargement of the Communities, the Audit Board has consisted of nine members, appointed by the Council, acting unanimously, for a period of five years. The members of the Audit Board discharge their duties on a part-time basis: they are selected from among persons having, generally, the status of officials or staff of a corporate body governed by national or international public law whose independence is beyond doubt and who hold recognized professional qualifications and competence in economic and financial accountancy or in the auditing of public accounts.

The Audit Board discharges its duties in the general interest of the Communities, in complete independence and on its own responsibility. It has a budget and staff; it draws up its internal regulations and determines the tasks and responsibilities of its staff.

Every three months, each Institution forwards to the Audit Board the documents supporting its accounts. Auditing is based on records and, if necessary, performed locally.

At the end of each financial year, the Audit Board prepares a report on the accounts. This is examined by the Council and the Parliament with a view to the giving of a discharge in respect of implementation of the budget, and is debated by Parliament in public session.

The work of the Audit Board is shared between teams which on the Board’s authority, give every possible support to the members. The division of work is shown below: it is flexible, as is required in view of the frequent changes in the Communities’ financial activities.

Services Directorate	1 Director 1 Head of Division
Documentation, archives, secretariat	1 Assistant 3 Secretaries 1 Clerk
(a) Revenue control	1 Principal Administrator
(b) European Development Fund	1 Principal Administrator 1 Principal Assistant 1 Assistant
(c) Research and Investment Expenditure	1 Principal Administrator 1 Principal Assistant 1 Assistant
(d) 'Guarantee' Section of EAGGF	1 Principal Administrator 1 Administrator
(e) 'Guidance' Section of EAGGF	1 Principal Administrator 1 Administrator
(f) Expenditure on Commission Personnel	1 Principal Administrator 1 Principal Assistant 1 Assistant
(g) Operating expenditure of the Commission, European Schools	1 Principal Administrator 1 Principal Assistant 1 Assistant
(h) Parliament, Council, Economic and Social Committee, Court of Justice	1 Principal Administrator 1 Assistant

The Audit Board had an establishment of twenty-six posts on 1 January 1973.

(b) *The ECSC Auditor*

(i) *Legal terms of reference and responsibilities of the ECSC Auditor*

Article 21 of the Treaty establishing a Single Council and a Single Commission of the Communities repealed the provisions of Article 78(6) of the Treaty of Paris concerning the appointment and duties of the ECSC Auditor and substituted other provisions under a new Article 78 e.

The new provisions of the Treaty merging the three Executives distinguished clearly between two external control bodies and defined their respective functions: on the one hand, the *Auditor* who controls only those operations of the ECSC which continue to be carried on by the Single Commission in the framework laid down by the Treaty of Paris (revenue from levies, administration and allocation of funds, expenditure on research, retraining and conversion, borrowings and loans); and, on the other hand, the Audit Board of the European Communities, which controls all the administrative revenue and expenditure of the three Executives.

The responsibility of the ECSC Auditor does not, therefore, since the merger of the executives, include control of implementation of the administrative budget, but is limited to examination and endorsement of the balance-sheet and statement of revenue and expenditure of the ECSC, i.e. to the regular and permanent auditing of the Community's own resources (revenue from levies, from investment of funds, penalties and interest on late payments), special expenditure charged against own resources (from the financing of technical and social research operations, retraining and industrial conversion) as well as all borrowing and lending effected in performance of the tasks entrusted to the Institutions by the Treaty of Paris.

(ii) *Nature of controls*

The checks are carried on continually and are comprehensive; in some cases they are based on random checks.

They relate to banking, budgetary and special operations:

- (a) banking operations: revenue and expenditure of the loans (raised and granted) service, loan-raising operations (about 800 million u.a. altogether), loans granted for industrial and social projects (about 750 million u.a. altogether), administration and investment of funds (about 275 million u.a.);
- (b) budgetary operations: ECSC levies, operational expenditure (research, retraining and conversion, aid for coke), allocation to funds and reserves (about 370 million u.a.);
- (c) special operations: liquidation of the ferrous scrap equalization fund.

(iii) *Establishment plan for the financial year 1973*

- (a) The independent Auditor (not an official) appointed by a renewable 3-year contract, paid on yearly basis;
 - (b) 1 Director grade A/2;
 - (c) 1 Principal Assistant grade B/1;
 - (d) 2 Assistants grade B/3;
 - (e) 1 Secretary grade C/1;
- (Total, 5 statutory staff members).

Section III — Outline of the main provisions governing the financing and control of the Communities' budget

Until 1970, in so far as revenue was concerned, the Communities did not have their own budget, but depended on the Member States' contributions. At the Community level, financial control, which related only to expenditure (not revenue, which consisted of contributions from the Member States), was in the last resort vested in the Council. But the conferring of own resources on the Communities and of budgetary powers—however modest—on the European Parliament, while affirming the existence of the Communities, led to a new distribution of responsibilities not only in budgetary matters but also as regards control.

The Community's identity has been further strengthened by the plan for economic and monetary union and by the establishment, alongside the agricultural policy, of new common policies—social and regional policies—involving the Community's own financial responsibility. The intention of the Heads of State gradually to create a 'European union' gives reason to hope that the Community may assume further responsibilities.

All these factors have introduced significant changes in the Communities' financing arrangements and, therefore, in the supervision of their revenue and expenditure.

New provisions have been made in the following areas:

Collection of the Communities' own resources

- (i) Regulation 2/71 of 2 January 1971 implementing the decision of 21 April 1970, replacing financial contributions from Member States by the Communities' own resources (*OJ L* 3 of 5 January 1971).

EAGGF Expenditure

- (i) Council Regulation 729/70 of 21 April 1970 on the financing of the common agricultural policy (*OJ L* 94 of 28 April 1970).
- (ii) Council Regulation 283/72 of 7 February 1972 on irregularities and recovery of sums wrongly paid in connection with the financing of the common agricultural policy and on the organization of an information system in this area (*OJ L* 36 of 10 February 1972).

These arrangements govern both sections of the EAGGF, i.e. the guarantee and guidance sections. For the guarantee section, the Commission has adopted three further implementing regulations:

- (i) Regulation 2697/70 of the Commission of 29 December 1970 relating to the allocation to Member States of Community resources from the guarantee section of the Fund (*OJ L* 285 of 31 December 1970);
- (ii) Regulation 1723/72 of the Commission of 26 July 1972 on the auditing of accounts for the EAGGF guarantee section (*OJ L* 186 of 16 August 1972);
- (iii) Financial regulation of 7 November 1972, laying down special provisions for the EAGGF, guarantee section (*OJ L* 257 of 15 November 1972).

In addition, the Commission has submitted to the Council a proposal for a regulation on general rules for the financing of operations of the EAGGF guarantee section (COM (72) 902 fin. of 26 July 1972).

Expenditure of the European Social Fund

- (i) Council decision of 1 February 1971 on reform of the European Social Fund (*OJ L* 28 of 4 February 1971).
- (ii) Council Regulation 2396/71 of 8 November 1971 implementing the reform of the Fund (*OJ L* 249 of 10 November 1971).
- (iii) Council Regulation 2397/71 of 8 November 1971 on aid which may be granted from the Fund (*OJ L* 249 of 10 November 1971).

- (iv) Council Regulation 858/72 of 24 April 1972 on certain financial and administrative procedures (*OJ L 101* of 28 April 1972).
- (v) Financial regulation of 24 April 1972, embodying special provisions for the European Social Fund (*OJ L 101* of 28 April 1972).

Research and investment expenditure

- (i) Financial regulation of 20 September 1971 laying down special provisions for research and investment appropriations (*OJ L 218* 28 September 1971).

This set of financial provisions representing a more precise commitment by the Community institutions has still to be completed in several areas. The Council still has to act on a proposed new financial regulation submitted to it by the Commission on 15 December 1970 and in particular on the rules governing the Audit Board which have not been revised since Article 206 was amended by the Treaty of 22 April 1970.¹

Expenditure of the European Development Fund (EDF) in favour of the Associated African States and Madagascar

Relevant here is the financial regulation of the EDF (1969) established by the internal agreement on the financing and administration of the Community's aid programmes (*OJ L 31*, 8 February 1971). This regulation relates to the third fund. Although the accounts of the first two funds have not yet been finally settled, the outline given below will be limited to the regulation cited, since it differs very little from the financial regulations applicable to the other funds. Some rules were set out in Commission Regulation 229/72 of 28 January 1972 on working procedures for the EDF (*OJ L 29*, 2 February 1972).

Financial Activity of the ECSC is controlled by an auditor. His duties are defined in Article 78 (e) of the ECSC Treaty amended when the three Executives were merged. No financial regulations have been drawn up in implementation of this Article.

1. *General rules governing finance*

To replace the separate financial regulations governing the expenditure of the EEC and Euratom, their revenue, and the preparation and rendering of their accounts, the Commission submitted the draft of a new regulation aimed at unifying and revising the provisions in accordance with the decisions of 21 and 22 April 1970 on the Communities' own resources and the budgetary powers of the European Parliament.

The main provisions of this proposal as amended by the Commission are set out overleaf.

¹ The Commission drew up an amended proposal for a financial regulation on 28 November 1972 (Doc. 247/72) which takes into account certain observations of the Parliament (Rossi Report, Doc. 230, 1970-1971 and Resolution of 19 January 1971; *OJ C 11*, 5 February 1971). See also Miss Flesch's report, Doc. 298/72.

(a) *General Provisions*

The budget is the instrument which sets down and authorizes *in advance* the revenue and expenditure for each year. There are several exceptions to this rule:

- (a) current administrative expenditure may be committed as from 15 November of the previous financial year.
- (b) if the budget has not been adopted at the beginning of the financial year, research and investment expenditure may be paid under the special conditions described in item 5 below.
- (c) for other expenditure, payment operations are covered monthly, in respect of each chapter, in an amount of up to one *twelfth* of the budget appropriations of the previous year and not exceeding one twelfth of the appropriations of the budget in preparation; commitment operations are covered in an amount of not more than one quarter of the appropriations of the previous budgetary year (plus one twelfth for each month which has elapsed of the current year) within the limit of the total appropriations stipulated in the budget in preparation.

Expenditure may only be authorized for one financial year except:

- (i) if special arrangements are made in the budget;
- (ii) in the case of contracts.

There is a 'single' budget covering all revenue and all expenditure. The total revenue and total expenditure are in balance. However,

- expenditure relating to supplementary research and investment programmes (Euratom) may be covered by financial contributions from the States according to a special scale;
- special conditions may sometimes apply to approved projects and subsidies.

The Commission may draw up *supplementary* preliminary draft budgets:

- the same procedure applies to these as to the budget which they amend;
- they must, generally speaking be submitted at the latest by the date required for the preliminary draft budget of the following year.

Revenue and expenditure are accounted for in a financial year corresponding to the calendar year.

On the revenue side, claims which are confirmed but not recovered by 31 December are shown individually by article in the accounts for the following financial year.

Expenditure is chargeable to the accounts of the period for which the appropriations were authorized only if it is regularly incurred and paid during that year. Exceptions to this rule are made in the following cases:

- entries carried forward;
- research and investment appropriations;
- debts incurred in previous years for which no appropriation had been carried forward;
- EAGGF expenditure (guarantee section);
- expenditure of the Social Fund.

Appropriations may only be carried forward to the next financial year:

- appropriations corresponding to payments outstanding on commitments incurred between 1 January and 31 December shall automatically be carried forward;
- the request for permission to carry forward shall be submitted to the budgetary authority before 1 July for appropriations corresponding to the *payments outstanding* at 31 December in connection with commitments incurred after 15 December and with purchases of supplies, services and equipment as well as for the portion of the appropriations not committed as at 31 December. If no decision to the contrary is taken within one month, these amounts may be carried forward; the application for permission to carry forward shall be submitted by the Commission to the Council and to Parliament before 1 May.
- the appropriations of the EAGGF, guidance section, may be carried forward automatically for up to 5 years with a possibility of further extension;
- the appropriations corresponding to expenditure by recognition of the rights of Member States or by approval from the Commission for conversion projects of the Social Fund shall automatically be carried forward to the next financial year.

Appropriations relating to personnel cannot be carried forward.

(b) *Presentation and structure of the budget*

Time limits

- 1 July : the Parliament, Council and Court of Justice prepare their estimates with an introduction, and forward them to the Commission.
- 1 September: the Commission forwards the preliminary draft budget to the Council with a general introduction.
- 5 October : the Council forwards the draft budget to Parliament with an explanatory statement, showing the main trends and explaining any departures from the preliminary draft budget.

Composition of the preliminary draft budget

- Estimates of revenue and expenditure of each Institution.
- Introduction by each Institution.
- General introduction by the Commission, defining its policy and explaining the variations in appropriations as between one year and the next.
- Where appropriate, the opinion of the Commission which may set out estimates differing from the preliminary estimates of the other Institutions.
- The establishment plan of posts shown in the budget and staff with a justification of new posts.
- a monthly forecast of payments and receipts.
- for the guidance section of the EAGGF, a chart must show the commitments and payments position at 31 December of the previous year and at 1 September of the current year, a schedule of payments due and payment forecasts for subsequent financial years.

Should one of the Institutions so request, the Commission may submit amendments before the budget is adopted, on receipt of additional information.

Structure of the Budget

The budget consists of four sections covering the revenue and expenditure of the Parliament, Council, Commission and Court of Justice.

The revenue and expenditure of the Economic and Social Committee and the ECSC Auditor come under the 'Council' section. This also applied to the Audit Board until 1971. Since that time, at the request of Parliament, half of the Audit Board's appropriations have been included in Parliament's estimates and the other half in the Council's estimates. This is in keeping with the new Article 206 of the EEC Treaty under which both Parliament and Council are required and entitled to give a discharge in respect of the accounts.

The *subdivisions* of the budget are the titles, chapters, articles and headings; they follow a decimal classification.

The *budgetary nomenclature* is obligatory, but not limiting; it includes a chapter for provisional appropriations not allocated and a chapter for expenditure not otherwise foreseen which may only be used by transfer operations.

The budget shows:

on the left-hand page: the *appropriations* opened for the budgetary year concerned and for the current year, as well as the expenditure of the previous year;

on the right-hand page: the *comments*, which may if so stated be binding;

annexed: an *establishment chart* for each institution imposing a compulsory limit.

Appropriations are *classified* by chapter and article; they cannot be assigned to other expenditure. However, *transfers* may be requested:

— from one *chapter* to another: they are approved if the Council has not acted within six weeks;

— from one *article* to another: they are approved if the Commission has not acted within six weeks.

In the absence of a contrary decision taken in accordance with budgetary procedure, only those budget lines for which an appropriation is shown or which are marked as 'token entries' may be the subject of a transfer.

Transfers of appropriations shall be endorsed by the financial controller.

(c) *Pluriannual forecasts*

Parallel with its decision to replace Member States' financial contributions by the Communities' own resources, the Council adopted a further decision requiring the Commission to prepare pluriannual forecasts once a year.

Their purpose is to place the Communities' budget in a three-year perspective and to indicate

the financial implications for the Community of existing regulations and decisions and of proposals submitted by the Commission to the Council.

These forecasts are drawn up by the Commission on the advice of the Committee on Budget Policy and are referred to Parliament for an opinion. They are submitted to the Council for consideration and assessment.

At the end of the financial year, the Council can *compare* forecasts and actual developments *for consistency* on the basis of a report drafted by the Commission. If expenditure is well above the forecast level, the Commission must report to the Council proposing suitable measures.

(d) *Implementation of the budget*

For implementation of the budget, the principle of separation between authorizing officers and accounting officers shall be observed.

The Commission implements the budget. Implementation of the Parliament, Council and Court of Justice Sections shall be supervised by the authorizing officer of each Institution and his assistants. Each Institution appoints a financial controller and an accounting officer responsible for paying items of expenditure and collecting revenue.

The Financial Regulation then describes the method of *committing, settling, authorizing and paying* expenditure. It authorizes the determination of conditions for the grant of advances. It lays down the conditions for awarding contracts, keeping inventories and entering items of revenue and expenditure.

In regard to budgetary revenue, the Commission has included in its new proposal provisions on the coverage of the Communities' cash requirements in the context of budgetary expenditure.

(e) *Rendering and auditing accounts*

Management account and Financial balance sheet

By 1 May at the latest, each Institution shall forward to the Commission the information it needs in order to prepare the management account and Financial balance sheet.

By 1 June at the latest, the Commission shall draw up:

- a *management account* covering all revenue and expenditure operations relating to the previous financial year for each of the Institutions;
- a *Financial balance sheet* showing the assets and liabilities of the Communities on 31 December of the previous financial year;
- a statement of the movement and balances of the accounts.

The Role of the Audit Board

The Board receives every quarter, from each Institution, vouchers in support of the entries.

On 1 June at the latest after the end of the Financial year, the management account and balance sheet.

The Audit Board makes its examinations on the basis of documents and, if necessary, locally. It verifies the legality and regularity of items of revenue and expenditure having regard to the provisions of the treaties, budget, financial regulations and all acts adopted pursuant to the treaties. It ascertains whether the financial management has been sound.

For this purpose, each Institution gives the Board access to all information it requires.

The Audit Board makes its *observations* known to the Commission and Institutions concerned. Their replies are forwarded to it and to the Commission.

By 15 July at the latest, it draws up its *report* on the accounts and makes observations on the balance sheet.

On 31 October the Commission forwards to the Council and Parliament:

- the management account, the financial balance, and
- the report of the Audit Board.

By 30 April of the following year, the Council and Parliament give a *discharge* to the Commission on the implementation of the budget. If this date cannot be met, the Council or Parliament informs the Commission of the reasons for postponing the decision.

Other provisions concerning the Audit Board

It is informed of all decisions taken by the Council, Parliament and Commission concerning:

- initial appropriations;
- carrying forward of appropriations;
- the provisional twelfths;
- the final adoption of the budget;
- the transfer of appropriations;
- the appointment of authorizing officers, financial controllers, accounting officer, paying out agents and delegates.
- the procedure for implementing the financial regulation laid down by the Commission after consulting the Council and Parliament.

2. Collection and auditing of own resources

The Communities' own resources are recorded by the Member States and placed at the Commission's disposal under the terms of Council Regulation 2/71 of 2 January 1971 implementing the decision of 21 April 1970 on the replacement of financial contributions from the Member States by the Communities' own resources.

(a) *Recorded entitlements*

The 'own resources' are recorded and collected by the Member States who then make them available to the Commission which implements the budget. Therefore:

- they keep account at their treasuries of the recorded entitlements. Payments to this account are compulsory, except for reasons of force majeure, and must correspond to the amount actually recorded by the Member State for the particular item of resources where appropriate within the limits laid down in the budget;
- they are required to pay interest if there is a delay in entering amounts in the accounts; the time limit for entry in the accounts is 60 days from the end of the month in which the entitlement was recorded;¹
- they must *implement* as quickly as possible *orders and instructions* given by the Commission in the light of its real needs. The Member States' obligation to carry out these orders may go beyond the amounts entered in the account and involve an *advance* from them corresponding to the estimated revenue for one month and a half, or even more in the case of a mandatory or supplementary budget.

The Member States have wide responsibilities in regard to 'own resources', being required by the Commission to take the following action:

- they must preserve for a period of three years the supporting documents recording entitlement to and payment of own resources;
- they must inform the Commission on request of the name and status of the bodies responsible for recording entitlement to and payment of own resources and of the provisions laid down by law and regulation for recording such entitlement and payment;
- they must draw up an annual summary of *accounts* together with a report on the recording and control of own resources and forward both to the Commission by 1 June of the following year;
- they report *every six months* on the overall position and the points of principle raised by the main problems encountered with regard to own resources.

(b) *Financial control of own resources*

In matters of financial control, on the other hand, responsibility is shared—The Member States, it is true, carry out checks and enquiries into the recording and payment of own resources but the Commission can:

- (i) invite Member States to carry out additional checks and even—
- (ii) designate officials to take part in such checks. A proposal for a regulation submitted to the Council (Doc. 112/72)² lays down the conditions with which Commission officials should comply.

¹ In order to make adequate provision for the Communities' foreseeable cash requirements, the Commission has proposed that this time limit be reduced from 60 to 45 days (Docs. 248/72 and 288/72).

² See also Mr Aigner's report on behalf of the Committee for Finance and Budgets (Doc. 139/72). Document No 112 is given on page 113.

Control of own resources by the Member States and the Commission does not replace control by the Audit Board, or checking of the work done by the authorizing officers and accounting officers.

A consultative committee has been appointed to deal with the many varied problems to which own resources may give rise. Its members will be representatives of the Member States with as Chairman a member of the Commission. The Committee's task will be to consider these problems and in particular, to handle the financial control and checks carried out in cooperation with the Commission.

Until 1975 the Communities' budget will continue to be partially financed by *contributions* from Member States. Furthermore, such contributions may always be allocated to supplementary projects pursuant to the decision of 21 April 1970.

Contributions are entered in the Commission's special 'Contribution' accounts with the individual Member States' Treasuries as follows:

- seven twelfths by 20 January if the budget has been voted in the normal time (by 20 December) or within thirty days after the final adoption of the budget;
- the remaining five twelfths on 1 July.

In the case of a *parity change* in a currency, the Commission can submit preliminary draft budget adjusting the appropriations. This adjustment is made by a payment by or in favour of the Member State(s) concerned.

(c) *Valuation of goods for customs purposes*

The agricultural levies are laid down by the Commission on a flat-rate basis as required by current regulations. There is therefore no need to fix the basis of assessment in each instance. Customs duties on industrial products entering the Community are generally based on rates applying to the 'value for Customs purposes'.

On 27 June 1968 the Council adopted Regulation No. 803/68 on the valuation of goods for Customs purposes (*OJ* No. L 148 28 June 1968). This fixes:

- the normal price;
- the time for valuation;
- the place of introduction;
- the value of the currency;
- the costs borne by the seller and included in the normal price.

Rules on valuation for Customs purposes must be harmonized to prevent deflections of both trade and Customs revenue.

In July 1972 the Commission suggested amending certain provisions of Regulation 803/68. The following points should be noted:

1. The proposal fixes an exchange rate to be applied to the Customs value increases where the parity of the currency has not been declared to the International Monetary Fund or where fluctuations exceed the limits specified by the I.M.F.

2. The Commission would be granted certain rights for the purpose of checking the Customs value:

- it could ask the competent authorities in the Member States or the declarant to furnish the information and documents needed to establish the Customs value;
- it could initiate checks by national authorities (in conjunction with representatives of the Commission if necessary);
- it could impose penalties for failure to provide the information requested;
- it could even specify the customs value itself if the information requested was not provided.

3. *Financial rules of the EAGGF*¹

(a) *The paying bodies*

Paying bodies are appointed by the Member States for the payment of intervention on the internal market and of export rebates; the Member States provide the Commission with various particulars on the identity and statutes of these bodies and the conditions of payment.

The *Member States* are responsible for

- the selection of paying bodies;
- the information given to the Commission about them;
- the use made of the appropriations allocated by the Commission, and the payments by these bodies. The Member States satisfy themselves of the sound management of Community resources and arrange for their allocation among the paying bodies in such a way that similar payment schedules are observed for all expenditure financed by the EAGGF. They ensure that appropriations are used promptly and strictly for their intended purpose. Each paying body keeps separate accounts showing funds made available and the use to which they are put;
- forwarding to the Commission at least once a year the reports and summaries of accounts kept by the paying bodies;
- forwarding each month to the Commission the paying bodies' financial requirements, together with statements from each body of their cash position and of revenue and expenditure for the previous month, the current month and the two following months;
- forwarding to the Commission a weekly summary of transactions on their Treasury account;
- forwarding to the Commission the reports drawn up by the *national auditing or supervisory services*.

¹ A list of the financial regulations concerning the EAGGF is given on page 41.

The Commission, for its part, must make the necessary funds available to the Member States from an account opened by each Member State with the Treasury or another financial body, namely:

- at the beginning of the year, an *advance* not exceeding one third of the budget appropriations;
- in the course of the year, *additional monthly payments* intended to cover at least one month's cash requirements;
- in the course of the year a *special advance* on request, to be deducted from the following monthly advance.

The accounts are audited by the Commission before the end of the following year.

(b) *Auditing of accounts*

The Member States are responsible for forwarding to the Commission a certain number of accounts and reports to enable the Commission to audit the EAGGF accounts.

- The deadline for this is 13 March of the following year (except for 1971, when it was 15 October 1972).
- These accounts concern the operations for which payments were made during the calendar year.
- The following documents must be forwarded:
 - (i) summaries of accounts for each paying body extracted from the accounts kept by these bodies, together with the reports they are required to submit in accordance with a given pattern;
 - (ii) the reports, even incomplete, made by the national supervisory services;
 - (iii) a summary of the expenditure of all the bodies plus a summary cash statement at 31 December;
 - (iv) a statement relating to irregularities not included in the quarterly statements (Reg. 283/72) and for which the recovery procedure was completed during the previous year. Submission deadline for 1971—15 October 1972.

(c) *Operations entailing intervention*

These are described in the regulations setting up the various agricultural markets. To preclude any misunderstanding the Commission has drawn up a list of expenditure that corresponds to the concept of intervention designed to stabilize agricultural markets. But in many cases the amounts that may be included in the paying bodies' accounts have still to be specified.

The Council is to adopt a regulation specifying certain general financial conditions or rules—and the Commission suggested a number of provisions¹ in a document dated 26 July 1972. This proposal contains a few general rules and assigns to the managing committees (Fund Committee) the task of laying down implementing arrangements.

¹ Doc. No 127/72.

The proposals are as follows:

1. Intervention operations are classified according to the method of financing:
 - those for which a limit has been fixed are entirely financed by the EAGGF
 - those for which no such amount has been fixed are sub-divided as follows:—
 - (i) those where the allocation is equal to expenditure following deduction of any revenue resulting from the operation and
 - (ii) those involving purchase and storage of goods: here, the amount allocated from the EAGGF is dictated by the size of the balance in the annual accounts showing certain credit and debit entries.
2. The Commission proposes financing in full in place of refunds on a flat rate basis. As a result, Member States will be required to inform the Commission how the different phases of operations are financed (this varies considerably from State to State) and of any modifications made. The detailed arrangements for meeting costs phase by phase will then be laid down in accordance with the management committee procedure—following an attempt to align the financing procedures of the Member States.

However, the Commission hopes to retain the option of refusing to finance part of the costs where they are too high compared with the level in other Member States.

When this proposal was considered by the Committee for Finance and Budgets, a minority of its members objected that 'if Member States are required to refund part of the costs, they will tend to apply intervention measures more sparingly.' The system of flat-rate refunds has thus involved the Community in less expenditure than the prepared system would have done. A federative structure for the Communities—which is the ultimate objective—also implies mobilization of the Member States' interests in the discharge of management tasks.

3. The costs of purchasing goods will be met by the Member States for the time being, with the Community meeting only the *cost of the appropriation*. If the Community were to meet the full costs, the Commission would be compelled to request appropriations on a large scale whereas at the end of the period it only has to pay interest. The interest rate for each year is two points above the discount rate at the beginning of the financial year. Should it prove unsatisfactory this system will be reviewed by the end of 1975.¹

(d) *The rules applicable to the Guidance Section*

Subsidies provided by the Guidance Section are governed by Regulation No. 729/70 on the financing of the common agricultural policy although a number of previous regulations from 1964 still apply.

As a rule the Guidance Section finances joint projects decided by the Council, agricultural reform in particular (Mansholt Plan).

¹ By Regulation of 28 December 1972 (OJ No L 298, 31 December 1972) the Council decided on full financing, the necessary arrangements to be introduced on 1 January 1974 for all products.

The Community has considered it advisable, however, to maintain for the time being, a number of previous provisions from Regulation No. 17/64,¹ which deals with individual projects, to the extent that the Section's appropriations are not fully used on joint projects. The ceiling on these appropriations was 285 million u.a. until the end of 1972 and 325 million u.a. as from 1973.

Article 22 of Regulation No. 17/64, which is still in force, provides for a number of control measures 'Throughout the period of intervention by the Fund the authority or body appointed for the purpose by the Member State concerned shall provide the Commission on request with any supporting documents or other evidence establishing that the financial or other conditions specified for each project have been fulfilled. The Commission may conduct on-the-spot checks where necessary. Should these conditions not be fulfilled, aid from the Fund may be suspended, reduced or discontinued.'

Joint projects—as well as expenditure incurred by way of guarantee—are subject to verification as described below.

(e) *Control of EAGGF expenditure*

Initial control is effected by the *Member States* in accordance with national laws and regulations. In addition, the Commission may request that checks and enquiries into EAGGF activities be carried out by the competent bodies of the State concerned, with the latter's agreement. Commission representatives may take part.

The national system of control does not obviate the need for the Member States to submit to the *Commission* the full particulars required for the proper operation of the Fund and to provide every assistance with the checks, including local checks, which the Commission considers desirable. The Member State concerned receives prior notification of these checks which are carried out by officials appointed by the Commission; the latter have access to the ledgers and all other relevant documents.

(f) *Checking for irregularities and the recovery of sums paid in error*

It is the duty of the Member States as the authorities responsible for payments under the common agricultural policy to combat irregularities and to record sums lost through negligence; this does not mean, however, that the Commission cannot be contacted for this purpose.

Member States are in fact required to provide the Commission with the following information:

- the provisions laid down by law, regulation or administrative action to ascertain that transactions financed by the Fund are actually carried out and are executed correctly, to prevent and deal with irregularities and to recover sums lost as a result thereof;
- list of authorities and bodies responsible for implementing these measures;
- a quarterly statement listing irregularities, and quarterly reports on judicial or administrative procedures initiated.

¹ OJ No 34, 27 February 1964.

The Commission, for its part, is at liberty to intervene directly in the following ways:

- It can inform the States of irregularities brought to its notice and have them initiate an administrative enquiry;
- it must maintain appropriate contacts with the States in order to supplement the information in its possession;
- it must organize meetings at Community level with the Member States concerned for the purpose of providing information and of closing any gaps in national legislation or Community regulations.

If the sums cannot be recovered, or only in part, the financial consequences are borne by the Community unless the irregularities or negligence are the fault of Member States. However, when the Guidance Section has only been partly involved in the financing, the financial losses which cannot be charged to the Member States are shared between the Fund and the Member State concerned in proportion to their respective contributions.

Similar measures have been provided for in special regulations issued prior to the general provisions described above, namely:

(i) *Fruit production*

- Regulation No. 2093/70 of the Council of 20 October 1970, laying down the general rules for implementing Articles 6 and 7 (1) of Regulation No. 2517/69, specifying certain measures for rationalizing fruit production in the Community (*OJ* No. L 232, 21 October 1970).

(ii) *Bonuses for slaughter of cattle and non-marketing of milk*

- Regulation No 1094/70 of 8 June 1970 of the Council laying down general rules for implementing Articles 11 and 12 (1) of Regulation No 1975/69 establishing a system of bonuses for slaughter of cattle and non-marketing of milk and milk products (*OJ* No L 128, 12 June 1970).

The Commission ensures implementation of Regulation No 283/72 on irregularities and the recovery of sums paid in error through a group of four Grade A officials assigned to the 'Guarantee' Division of the directorate responsible for the EAGGF.

Owing to its many other tasks—management of the 'pigmeat, eggs and poultrymeat' sectors, products not listed in Annex II of the Treaty, implementation of Article 9 of Regulation No 729/70 on verifications and control, own resources of agricultural origin—the Group can spend only a limited time on the implementation of Regulation No 283/72, although the introduction of the information system in this field should be followed with close attention—if only to ensure that proper use is made of the data sent in by the Member States.

(g) *Other special provisions of the EAGGF Guarantee Section*

On 7 November 1972 the Council adopted a financial system providing for measures covering

- the commitment of expenditure,
- payments and carry-overs,
- transfers.

1. Expenditure is committed in two stages:

The Commission makes a *provisional overall commitment* in respect of each advance payable to Member States whenever the amount of the advance is fixed by the Commission itself.

Funds are subsequently committed by budget chapter, article and item, and charged to payments two months following receipt of the statement of expenditure from the Member States.

2. Expenditure is entered in the accounts for a given financial year if payment has been made at 31 December and the accounting officer informed of commitment and authorization no later than 31 March of the following year. Appropriations for which an overall commitment has been made but which have not been charged to payments by 31 March are carried forward to the following financial year.

However, payments effected up to 31 January 1973 are entered in the accounts for 1972 (see 1972 Supplementary Budget No 2 relating to expenditure for the benefit of the founding Member States only).

3. *Transfers* are authorized from chapter to chapter if requested by the Commission no later than one month before 31 March unless otherwise decided by the Council within a period of three weeks.

Transfers within a chapter are effected before 31 March by decision of the Commission.

4. *Financial rules of the new Social Fund*

The Social Fund acquired new responsibilities following the decision taken by the Council on 1 February 1971. Intervention by the Fund was seen to be necessary in situations

- (a) brought about by Community decisions or requiring Community action, and
- (b) caused indirectly by the operation of the Common Market or impeding the smooth development of the Community.

The Member States have sole competence to submit projects to the Commission to deal with the situations under (a) and to file advance applications for intervention to deal with those under (b).

These projects and applications are examined by the Fund Committee and subsequently approved by the Commission within the limits of available funds, provided they comply with the rules for implementation of the decision of 1 February 1971.

(a) *Approval of the Commission*

In approving applications for aid from the Fund as conforming to existing regulations, the Commission undertakes to commit the necessary funds; Commission approval thus signifies the

commitment of funds. Except in urgent cases, the Commission decides four times a year on applications for aid. The decision giving approval specifies the total amount of the appropriations involved, divided into annual instalments.

(b) *Aid from the Fund*

(i) *rate of participation*

Aid from the Fund is granted in respect of 50% of the eligible costs of projects carried out by public administrations or authorities. Aid to projects undertaken by a private body is granted on a scale equal to that provided by the public authorities, on condition that the latter guarantee proper project completion.

(ii) *basis of assessment*

Aid is granted 'on the basis of the actual cost of the operations'. In certain cases, the Commission can specify the maximum amount of aid from the Fund or decide on a method of assessing the costs eligible for intervention. This basis may be reviewed at the end of the first year with the object of narrowing any disparities between the aid granted and actual costs.

(iii) *method of payment*

The aid is paid over as the project advances. With each application, the Member State concerned gives the Commission the information it requires to effect payment of the approved aid. Successive instalments may be paid as the project proceeds up to a maximum of 85%.

(iv) *auditing of accounts for a project*

The balance is paid over after the Commission has received a general statement of expenditure drawn up upon completion of the project, with supporting documents.

(c) *Financial control measures*

The Commission, acting in close cooperation with the competent authorities of the Member States, must satisfy itself that allocated funds are properly used.

- (i) It may suspend payment of aid if any irregularities come to light or any significant alterations are made to the nature or conditions of the project.
- (ii) The Member States provide the Commission with all the necessary information and assist with any checks, including local checks, which it considers desirable. The officials appointed by the Commission have access to the ledgers and documents relating to the expenditure financed by the Fund.
- (iii) The Commission may, with the agreement of the Member State concerned, request the competent authorities in that State to carry out checks and enquiries.

These checks cannot replace those carried out by the Audit Board or verification of the work done by the authorizing officers and accounting officers responsible for the Community budget.

5. *The financial rules of Euratom*

At present, research and investment expenditure by Euratom is subject to the following financial rules:

- (i) The regulation of 23 October 1961 on the establishment and implementation of the EAEC research and investment budget and on the responsibility of authorizing officers and accounting officers (*OJ* No 74, 16 November 1961);
- (ii) The regulation of 20 September 1971 laying down the detailed rules of application for research and investment appropriations (*OJ* No L 218, 28 September 1971).

The latter regulation contained provisions which had to be adopted as a matter of urgency, until the regulation of October 1961 could be replaced in its entirety by the provisions which the Commission proposed in its draft 'unified' financial regulation, which will rescind the regulation of 23 October 1961.

The main rules of the September 1971 regulation on the Euratom research and investment budget which became applicable with the 1971 budget, will be found below.

The budgetary *nomenclature* is classified in two ways, with the functional purpose of bringing out the cost of each measure at both the estimate and implementation stages. It includes:

1. Schedule based on the earmarked purpose of expenditure and reflecting the achievement of research and investment objectives.

It contains titles, chapters and articles which are briefly summarized below:

(a) *Revenue*

- Deductions from staff remunerations;
- Contributions by Member States;
- Miscellaneous.

(b) *Expenditure*

- Joint programmes and supplementary programmes—direct and indirect projects;
- Completion of earlier programmes;
- Other activities;
- Balances of allocation accounts:
 - staff,

- general infrastructures,
- scientific and technical support,
- major installations (computing centre, reactors, etc.),
- services provided on behalf of third parties.

2. Schedule of expenditure according to type, giving particulars of each of the accounts listed above. This schedule is divided into categories and items.

It lists the following expenditure:

- staff,
- administrative operations,
- technical operations,
- contracts,
- other.

The balances on these accounts are:

- either a surplus of disbursements over resources which is allocated to the accounts under 1 (b) (balances),
- or a surplus of resources, which is entered in the accounts under 1 (a).

Total payment appropriations are entered in a special chapter in the budget section of the Commission; details are given in the annex.

Each project receives an overall allocation extending over several years and divided into *instalments*.

Each instalment comprises annual *commitment* and *payment* appropriations. Commitment appropriations remain authorized until cancelled. Payment appropriations may only be used in settlement of commitments contracted during the current or previous financial year.

Expenditure charged to the allocation accounts must remain within the authorized ceilings except in the case of

- transfers within chapters,
- opening of additional appropriations for third parties,
- entry of additional amounts in the allocation accounts for services provided to third parties to cover additional expenditure arising specifically from the provision of such services.

Transfers—within the annex to the budget—are subject to endorsement by the financial controller. A schedule of commitments and payments forms an integral part of the budget.

If the budget is not approved at the beginning of the financial year the following practice is observed.

- as regards the allocation accounts:
 - payments may be made monthly by chapter up to one twelfth of the total appropriations from the previous financial year, but may not exceed one twelfth of the budget;

commitments may be made within the limit of one quarter of total appropriations for the previous financial year but may not exceed the total of the budget in preparation;

— as regards budget chapters that correspond to projects:

payments may be made monthly by chapter up to one twelfth of the annual estimates in the payments schedule for that financial year; commitments may be made within the limit of one quarter of each appropriation entered in the commitments schedule but may not exceed the ceiling on appropriations provided for in the preliminary draft budget for that financial year.

6. *Control of the European Development Fund*

On 1 January 1971 the new Convention of Association between the European Economic Community and the African and Malagasy States associated with that Community came into force for a period of five years (*OJ* No L 282, 28 December 1970).

The new Fund has 918 million units of account, made up of 748 million u.a. of non-refundable aid, 80 million u.a. for loans on special terms and contributions towards the formation of risk capital plus 90 millions u.a. from the European Investment Bank for loans eligible for interest rebates. To this should be added the 82 million u.a. made available to the Fund for the overseas countries and territories.

For the administration of these extra-budgetary funds, the Community has laid down the following rules on financial control:

1. The financial administration of Fund shall follow the principle of the separation of the duties of authorizing officer and accounting officer;
2. The authorizing officers shall be responsible for the administration of appropriations. They are solely responsible for incurring expenditure, establishing recovery rights and issuing receipt and payment orders. The chief authorizing officer shall be a Director-General at the Commission who may appoint assisting authorizing officers. When projects submitted by governments are implemented under their own responsibility, implementation shall be ensured by the local authorizing officer designated by the financing agreement;
3. The accountants shall effect recovery and payment;
4. The financial controller shall be responsible for verifying the commitment and authorization of expenditure and for verifying revenue. He may withhold endorsement at the commitment or payment stage. Endorsement may not be withheld when the Commission confirms its decision. The assistant financial controller shall carry out his inspection on the basis of records and on the spot;
5. The Commission shall, working on the basis of records and on the spot, ensure directly or through the assistant financial controller that facilities set up with the help of the Fund are properly administered and maintained;

6. The balance sheet and administrative accounts shall be adopted by the Commission at the close of each financial year. They shall be submitted complete with supporting documents no later than 31 March of the following financial year to the Audit Board provided for in Article 206 of the Treaty.

Each year the Commission forwards to the Council and the Assembly the accounts and balance sheet of the preceding year, accompanied by a report drawn up by the Audit Board on the accounts of the Fund.

The Council gives a discharge to the Commission in respect of the financial management of the Fund.

The Council notifies the Assembly of the decision to discharge the Commission, supported by any documents it considers relevant to the financial administration of the Fund. The Council has sole authority to give the discharge, contrary to accepted practice after the Treaty of 21 April 1970 which gave this power jointly to the Council and the Parliament.

Mention should be made of the financial regulation of 27 July 1970 on the Fund for implementing special provisions applicable to oil products originating in the African and Malagasy States associated with the Community or in overseas countries and territories (*OJ* No L 173, 6 August 1970 and *OJ* No 173, 29 July 1967).

7. The financial accounts of the ECSC

The submission of the ECSC's accounts is governed by Article 78 (e) of the Treaty. The Article reads as follows:

'The Council shall appoint an auditor to serve for three years. He shall draw up an annual report stating whether the accounting and the financial management of the High Authority have been effected in a regular manner; this report shall not cover entries relating to the administrative expenditure referred to in Article 78 (2), to administrative revenue or to revenue derived from the tax for the benefit of the Community levied on the salaries, wages and emoluments of its officials and other servants. He shall draw up this report within six months of the close of

the financial year to which the accounts refer and shall submit it to the High Authority and the Council. The High Authority shall forward it to the Assembly.

The auditor shall be completely independent in the performance of his duties. The office of auditor shall be incompatible with any other office in an institution or department of the Communities other than that of member of the Audit Board provided for in Article 78d. His term of office shall be renewable'.

CHAPTER II

PROBLEMS RAISED BY SHORTCOMINGS IN THE CONTROL OF COMMUNITY FINANCE

The description of the present situation in regard to financial control may give the impression that everything has always been for the best and no major problems have ever arisen.

Unfortunately, such is not the case.

The purpose of this brief chapter is to review the various statements of position which gradually created an atmosphere in which the authorities responsible became aware of the serious shortcomings of the control procedure.

I — Shortcomings in the control of Community finance—the Audit Board's opinion.

II — The European Parliament's reactions:

1. Permanent control
2. Establishment of a Commission programme of action
3. Use of modern data-processing techniques
4. Control over the recovery of the Community's own resources
5. Rules governing the Audit Board

III — Discharges given by the Council of Ministers

Section I — Shortcomings in the control of Community finance— the Audit Board's opinion

Since 1969 Parliament and the other Community institutions have paid more continuous attention to examination of the accounts for several fundamental reasons:

- the increase in the Community budget;
- the budgetary powers which Parliament should enjoy;

- the growing frequency of frauds, which could adversely affect the European Communities' credit;
- the Audit Board's alarming report.

The Audit Board's reasons for emphasizing the shortcomings in the internal control exercised by the Commission, which is responsible for implementing the budget, were set out in its report on the accounts for 1968, particularly paragraph 151 on the Guarantee Section of the EAGGF.¹ The passage in question deals with EAGGF operations prior to the April 1970 reforms concerning the financing of the agricultural policy, the Community's own resources and the budgetary powers of the European Parliament. It explains a number of subsequent amendments described in Chapter I.

'According to the regulations in force, the expenditure of the EAGGF Guarantee Section arises out of other expenditure incurred by each Member State under its public accounting system.

The expenditure in question comprises refunds on exports to third countries and interventions on the home market. In the case of export refunds, the ultimate cause of this expenditure which is borne by the Community within the limits of the Community rules, is the export of a specific product to third countries. In the case of interventions on the home market, designed to stabilize the market situation, intervention by the Fund originates in expenditure on storage or processing operations carried out in Member States.

According to current regulations procedures, as well as the summary provisions dealing specifically with this matter, the national bodies are primarily responsible for verifying the details and actual occurrence of operations giving rise to applications for intervention by the Fund (export, import, storage, processing) and for paying refunds or carrying out other operations which the EAGGF subsequently reimburses.

The passage of goods across frontiers is under the control of national customs administrations which can check the quality and quantity of goods exported and

the country of destination. In the same way, intervention on the home market is carried out by national bodies governed by public or private law whose operations are supervised by the appropriate authorities in the Member States.

As emphasized in our previous report, control of exports or other material operations which give rise to expenditure reimbursed by the Fund can, moreover, be achieved only by carrying out checks during the operations themselves or, possibly, by checking as soon as possible afterwards with the beneficiaries of refunds or interventions. EAGGF regulations do not provide at least at the present time, for such control to be exercised by the Community.

Only after the appropriate national bodies have paid refunds or interventions to the various beneficiaries do Member States submit to the Commission, before 1 October, their annual applications for the preceding marketing year from 1 July to 30 June for reimbursement of the sums to be met by the Fund (Article 9, Regulation No 17/64, OJ No 34/64).

These applications, in the form of statistics relating to refunds and interventions, cover the whole of the period under consideration for each specified basic product.'

On the subject of internal control, the Audit Board concludes as follows:

'When account is also taken of the very summary provisions governing control by the Guarantee Section, it is obvious that the checks which can be carried out at the present time are very limited in number and scope. The Community's responsibilities in this area should not be made disproportionate to the means of control actually applied.

Not only does the actual occurrence of exports or other operations giving rise to applications for refunds fall outside the *checking procedure* of the Community authorities, but the accounting justification of payments which the Fund is asked to reimburse can only be controlled in practice even through spot checks,

if such payments are fully reflected in the accounts of national bodies in a manner complying with the requirements of the Fund. In this connection, EAGGF staff informed us that the length of time between the accounting period on which checks were carried out and the performance of the checks themselves had sometimes made it difficult or impossible to inspect certain supporting documents transferred to central archives or destroyed. In other instances, decentralization had meant that documents forming the basis for applications were not be found at the central administrative office of the competent authority.'

¹ Doc. 236/III A, 1969-1970.

It further noted:¹

'In 1969 we were able for the first time to take part in an on-the-spot check by the Fund's staff at the offices of various national bodies responsible for dealing with operations under the Guarantee Section. The check covered payment vouchers, the calculation of refunds, and a number of matters concerning processing and storage operations. The Audit Board would like more frequent on-the-spot checks of this kind in future.

Given the provisions currently in force, such checks are practically the only means of supplementing, documenting and analyzing the global figures quoted in applications for reimbursement and explanatory documents. They should also make for a more specific and practical acquaintance with the administrative procedures and operating methods of the national bodies concerned, which can then be studied, compared and useful suggestions made.²

Section II — The European Parliament's reactions

The European Parliament considered that the situation called for special measures on its part. Its action concerned the following points:

- permanent control;
- establishment of a Commission programme of action;
- use of modern data-processing techniques;
- control over the recovery of the Community's own resources;
- rules governing the Audit Board.

1. *Permanent control*

In its resolution of 6 October 1969 Parliament 'instructs the Committee for Finance and Budgets to keep a constant check on the financial management of the Communities, with special reference to the European Social Fund, the EAGGF, and the European Development Fund.'³

2. *Establishment of a Commission programme of action*

The report drawn up by Mr Leemans (Christian Democrat, Belgium) on the accounts for the 1967 financial year⁴ points to a series of measures for achieving greater control.

'The achievement of greater control along the lines already indicated in the Commission's new proposals requires the following measures:

- greater emphasis on cooperation between Member States' administrative bodies and the Commission;

¹ Doc. 117/III A 1970/1971, Section 123.

² Doc. 236/III A 1969-1970, par. 153.

³ OJ No C 139, 28 October 1969.

⁴ Doc. 107/1969-70, Section 47.

- encouragement of Member States to give explicit and regular notification of all cases of irregularity or fraud;
- entitlement of the Community authorities to carry out on-the-spot direct checks of operations giving rise to expenditure; such checks to be performed at sufficiently close intervals for them to be meaningful;
- provision of direct access for Commission staff to all documentation concerning operations financed;
- establishment of a system for bringing to the Commission's notice any loopholes in legislation or regulations liable to give rise to fraudulent practices;
- stipulation that Member States must regularly notify the Commission of national administrative and judiciary measures taken;
- a numerical increase in the Commission's staff;
- creation of a team of Community customs controllers who would also work at frontier crossing points and therefore provide the public with psychological and practical assurance of the existence and meaningfulness of direct Community control.

This increased control should be accompanied by substantially closer cooperation between Commission staff and the Audit Board, as well as by fuller information from the institutions responsible for the budget, particularly the European Parliament and the Committee for Finance and Budgets.

The Committee for Finance and Budgets should continue to encourage all the measures required for meaningful control at the European level. At the time of revision of the treaties, it should accordingly propose an institutional strengthening of supervisory powers in both the accounting and political spheres.'

In the resolution adopted following its consideration of Mr Leemans' report, Parliament stressed that:

'valid control requires cooperation between Member States' administrative bodies and the Commission, and, for the latter, the right to carry out direct on-the-spot checks of operations giving rise to expenditure;¹ rapid direct checking of such operations is considered necessary by the Audit Board as a pre-

condition for the effective exercise of its own control functions; new methods of control should be introduced and a department of Community controllers set up in permanent contact with Member States' administrations.'

A year later (November 1970) Mr Aigner (Christian Democrat Germany), noted in his working document on the EAGGF's accounts for 1968:²

'The Committee for Finance and Budgets invited the Commission, as has been stressed, to draw up a real plan of action for the strict application of the Community provisions. The committee insists on this course of action because it is the only way in which the Community institutions can discharge their supervisory responsibilities. It is obvious that control

can be meaningful only if it is carried out with sufficient frequency, if it provides a practical possibility of dealing with shortcomings which encourage 'systematic fraud', and if the means of verification available to the bodies and institutions responsible really allow them to carry out thorough and effective investigations. To fulfil its supervisory responsibilities, the

¹ OJ No C 139, 28 October 1969.

² Doc. 162, 1970-71, page 23.

Commission must not only lay down meaningful legal and administrative rules, but, above all, undertake genuinely effective action. It is particularly in

this last respect that the situation has hitherto been unsatisfactory, and it is at this level that the efficacy of current measures should be judged.'

Following the advice of the Committee for Finance and Budgets, Parliament invited the Commission to submit to it a programme of action as soon as possible.

Parliament has called for action by the Commission on many occasions including the following:

- Mr Aigner's report on the draft budget for 1970,¹ in which he notes a lack of responsibility by the Commission in supervisory matters and repeats his request for a 'flying squad' of at least 50 Community officials to check the operations of the EAGGF;
- Mr Aigner's report on Draft Supplementary Budget No 2.² The resolution adopted following this report read as follows:³

'The European Parliament,

- ...
1. Considers that the presentation of the EAGGF Guarantee Section's operations for 1967, 1968, 1969 and 1970 lacks clarity;
 2. Affirms that the Council and Commission must bear sole responsibility for a system under which funds are managed according to no clearly defined criterion, Parliament receives no detailed information, and doubts arise as to whether funds are

used with the necessary efficiency, because of inadequate control due to lack of staff and funds in the relevant Commission departments;

3. Accordingly takes note of the draft budget having regard to certain imperatives, but refuses to endorse it at this stage;
4. Declares its intention to maintain this attitude so long as budgetary information lacks the necessary clarity and control is inefficient.'

In response to repeated requests Mr Coppé, Member of the Commission, presented a four-point plan to Parliament on 10 June 1971:

'First step: We have just submitted to the Council a draft supplementary budget for staff increases in the Directorate-General for Agriculture. We are asking for 40 officials for the EAGGF, first to expedite the closure of operations—as requested in the report—and secondly to undertake systematic control of the operations of the Guarantee and Guidance Sections.

Second step: We have completely reorganized our internal financial control, assigning a special division to EAGGF operations and another to operations of the European Development Fund and the European Social Fund.

Third step: This is at least being studied in the Commission—a special inspectorate with special responsibility for the different funds.

Fourth step: I am proposing to my colleague Mr Mansholt that an information network should be set up for the detection of frauds in the EAGGF Guarantee Section.

The Audit Board is an organ of Parliament, and this will be even more true when Parliament gives the discharge. I must tell you, however, that I never forget that it is also an organ of the Council of Ministers.'

¹ Doc. 160, 1969-1970.

² Doc. 179, 1969-1970.

³ OJ No C 143, 3 December 1970.

3. Use of modern data-processing techniques

In its resolution of 10 June 1971,¹ Parliament:

'Requests the Commission to examine with the Member States the possibility of setting up in the near future an electronic processing system for

general accounting and especially for control of EAGGF operations.'

The justification for this request is given in the report by Mr Aigner (Christian Democrat, Germany) on the accounts for 1969:²

... Given the complexity of EAGGF operations, the question arises of whether it is not absolutely necessary to introduce data-processing techniques at Community level in order to:

- be able to deal properly with the flood of figures;
- be able to assess the financial position of the agricultural fund at any time;
- be able to draw up a systematic list of Fund operations and thus to ensure greater clarity;
- set up efficient control arrangements allowing systematic spot checks;
- facilitate the prevention and repression of fraudulent practices;
- exert a healthy pressure towards harmonization of administrative procedures.

The system of direct financing of the common agricultural policy laid down in Regulation No 729/70 places no explicit restrictions on expenditure by the Fund, but such restrictions are implicit in the creation of the Community's own resources.

The Community's financial autonomy requires the adoption of regulations implementing Regulation No 729/70, especially with regard to the status of the various departments and bodies, at the present time of a national character, entitled to make payments relating to the implementation of Community rules, and with regard to relations between those departments and bodies and the Community institutions, particularly the Commission.

The institutional conditions for applying data-processing techniques are basically the following:

- adaptation and simplification of rules and procedures;³
- strengthening and coordination of the activities of national administrations, especially within the framework of provisions on direct financing of the common agricultural policy.

The technical conditions for the introduction of such techniques are as follows:

1. Collection of the same data in all Community countries, i.e. standardization of the information base;
2. Introduction of special control forms (or amendment of existing forms) for recording operations resulting from trade flows.

Studies should be made of the following:

- use of available data already harmonized;
- use of available data not yet harmonized;
- additional data for collection.

Countries with several payment departments (the number of these departments varies from one country to another: France has 4, Italy 3, the Netherlands 8, Belgium 2 and the Federal Republic of Germany 23) should set up departments to centralize the relevant data.

The large number of payment departments obviously complicates computer processing.

In particular, the usefulness of data currently available and the need for other data should be considered and procedures defined for recording and presenting them. An estimation of the costs of applying data-processing techniques is also required. Frauds committed so far under the EAGGF are estimated as having already reached 1 000 million u.a. Cost is not an overriding consideration, however, since there is no question but that data-processing techniques will eventually be required to deal with the enormous mass of statistics if administrative work is to be standardized and the collection of data on EAGGF operations in all Member States is to be harmonized.

What must be avoided above all is that Member States make their own provisions and set up different systems.'

¹ OJ No C 66, 1 July 1971.

² Doc. 61/71.

³ It is worth recalling here the steps taken by the Commission to set up a data bank of Community legislation, which at the present time consists mainly of regulations adopted under the common agricultural policy.

4. Control of the recovery of the Community's own resources

On 20 May 1970, pursuant to the decision of 21 April 1970 creating the Community's own resources, the Commission submitted a proposed regulation which was examined by Parliament and approved by it on 8 October 1970. The Council adopted the regulation on 2 January 1971.¹

In his report on behalf of the Committee for Finance and Budgets, Mr Westerterp (Christian Democrat, Netherlands) stressed the Community's responsibility in regard to its own resources and envisaged the possibility of direct control by Community authorities over the collection of those resources.

As specified in the comments on these articles, the provisions relating to control are similar to those which deal with the financing of the common agricultural policy. Although the rules laid down in this implementing regulation are of a general nature and will therefore require closer definition where necessary in future, they nevertheless form an essential part of the regulation as a whole, since they impose on Member States the obligation to make available to the Commission all information required for recording amounts which have been and are to be recovered as the Community's own resources, and to take all necessary steps to facilitate such checks as the Commission may consider desirable, including the verification on the basis of records or on-the-spot control. As already emphasized, these provisions therefore allow for the control of Community revenue according to rules which are at least similar to those governing the control of expenditure.

Although it is of course necessary that, materially speaking, the whole range of operations creating an entitlement to Community revenue and the recovery of such revenue should be carried out by administrations as well-organized as the national administrations, it is also true that the *Community's responsibility* in this matter—and therefore in regard to the control of such operations—is fully direct, and that the need for control follows from the entitlements attaching to the Community's own resources.

In regard to the first paragraph of Article 15 (Member States 'shall adopt or amend provisions concerning the *recovery of the Community's own resources* only after consulting the Commission. The latter shall deliver an opinion which it shall forward to the Member State concerned and to the Council'), it should also be pointed out that while a standstill is

opportune, *harmonization* or genuine Community legislation in this field is desirable in the future.²

In its present form the second paragraph of Article 15 deals with direct control operations which may be performed by Commission staff. These operations rightly include:

- (a) compliance of administrative practices with Community rules;
- (b) existence of the necessary supporting documents and their accordance with operations creating entitlement to Community revenue;
- (c) the conditions under which the operations referred to under (b) above are carried out and checked.

It is normal that the Commission should be able to carry out a number of direct checks at any time. This will make the rules laid down in Article 6 genuinely effective. This article specifies the steps which the Commission can take against Member States if it considers that there has been a failure to record or recover the Community's own resources. The need to provide for the *possibility of direct checks* arises from the fact that such checks will form the basis of the Commission's judgment of any negligence by bodies in Member States responsible for recording and collecting own resources. The Commission has pointed out that 'the means by which it can conclude that an entitlement due as part of the Community's own resources has not been recorded are not restricted and may include any information from private persons, the press or other Member States. This is one more reason why the proposed regulation should provide for direct Community control over operations relating to its own resources.'

The text adopted by the Council stipulates that Member States shall take all necessary measures to ensure that the sums corresponding to the entitlements recorded are placed at the Commission's disposal, that they shall carry out checks and inquiries relating to the recording and making available of the Community's own resources, and that the Commission, at its own request,

¹ Docs. 63 and 121, 1970-1971; OJ No C 129, 26 October 1970; OJ No L 3, 5 January 1971.

² Article 15 of the Commission's proposal was only partially incorporated in the text adopted by the Council (see Articles 13 and 14 of Regulation No 2/71, quoted in Chapter IV below).

shall participate in the checks which Member States perform. Thus the Commission has no direct right of control. The Council regulation does not contain the Commission text concerning the financial consequences of failure to recover in full revenue corresponding to recorded or unrecorded entitlements. Nor does it incorporate the requirement for Member States to consult the Commission before amending provisions laid down by law, regulation, or administrative action relating to the recovery of the Community's own resources.¹

5. Rules governing the Audit Board

(a) A European Audit Office

The idea of an Audit Office for Community finance was put forward as early as 1964 when the first attempt was made to give the Communities their own resources.²

During examination of the accounts for 1967, Mr Boertien (Netherlands), on behalf of the Christian Democratic Group, dealt at length with the shortcomings in internal control of the EAGGF. He concluded as follows:³

'I think it inevitable in the long run that all control over the Fund will be of a Community nature, with control by Member States entirely subordinate. If this were not to happen, we would find ourselves back

in the situation which I have already described, where a Member State can evade serious criticism from the Audit Board on grounds of national security.'

Mr Vredeling (Socialist, Netherlands) called for the setting up of an independent Community audit office, since internal control was not enough.

Mr Leemans (Christian Democrat, Belgium) devoted a full chapter to the rules governing the Audit Board in his report on the accounts for 1968.⁴ He writes:

'It is, however, necessary that the Audit Board should henceforth be able to play an effective part, within the framework of its own responsibilities, in the tasks now entrusted to the Community institutions in regard to the control of Community revenue and expenditure.

Audit Board becomes an organic and effective part of the new machinery for Community control of revenue and expenditure to be set up on the basis of the decisions of 21 April 1970.

In this respect your committee recognizes that the decisions of 21 April 1970 largely confirmed the powers granted to the Audit Board under Article 206 of the EEC Treaty and the corresponding articles of the other treaties. It will, however, ensure that the

In regard to the long-term increase in the Audit Board's responsibilities, your committee can only repeat the desire expressed in its resolution of 6 October 1969 for the creation at the time of the merger of the Community treaties of a *real Community audit office* enjoying the independence and powers essential for the performance of its duties.

In its resolution following the debate on 6 October 1969,⁵ Parliament expressed the wish that:

'at the time of the merger of the Community treaties a Community audit office should be set up enjoying

the independence and powers essential for the performance of its duties'.

¹ For text of this regulation see Chapter IV, Section II.

² Resolution of 24 September 1964, OJ No 153, 6 October 1964, Section 15.

³ OJ Annex No 117, Proceedings of the European Parliament, October 1969, pages 12 and 19.

⁴ Doc. 162, 1970-1971.

⁵ OJ No C 139, 28 October 1969.

It should be emphasized that this text goes further than the Council declaration referred to in the explanatory statement accompanying the 1970 draft budget.¹

'In regard to the Audit Board it should be stressed that the Council has agreed to review the current rules with a particular view to facilitating the Board's performance of the tasks assigned to it by the treaties

and regulations. The means available to the Audit Board will be adapted where necessary after revision of these rules.'

In his report on the accounts for 1969 Mr Gerlach (Socialist, Germany) defines responsibilities in this respect:²

78. ... 'Parliament has also requested, further to a Commission proposal, that the Commission and other Community institutions should provide the Audit Board with the *facilities* which the Board considers it needs to fulfil its task, with special reference to *checks carried out in departments concerned with the management of Community finance* and with making payments on behalf of the Communities.

precise definitions in order to strengthen the instrument of Community control and clarify the responsibilities of each Community institution with respect to such control and to management of the budget.

Exercise of this power raises the need for even more

79. The Committee for Finance and Budgets considers that *definition of the manner in which the Commission shall exercise this power of control is up to Parliament* and the other institutions and organizations concerned.'

Further to these observations, Parliament considered that:³

'The exercise of the Audit Board's powers calls for closer definitions which should be laid down in cooperation with all the institutions and bodies

concerned, the purpose being to clarify the responsibilities of each Community institution in the exercise of such control and management of the budget.'

In the autumn of 1972, during the debate on the draft budget for the 1973 financial year, the problems of control were referred to in similar terms.⁴

Mr Offroy (European Democratic Union), rapporteur on the budget, listed the gaps in financial and budgetary control:

'In our opinion, the powers of the Audit Board are not sufficiently well-defined. We are not sure that it always has access to the relevant accounting documents, which is absolutely necessary. We are not adequately informed of its conclusions, which ought to be dealt with regularly in reports discussed by the European Parliament. Generally speaking, we think

that the present control system should be improved. At our meeting with the chairmen of the audit offices of the various Member States, the general feeling was that, sooner or later, it would be necessary to set up a real Community audit office in order to achieve satisfactory control.'

On behalf of the Christian Democratic Group, Mr Schuijt (Netherlands) declared that

'the Summit Conference made a considerable effort to ensure that Parliament would in future enjoy increased powers of control. It could do no more. This itself is not without importance. If these powers are to be given a real content, i.e. if Parliament is to be granted real powers of budgetary control, the

Summit Conference decision could be termed important. Consequently, contacts with the Audit Board should be increased and better organized. Parliament should support the view of the Commission for Finance and Budgets on the creation of an audit office for the European Parliament. As in national parlia-

¹ Doc. 141, 1969-70.

² Doc. 61, 1971.

³ Resolution of 10 June 1971, OJ No C 66, 7 July 1971.

⁴ OJ Annex 'Proceedings of the European Parliament' No 154, October 1972 and No 155, November 1972.

ments, experts should subsequently examine in detail whether the money of the European taxpayer has been well spent.

This would constitute a considerable strengthening of the European Parliament's powers of control.'

Mr Koch (Germany) spoke on behalf of the Socialist Group on the role of audit offices:

'As far as I am concerned, with my background in public administration, I tend to think that audit offices should have very wide powers. I cannot understand why there is opposition to control by audit offices, for a clear conscience need not fear investigation. A taxpayer who makes an honest return is not afraid to show his accounts. Why then this aversion to the creation of what I would call, using an old Prussian concept, a higher audit office, i.e. one enjoying all the facilities required by an audit

office worthy of the name? Its role, indeed, would not be to give opinions or instructions, but simply to check. It would record the use made of credits granted and note whether the underlying principle had been respected. It would investigate what had been done in such and such an office or factory. I think this could also be of interest, indeed, of considerable interest, to Parliament. Here again, Parliament would like a right of inspection.'

(b) *Supplementary controls*

The budgetary debate of 16 November 1971¹ showed that two problems had to be solved before the rules governing the Audit Board could be defined:

- (i) the relation between internal and external control at Community level,
- (ii) the relation between national and Community control.

According to Mr Aigner, rapporteur on Parliament's estimates (1972):

'We do not happen to share the ideas on which the Council has hitherto based its action on the control of European funds. This is an important point. The Community has a great financial responsibility. Customs duties and levies now revert to the Community and are Community resources par excellence. The Community will be able to fulfil its responsibility only when it has an efficient, well-trying control system. In this respect, however, as you all know, things could be better.

some success, to extend its own financial control to Member States, whose powers it shares. But what the budgetary authorities, i.e. the Council and Parliament, must particularly aim for is a financial control body with the necessary powers and means, independent of the Commission. This is the role of the Audit Board. However, Mr Coppé, I have been told that since the spring the Audit Board has been encountering increasing difficulties raised by the Commission, whose staff are said to be refusing free access to the full records.'

It is true that the Audit Board is endeavouring, with

To this Mr. Coppé replied that

'the Commission has not opposed on-the-spot control of all necessary documents. On the contrary, it has taken steps to harmonize relations between the Audit Board and the various Directorates-General.

We are attempting to *channel* these relations in such a way as to facilitate the Audit Board's dealings with our 22 or 23 directorates.'

In his reply Mr Aigner attempted to define the point at issue:

'A situation of conflict has arisen between the Audit Board and the internal administrative control which you envisage. This is a perfectly natural conflict such as may happen anywhere.

The view of the Committee for Finance and Budgets is as follows: what is needed is an Audit Board which is an effective coordinating organ working in close contact with national audit offices and which while

¹ OJ Annex No 143, Proceedings of the European Parliament, November 1971.

avoiding any duplication of work, is able to perform a real control function.

The Federal Republic offers a classical example of this kind of organization: the audit offices of the Länder and the Federal Audit Office. The Federal

Audit Office assigns tasks to the various Länder offices: you take care of this, so that I don't have to deal with it myself. Cooperation is smooth. This arrangement could be transposed to the European level. This is the whole problem of the Audit Board."

On behalf of the Commission, Mr Coppé repeated what he had said at the sitting of 17 November 1970:

'We shall never be able to carry out such control alone from a Community administrative centre. The task of controlling these funds, which amount to between 3 and 4 thousand million units of account, will always fall to the national administrations, under the supervision of the Community administration.' On 12 October 1972 Mr Coppé further stated: 'The Commission of the European Communities intends to strengthen internal control to the maximum, in cooperation with the Member States, so as to avoid as far as possible any form of fraud.

I would therefore ask all members of this Assembly to stress once again in their national parliaments that proper control is impossible unless the national administrations realise that the expenditure of Community resources is a process as rational as that of national resources. It goes without saying that we shall never achieve efficient control in the Member States if they themselves are negligent in this respect. The problem would simply remain unsolved.'

Section III — The Council's discharge

In giving a discharge, the Council always states its position on the Audit Board's observations.

The most interesting point in connection with the discharge is the *non-compulsory* nature of the Council's observations on any defects noted. In general, the Council, which prior to 1970 was the only authority giving a discharge¹, does no more than invite the Commission and the other institutions to take certain budgetary administration measures:

- it notes that the Commission has undertaken to do certain things;
- it invites the Commission to comply with certain rules;
- it expresses certain wishes;
- it recalls its previous invitations.

More rarely, it notes with satisfaction that the institutions have taken account of the Audit Board's observations. In regard to the financial regulation, whenever some difficulty of application arises e.g. 'extra-budgetary' payments or receipts not covered by the regulation—it reserves the right to review the matter when the financial regulations are subsequently revised.

The Council's decisions giving a discharge show a number of other features which have an essential bearing on this report.

1. The decisions are taken after considerable *delay*. For the 1965 financial year, the Council's decision was taken on 20 July 1968 (*OJ* No L 186, 30 July 1968).

¹ See Article 206 of the EEC Treaty, given on page 118. The revised Article 206 will apply to the accounts for the 1970 financial year.

The decisions for 1966, 1967 and 1968 were taken on 29 June 1970 (*OJ* No L 152, 13 July 1970).

The decision for 1969 was taken on 7 November 1972 (*OJ* No L 304, 31 December 1972).

The average length of time between the end of the financial year and the corresponding discharge is thus about 30 months.

Under the terms of the financial regulations the discharge should be given not later than 31 December of the year following the financial year, i.e. within 12 months.¹

2. On several occasions the Commission has been invited either to *associate* the *Audit Board* more closely with checks in one or the other sector, to forward it certain documents, or to supply it with information on the factors involved in calculating fixed costs, so as to ensure effective control.
3. In the agricultural expenditure sector, the Council felt it necessary to specify the *position of the Community in regard to control*. With respect to the participation of Community institutions in control over the Guarantee Section, the Council stated:

'As regards Community responsibilities in matters of control, the Council notes that there is a degree of joint responsibility prior to the filing of applications for reimbursement and that Articles 8 and 9 of Council Regulation (EEC) No 729/70 of 21 April 1970 on financing the common agricultural policy define the extent of Community responsibility for the control of expenditure from

the entry into force of the definitive arrangements.'²

In giving a discharge for the 1969 financial year, the Council stressed 'the need to *strengthen* control over expenditure by the Guarantee Section, which constitutes the greater part of Community expenditure.'

4. The Council largely supports the Audit Board's action. As far as the EAGGF Guidance Section is concerned, the Council decision of 29 June 1970 states that

'the Council has noted that, in accordance with the Audit Board's wishes, a member of the Board

now has the opportunity of taking part in on-the-spot control.'

¹ Discharge in respect of the 1970 accounts was given by the Council on 6 February 1973.

² Council decision of 29 June 1970 on the accounts for 1966, 1967 and 1968, *OJ* No L 152, 13 July 1970. See Regulation No 729/70, Chapter III.

CHAPTER III

THE PREVENTION OF FRAUDS IN AGRICULTURE

The statement made by Mr Aigner before the European Parliament on 20 October 1971 will serve to introduce and emphasize the importance of this chapter.

'Our budget amounts to 4 000 million units of account, i.e., about \$ 4 000 million. This is an enormous sum. And since we have 7 500 officials at European level, these questions are worth discussing. Most of this money goes into the agricultural fund. Yet control over this fund is quite inadequate. I shall now state very plainly what I have repeated often enough: the unauthorized benefits derived from this fund have not decreased, as expected, but are increasing. So it

was not a case of teething problems. Uncontrolled expenditure is believed to reach a very high figure but is naturally impossible to pinpoint. But the officials themselves estimate that unauthorized benefits—and I do not mean only fraudulent benefits but all kinds of unauthorized benefits that are not genuine in the sense that they were not intended by the legislator—amount to between 100 and 130 million units of account.'

This chapter contains information on:

- I — The expenditure of the European Agricultural Guidance and Guarantee Fund
- II — The scale of frauds
 - 1. Press commentaries
 - 2. Written questions to the European Parliament on the problem of financial frauds to the detriment of EAGGF
- III — Initial reactions of the Commission of the Communities
 - 1. Oral question No 3, with debate, of 14 March 1967
 - 2. Commission recommendation
 - 3. Commission report to the Council
- IV — Current rules on the financing of the common agricultural policy
 - 1. Council Regulation 729/70
 - 2. Regulation concerning irregularities and the recovery of sums paid in error
 - 3. Mutual assistance in respect of levies and the recovery of sums paid in error.

Section I — Expenditure of the European Agricultural Guidance and Guarantee Fund

Titles 6-8 of the Communities' budget refer to the European Agricultural Guidance and Guarantee Fund. The following figures are drawn from the draft budget for 1973.

Nature of expenditure	Units of Account		
	Appropriations 1973	Appropriations 1972	Expenditure 1971
<i>European Agricultural Guidance and Guarantee Fund</i>			
<i>Guarantee Section</i>			
Cereals	879 600 000	891 500 000	517 443 965.91
Rice	55 600 000	55 000 000	50 618 934.17
Milk and milk products	848 700 000	634 500 000	610 693 017.92
Fats	318 600 000	285 500 000	136 613 670.71
Sugar	161 000 000	221 500 000	115 670 030.03
Beef and veal	6 000 000	30 000 000	19 088 106.64
Pigmeat	61 100 000	50 000 000	56 297 010.31
Eggs and poultry	17 200 000	15 000 000	12 621 159.91
Fruit and vegetables	91 000 000	70 000 000	55 556 340.31
Wines	56 600 000	53 000 000	28 251 047.85
Tobacco	129 000 000	123 000 000	73 764 141.62
Fishing	3 000 000	10 000 000	173 673.31
Flax and hemp	11 000 000	9 000 000	698 568.20
Seeds	5 000 000	3 000 000	
Hops	6 000 000	6 000 000	—
Other common organizations of markets	1 000 000	token entry	—
Credits for auditing the accounting periods prior to 1 January 1971	170 000 000	145 000 000	—
Agricultural products processed into goods not in Annex II of the EEC Treaty	27 000 000	25 000 000	18 464 897.55
Other expenditure	300 000 000	60 000 000	90 000 000.00
	—	—	222 319 199.07
Total	3 147 400 000	2 687 000 000	2 008 273 763.51
<i>Guidance Section</i>			
Projects to improve agricultural structures referred to in Article 13 of Regulation No 17/64	162 000 000	200 000 000	
Joint measures in the structural field pursuant to Council Resolution of 25 March 1972	27 000 000	token entry	
Other joint measures	14 700 000	token entry	
Groupings of hop producers	300 000	300 000	
Development operations in priority agricultural regions	75 000 000	token entry	
Credits to cover the expenditure of Chapters 81 to 86 and Chapter 80, item 8001 ¹	no figures	254 700 000	
Credits reserved during the previous financial years to finance expenditure under Chapters 81-84	token entry	351 631 300	
Special measures	31 000 000	32 920 000	
Total	310 000 000	839 551 300	203 279 217

¹ Earmarked for the implementation of the Mansholt plan for the reform of agricultural structures. They are shown as a token entry for 1973 pending their effective utilization.

Section II — The scale of frauds

Under Regulation No 283/72 on irregularities and the recovery of sums paid in error in the framework of the common agricultural policy, the Commission should have submitted to Parliament on 1 July 1972 a report on the administration of the EAGGF, with a special chapter on frauds. In reply to a written question on the subject,¹ the Commission stated that it would try to submit this report to Parliament before the end of 1972.² Since Parliament still does not have the report (February 1973) two indirect methods have been employed to assess the scale of frauds: press comments and written questions to Parliament.

(1) *Press comments*

In each of the Member States the press has reported a number of cases of fraud. A few extracts are quoted below. These should be considered as reflecting the views of their authors.

(a) *Der Spiegel* No 9/1971

Beyond the Border Line

For years Berthold C. Keller from the Swabian Weissenhorn exported 'finest quality wheaten flour' to Switzerland. But what the Swiss got was animal feedingstuffs, bran and waste from barley husks—fodder for contented cows. But not even the cows would eat what Keller exported to Switzerland as 'concentrated feed'—so the chaff was burned.

Last week the case of Keller exports came before the First Criminal Division of the Augsburg Superior Court. With a charge sheet 125 pages long, and over a hundred files, the court attempted to throw light on a shady business which according to the indictment, had been worth 14.6 million Deutschmarks to Keller and his partners.

Keller and company had made the most of the unlimited opportunities which Europe's agricultural market holds out to resourceful traders. In order to prevent Europe's expensive agricultural surpluses from going to waste, the authorities make up the difference between world and EEC prices for exports to third countries. The reverse procedure applies to cheap imports from third countries, such as meat from Argentina, butter from Denmark and chicken from the USA, whose prices are upped to Community level through levies similar to customs duties at the EEC borders.

When he exported husks, bran and chaff to Switzerland, Keller declared the goods as high-quality processed produce—flour, barley or feedingstuffs. He

then presented the 'doctored' customs documents to the Frankfurt Import and Storage Office for cereals and feedingstuffs which granted the EEC export premium—authorizing levy-free imports. Duty-free imports proved to be a particularly worthwhile proposition in that the quantity imported was considerably higher than the exported weight—to make up for the processing losses that normally occur when very fine wheaten flour is extracted. In this way, Keller was able to import duty free 75 000 tons of high-quality wheat for 41 000 tons of low-grade exports. According to the public prosecutor's office the net cash benefit was 14.6 million Marks.

The Augsburg judges who now had to investigate this matter of EEC subsidies could not take evidence from the main defendant, for Keller had died, leaving no estate and burdened with debt, before the main hearing opened. 'What we don't know', said the Director of Public Prosecutions, Dr. Alfred Peischer, 'is where the money has gone'.

The Keller affair is the most recent scandal in a sector which is making increasing capital of the dream of a united Europe. Experts say that defrauders are making over 100 million marks a year from the EEC fund for harmonizing agricultural markets. The steadily expanding Euro-market, now subject to 2700 Brussels regulations, is a natural jungle impenetrable to outsiders. 'The EEC market regulations are a maze of confusion' fumed the SPD Member of the Bundestag Ludwig Gellermaier from Neu-Ulm.

¹ Written question No 241/72 by Mr Berkhouwer, OJ No 128 of 9 December 1972.

² See also written question No 134/72 by Mr Vredeling, OJ No C 78 of 19 July 1972.

(b) *La Dernière Heure*, 9 January 1973. 'Two years for Frenchmen who owe 6,500 million Belgian francs to the French customs'

Two industrialists from Tourcoing, Guy and Stéphane Dumortier, prosecuted before a court at Lille for infringement of customs and exchange legislation, were sentenced to two years' prison and a fine of 180 000 Belgian francs on Monday.

The two men have ten days in which to appeal.

The case was brought before the Lille County Court on 4 December 1972. Charged with the same offences were twenty-six other persons, of Belgian, British, French, Dutch and Danish nationality.

The 'Dumortier' Mills and Oil-works were accused of fraudulently exporting more than 40 000 tons of maize semolina to England and Denmark between 1963 and 1966. According to the charge, these goods—worth some 90 million francs—were in fact never exported to England and Denmark but fraudulently diverted to Germany as cattle feed, a product which at that time was not covered by Community regulations. A Belgian company, Agimex, acted as intermediary for the transactions.

These 'exports' were eligible for heavy subsidies as an incentive to cereals manufacturers to expand their sales to third countries.

According to the customs authorities, Agimex paid the profits into a Swiss bank under cover of fictitious companies and accommodating agents.

Besides the verdict against the two Frenchmen, the court also sentenced a German, Mr Gunter Hench, aged 46, residing in Hamburg-Altona (FGR) by default, to three years' prison and a fine of 50 000 French Francs (c. 450 000 Belgian francs).

All the others—except for the customs officers, who were all released—were given a suspended prison sentence.

In addition to the prison sentences, they will have to pay 6 500 million Belgian francs to the French customs authorities.—B.

(c) *Die Zeit*, 2 June 1972 'Cereals and Cheese Swindle'

Accomplices in the East

The EEC Official Journal appears in Luxembourg a few days earlier than in the other capitals. And corrections to regulations are often only published months later. The customs authorities of the Member States have confirmed to the EEC Commission that a considerable number of defrauders do business simply by adhering to the wording of the texts.

This is how three-way deals with Eastern European countries—including the GDR under the 'one Germany' concept—have made the news. Taking advantage of the generous subsidies on exports to third countries, dealers began years ago exporting cereals to Czechoslovakia which were next shipped to the GDR and then back to the Federal Republic under levy-free inter-German trade arrangements. There, the cycle began anew.

Last year, with the aid of indications from Poland, a butter scandal was legalized after the event; the 'Frankfurter Allgemeine' looked on this as a remark-

able precedent 'tantamount to an invitation to pilfer from the EEC till'.

In return for an export subsidy of some 28 million Marks, the Hamburg Milk, Fat and Eggs Bureau exported 17 200 tons of butter to a Lebanese trading company. The deal had been arranged through East German export-import agencies. The consignment was landed in the port of Rostock, where it had no business to be since the ship's papers indicated Beirut as the destination.

When the West German customs authorities made a fuss, the affair threatened to become political, for the relevant GDR Bureau had agreed to stand surety for the export subsidy and the East Germans were not willing to throw away 28 million West German Marks. On their side, the West German authorities did not want to reclaim the money from the Hamburg Bureau, which would have meant bankruptcy, or to hold it responsible for failure to understand the complicated EEC regulations. So Bonn put mercy before justice and agreed with the GDR offices that the butter should be sent on to a Polish port.

(d) *Jeunes Agriculteurs*, October 1972, 'The common fraud market'

'Eight people, including three foreigners, had set up a vast organization composed of six fictitious import-export companies. Butter from Bulgaria, Romania or Poland was shipped in 40-50 lb containers. Sprinkled over with various substances and accompanied by false certificates, it was declared a 'flour and cocoa preparation' intended for ice-cream makers

or as a 'mayonnaise sauce for industrial use', both products for which the customs duty is much lower than butter.

This disguised butter only stayed in Italy for the time it took to change trains, and then left for another Member State of the EEC. Meanwhile it was no longer

Polish or Romanian but had become an Italian product. On arrival in France, Germany or Belgium it was cleared of all foreign matter and, once refined, re-exported to Italy, this time, of course, at the price of top-quality butter. The trick had succeeded.

For a period of two years this organization defied the customs barriers and carried 5 000 tons of butter halfway across Europe. These conjuring tricks brought in the tidy sum of 40 300 000 francs, a sum which should have reverted in part to the Italian customs and in part to the EEC...

In April 1972, after a year of investigations, the Italian customs succeeded in tracing a band of Sicilians who were importing butter into Italy and avoiding customs controls. This butter mafia operated with a fleet of small ships. They used an Italian port, usually Genoa, to take aboard detergents or dietary products destined for another Italian town. But in the open sea the cargo was jettisoned and the ships diverted to a Mediterranean port outside Italy. At the rendezvous point, another cargo was waiting consisting of barrels and boxes that looked exactly similar and bore the same labels as those thrown overboard. The only difference was that they contained butter. The nature of the consignment was declared correctly. It was the destination for a non-Member State of the EEC that was false.

The butter actually unloaded in Italy, in the same port which—according to the papers submitted to the

(e) *Daily Telegraph*, 17 April 1972. 'Italians accused of Six butter black market'

A Rome prosecutor has charged nine people, including the heads of two Roman Catholic Institutions, of running a black market in Common Market butter.

Official sources estimated that the fraud involved 550 tons of surplus butter from West Germany, France and Luxembourg, sold at big profits in Italy for about £392 000.

They said customs police had discovered that the butter was bought in the EEC countries at 10p per lb and sold in Italy for 32p per lb.

The butter was alleged to have been bought on the pretext of supplying Italian Roman Catholic institutions, under a Common Market regulation which allows surplus butter to be sold cheaply to charity organizations, but bars its resale for profit.

(f) *La Libre Belgique*, 27 Janvier 1972. 'Will European fraud increase with the enlarged EEC?'

One of the reasons for the increase in frauds is clearly the lack of cooperation between the customs authorities in the six countries.

According to the letter and spirit of the agreement of 13 June 1969, which itself derives from the Treaty of Rome, the customs authorities of the Six are in theory required to work in cooperation. They are no longer allowed to restrict their enquiries and invest-

Italian customs when the goods were loaded—should have received the soap or dietary products. The smugglers always used a small port in southern Italy, since the distance from Genoa made it easier for them to justify the two or three days' delay, the time needed to go abroad. In a small town, too, the mafia was more likely to secure the connivance of certain officials.

The butter returned from the south to the north. The traders took great pains to avoid controls: there was no written agreement with the purchasers, the goods were unloaded in warehouses in open country, there were constant changes of direction, and the goods were transferred to other trucks en route. The smugglers had simply followed in every detail the system used by their American counterparts to carry narcotics.

However, there was one weak link in the chain: the customs found that these 'packets of soap' were a little long in transport for instead of taking the motorway from Genoa to Milan they travelled via the Southern tip of Italy. By the time the customs managed to clear up this affair entirely, the mafia had made ten trips and 'imported' 3 500 kilos of butter; purchased at roughly 2.58 francs per kilo in the country of origin, it had been resold in Italy at about 10.32 francs per kilo, besides which, the EAGGF had paid out more than 4 300 000 francs to the exporters!'

Publishing manager

The nine accused, who include Signor Luigi Micconi, manager of a religious publishing house in Rome called Opus Dei Publishers, and Signor Benito Puccinelli, director of an institute called Opus Christi, are alleged to have sold the butter in several cities at triple the cost price.

Justice sources said that about 30 Rome-based religious organizations were being investigated.

Among these was the provincial headquarters of the Discalced (barefoot) Carmelite monks, which is alleged to have imported 400 tons of the butter.

Another consignment under investigation involves 14 tons imported by the Rome-based Franciscan Missionary Sisters of the Sacred Heart, the sources said.—Reuter

igations to their own country. Admittedly, international meetings take place at more or less regular intervals. And, while 'European' cooperation in this field is theoretically satisfactory, it is still in fact at a very early stage. In addition there is a staff problem.

All in all, the Common Market has about fifteen men sufficiently well-trained and mentally equipped to combat the trickery of countless international de-

frauders, with almost unlimited funds at their disposal. These few officials belong to the customs administration at Antwerp, Hanover and Paris, and to a lesser extent, Paris and Rome.

Even allowing for the small staff available, the agreement does not always produce the expected results...

The EEC authorities all realize that Switzerland has become a hub for the vast majority of very cleverly organized schemes to defraud the European Agricultural Fund. The beneficiaries of these highly lucrative transactions are greatly aided by the fact that

the Swiss customs and financial authorities simply refuse to answer all queries—even official—from European administrations.

The stage has now been reached where it is feared that the entry of Great Britain, Ireland, Norway and Denmark into the Common Market will enable these clever defrauders to further expand their activities. Great Britain was already concerned about this unappealing prospect in 1970 and sent a written request asking what counter-measures were being contemplated. The answer to this legitimate request is still pending.

2. Written questions to the European Parliament on the problem of financial frauds involving the EAGGF

Since 1965, some thirty written questions have been put to the Commission and the Council on the problem of frauds involving the EAGGF. They are listed below. It should be pointed out that only one written question on frauds refers to the Social Fund. Several refer to the European Development Fund, but by far the largest number concerns the EAGGF.

The main points raised in the written questions are discussed here. While they do not cover every aspect of the frauds, these questions do bring out the political aspects involved. The comments made have been arranged under the following headings:

- the agricultural sectors concerned;
- fraudulent practices;
- interventions by Community authorities.

(a) The agricultural sectors concerned

Confirmed or assumed frauds relate to wheat, groats, cattle feed, maize, skimmed milk powder for animal feed, butter, eggs and meat. At times fraudulent practices can be directly related to a certain agricultural sector. In one written question for instance, four prices, varying in the ratio 1:3 according to destination, were noted for powdered skimmed milk in 1969. After stating that appropriate measures had been planned to ensure compliance with the conditions governing these prices, the Commission admitted that when high subsidies were granted to a product earmarked for a particular destination this always raised control problems.¹

(b) Fraudulent practices

More often than not frauds involved fictitious exports to third countries, the goods actually being used or consumed in another Member State in order to obtain export refunds.

Further cases of fraud involve alleged deliveries to charitable institutions, the use of a product as cattle feed when it is in fact used for human consumption, back-dating beyond the introduction

¹ Written Questions Nos 291/69 and 142/71.

of compensatory amounts, presentation of frozen meat as fresh meat, consideration of the Vatican as a foreign country, or exploitation of certain ambiguities in nomenclature, as in the case of groats and semolina. Five written questions in 1970 and 1971¹ referred to exports to the Vatican. The Commission's answers did not mention frauds, simply noting that the foreign trade statistics for Italy and the Vatican were identical and that it was not possible to single out the figures for the Vatican. The Commission further stated that the Community regulations (May 1971) do not provide for a separate valuation by country of destination of refunds paid. Finally it declared that the Lateran Treaties 'did not only refer to goods consumed within the Vatican City but to all goods destined for institutions or services of the Holy See, including those outside the Vatican.

(c) *Interventions by Community authorities*

The Commission's answers to the first questions put to it on frauds (1967-1968) show that it is not in a position to give accurate information. What information it does possess is 'unofficial'. It takes the view that 'it is for the Member States to check whether transactions eligible for export refunds have actually taken place; consequently, cases of fraud do not fall within the Commission's sphere of responsibility'. It adds that 'cooperation among Member States on judicial instructions seems desirable' and is considering measures to achieve this purpose.²

In 1967 the Commission adopted measures³ to control trade in agricultural products subject to a single price system:

- first, for exports eligible for refund, the production of documents certifying that the goods came from the geographical territory of the Community and arrived in the third country of destination;⁴
- simplification of the nomenclature of agricultural products;
- the provision of sureties by the exporter;
- finally, an invitation to the authorities within a given country to cooperate closely and, if possible, to restrict the number of departments responsible.⁵

On 7 September 1967 the six Member States signed an agreement of mutual assistance between customs authorities.

Meanwhile a group of experts has been set up with the Council to look into the problem of fraud prevention.⁶ This group drew up a report which led to the adoption of Community legislation in 1969. In that year the Council finalized Community arrangements for goods in transit between two points in the Community.⁷ A special form was introduced to verify the intended use and/or destination of the goods. The same form, which requires cooperation between the authorities in the different Member States⁸, was first used late in 1969 to prove that the goods had left the geographical territory of the Community.⁹

¹ Written questions Nos 31/70, 390/70, 421/70, 18/71 and 467/70.

² Written questions Nos 129 and 132/1967.

³ Written question No 5/68.

⁴ Regulation No 1041/67 *OJ* No 314, 23 December 1967.

⁵ Recommendation of 17 October 1967, *OJ* No 259, 26 October 1967.

⁶ Question No 487/69.

⁷ R. No 542/69 of the Council *OJ* No L 77, 29 March 1969.

⁸ Commission R. No 2315/69 *OJ* No L 295, 24 November 1969.

⁹ Commission R. No 2586/69 *OJ* No L 322, 24 December 1969.

Also in 1969, towards the end of the transitional period, the Commission proposed a new regulation for the financing of the common agricultural policy, including measures for the Member States to provide regular information on the progress of administrative or judicial procedures relating to negligence or irregularities.

Council Regulation No 729/70 (Articles 8 and 9), provides for measures relating to control, the recovery of sums paid in error and cooperation between the Member States and the Commission to combat frauds.

In 1972, pursuant to Regulation No 729/70, the Council adopted Regulation No 283/72 on irregularities and the recovery of sums paid in error.¹ This regulation did not take up the idea put forward in several written questions of setting up a 'central enquiry office in Brussels', to which the Council had no objection on principle in May 1970.² However, the Commission proposal (Doc. 151/70) did not take up this idea, first put forward in March 1968.³ At the time the Commission did not consider taking steps to set up a 'central supervision service'.

The final written questions cover the implementation of Regulation No 283/72 mentioned earlier and Regulation No 773/72 on applications for refunds under the Guarantee Section of the EAGGF for the accounting periods 1967/1968 to 1970.

This latter Commission regulation provides that Member States must supply information on irregularities and negligence during the period in question.

In reply to these questions the Commission stated that Regulation No 283/72 assumes gradual progress and that it was waiting for the first quarterly reports which the States were required to submit pursuant to this regulation.

(d) *List of written questions*

Questioner	No and date	Addressee	Subject	OJ
Vredeling	31 1965-1966	Commission	Manipulations of EEC levies and refunds on imports of wheat and maize (frauds)	158 24 September 1965
Baas and C. Berkhouwer	129 1966-1967 17 January 1967	Commission	Fictitious exports of cattle feed involving Community funds	18 March 1967
Pedini	132 1966-1967 20 January 1967	Commission	Possible frauds involving the EAGGF	18 March 1967
Fellermaier	5 1968-1969 13 March 1968	Commission	Prevention of fraudulent practices in imports and exports of agricultural products (refunds)	C 46 11 May 1968
Vredeling	157 1968-1969 13 August 1968	Commission	Fraud relating to export refunds on agricultural products	C 112 28 October 1968
Fellermaier	229 1968-1969 31 October 1968	Commission	Prevention of fraudulent practices in imports and exports of agricultural products	C 6 22 January 1969
Richarts	173 1969-1970 27 June 1969	Commission	Irregularities in refunds on maize flour	C 128 6 October 1969
Vredeling	291 1969-1970 1 October 1969	Commission	Prevention of frauds and fixing of skimmed milk powder prices	C 11 29 January 1970

¹ OJ L 36 of 10 February 72.

² Questions 5/68, 229/68, 487/69, 1/70, 358/70.

³ This was the Commission proposal which led to the adoption of Regulation No 283/72.

Questioner	No and date	Addressee	Subject	<i>OJ</i>
Richarts	329 1969-1970 23 October 1969	Commission	Irregularities in refunds on maize flour	C 14 4 February 1970
Vredeling	311 1969-1970 9 October 1969	Commission	Community exports and frauds	C 38 1 April 1970
Vredeling	461 1969-1970 12 February 1970	Commission	Prevention of frauds and fixing of skimmed milk powder prices	C 56 11 May 1970
Mrs Orth Messrs Fellermaier, Behrendt, Bröscher, Gerlach, Seefeld, Lautenschlager, Faller	487/69 27 February 1970	Council	Prevention of fraudulent practices in the import and export of agricultural products on Community territory	C 62 28 May 1970
Vredeling	1/70 11 March 1970	Council	Prevention of fraudulent practices in the import and export of agricultural products on Community territory	C 62 28 May 1970
Vredeling	31/70 7 April 1970	Commission	Exports of agricultural products from the Community to the Vatican (further to Question No 311/69)	C 86 10 July 1970 and C 138 18 November 1970
Berkhouwer and Baas	358/70	Commission	Frauds involving the EAGGF	C 20 3 March 1971
Vredeling	357/70 19 November 1970	Commission	Butter frauds in Belgium	C 22 9 March 1971
Vredeling	390/70 11 December 1970	Commission	Exports of agricultural products from the Community to the Vatican (further to Question 31/70)	C 24 16 March 1971
Vredeling	421/70 6 January 1971	Commission	Exports of agricultural products to the Vatican (further to Questions 390 and 31/70)	C 24 16 March 1971
Vredeling	411/70 22 December 1970	Commission	Prevention of frauds when prices are fixed for skimmed milk powder (further to Questions 291/69 and 461/69)	C 29 29 March 1971
Vredeling	18/71 22 March 1971	Commission	Export of agricultural products to and from the Vatican (further to Questions 390 and 421/70)	C 47 13 May 1971
Vredeling	467/70 25 January 1971	Commission	Export of agricultural products from the Community to the Vatican (further to Question 31/70)	C 50 22 May 1971
Vredeling	571/70 15 March 1971	Commission	Exports from the Community and frauds (further to Question 311/69)	C 59 11 June 1971
Vredeling	108/71 5 May 1971	Council	Frauds committed under Community provisions on the common agricultural policy	C 65 29 June 1971
Vredeling	142/71 26 May 1971	Commission	Trade in skimmed milk powder in Italy (cf. Question 411/70)	C 97 2 October 1971
Vredeling	280/71 9 September 1971	Commission	Advance fixing certificates for agricultural products	C 32 1 April 1972
Vredeling	345/71 12 October 1971	Commission	Prevention of frauds within the Community (cf. answers to Questions 487/79, 1/70, 357/70, 358/70, 52/71 and 108/71)	C 25 14 March 1971
Vredeling	385/71 28 October 1971	Commission	Frauds in the sphere of compensations in the maize trade at the different frontiers	C 42 28 April 1972
Berkhouwer and Baas	79/72 28 April 1972	Commission	Misuse of EAGGF funds in Italy under cover of butter financing transactions	C 72 5 July 1972
Vredeling	94/72 4 May 1972	Commission	Available means of checking countervailing charges at frontiers in trade in agricultural products following exchange rate fluctuations	C 68 28 June 1972

Questioner	No and date	Addressee	Subject	OJ
Vredeling	134/72 19 May 1972	Commission	Applications for refunds under the EAGGF for the accounting periods 1967/68 to 1970	C 78 19 July 1972
Vredeling	104/72 4 May 1972	Commission	Frauds in the sale of butter in Italy	C 78 19 July 1972
Vredeling	274/72 23 August 1972	Commission	Frauds in the butter trade committed in the port of Hamburg	C 132 22 December 1972

Section III — First reactions of the Commission of the Communities

The Communities' first reactions to the problem of frauds came in 1967. The reply of Mr Mansholt, Vice-President of the Commission, to an oral question by Mr Leemans (Christian Democrat, Belgium) on behalf of the Committee for Budgets and Finance is quoted below, together with a Commission recommendation addressed to the Member States and a Commission report to the Council.

1. Oral Question No 3, with debate, of 14 March 1967

The question was as follows:

1. How high is the sum known to have been lost through fraud? Is this figure likely to increase further?
2. How did the defrauders go about infringing existing regulations? How did they manage to

evade both the rules of the Fund and control by the national customs authorities for so many years, and on a scale which a comparison of statistics ought to have revealed had there been sufficient coordination between the economic affairs departments and those administering the fund?

The following extracts are from Mr Mansholt's reply:

'The first point which requires clarification is how the regulations could be circumvented, i.e. how the defrauders succeeded in evading the provisions they contain.

The answer depends on the products themselves. Clearly there are different types of fraud. Assuming, for example, that wheat is exported from the Community at a price higher than the world market price and thus qualifies for a refund, and that the customs authorities of the country concerned do not satisfy themselves before granting the refund that the wheat has reached its destination, but simply that it has left the port, then fraud will be extremely easy. We have established in several cases that this is, in fact, the way frauds were committed. My tentative conclusion is that the customs were negligent in this case. If a refund is to be paid, they must first make

sure that the full range of provisions has been observed.

Another type of fraud consists in exporting or importing two different products eligible for separate refunds. This method can also be used in the case of industrial products. Suppose this time that a product is loaded on a ship, railway car or lorry. Again fraud will be very easy. I think that here too we can conclude negligence on the part of the chief customs officer who did not make sure, either by spot checks or permanent supervision, that a certain article was in fact covered by the accompanying documents.

Finally it can happen—our knowledge here is not based on information from government sources, so I speak with some reservations—that goods are exported abroad and then immediately diverted to another

country. For instance we have learned that butter has been exported to Switzerland and then shipped directly to Italy, accompanied by forged documents. It is known that butter can be exported in Italy accompanied by a so-called DD4 form covering internal traffic. The export of butter abroad entitles the exporter to a substantial refund. But importing butter into Italy with forged documents is obviously a fraudulent practice, causing losses to the national Treasury which pays all refunds...

One question immediately comes to mind—who is responsible for this control at the present time. The Commission is looking into the problem and it will continue its investigation in cooperation with the Member States. I cannot say anything definite on the subject at this stage, however. I shall simply say that we can find no article in the Treaty that makes us legally responsible for checking the content of the documents, in other words we cannot, as a Community, go as far as to check whether the goods correspond to the information on the documents—I am of course leaving aside the question of which body should do so, supposing for a moment that it is the Commission and its administration.

So far, i.e. during 1962-63 and 1963-64, the two years for which we have drawn up a balance sheet of Member States' revenue and expenditure and the amount of contributions to be paid to or collected from the EAGGF, we have worked on the assumption that the documents corresponded to the goods and had not been falsified. I must add that, owing to

shortage of staff, only very summary checks are made by random sampling—at a guess, probably one in ten thousand—by no more than three officials. We would need a fairly large administrative staff to increase the number of such checks.

So far, then, we have assumed that responsibility for ensuring that import and export operations are properly conducted lies with the national governments. I think we must keep to this system in future too, although—and this is a second problem the Commission is studying at the moment—it requires very close coordination between the various customs authorities. The external frontier of our Community is a Community frontier, and certain operations are controlled by six national customs authorities and not by a single Community customs authority. It is therefore necessary to ensure very close cooperation between these services and to set up a control system to make these relatively simple frauds impossible.

This still does not exhaust the responsibility of the Community. I cannot yet say how things should be organized. The Commission is looking into the matter and perhaps we should make proposals to the Council. This applies not only to agricultural products but in principle to all industrial products too...

My own feeling—I would not like to say this on behalf of the Commission—is that in the matter of control we will have to go much further in a Community direction than we have done so far for otherwise our Community will be unable to assume responsibility for this expenditure.'

2. *The Commission's recommendations*

On 17 October 1967 the Commission recommended that the Member States take measures to prevent and repress frauds in agriculture.¹

'The discovery of serious cases of fraud in trade in agricultural products makes the implementation of the agricultural regulations in each Member State a particularly acute problem.

The investigations made by the Member States after these frauds had been discovered showed that in a number of cases they could have been partly or wholly prevented by more stringent application of the regulations and stricter and more frequent checks when the goods cleared customs.

It was also found that where, for reasons of internal organization, responsibility for implementing the agricultural regulations was shared between various authorities in a given Member State, it was very important to establish close coordination between them.

A more general point in this latter connection is that administrative cooperation between Member States—a necessary corollary to the administrative measures taken on a national scale—can only be genuinely smooth and effective if the number of authorities responsible for implementing the regulations in each Member State is reduced to a minimum whenever possible.

Having regard to the above considerations and by virtue of the provisions of Article 155 of the Treaty, the Commission recommends that the Member States:

- I. give appropriate instructions to the national administrations to ensure *strict application of the agricultural regulations* during customs clearance regardless of whether the goods are for consumption or export in transit or subject to any other

¹ OJ No 259 of 26 October 1967.

customs arrangements; this means that the goods must be thoroughly checked—if necessary by random sampling for analysis—and the accompanying papers scrutinized.

- II. ensure that where responsibility for implementing the agricultural regulations is shared between

several authorities in a given Member State, there is *close cooperation* between them.

- III. *reduce to a minimum, wherever possible, the number of authorities responsible, at national level, for implementing the agricultural regulations.*'

3. Commission Report to the Council

The Commission of the Communities has not simply relegated responsibility for investigating and dealing with cases of fraud to the Member States.

At its own initiative it has undertaken the task of recasting Community legislation, ridding it of imprecisions to which the customs authorities responsible for its implementation had drawn attention.

This long and patient work deserves special mention. Several extracts from the report the Commission presented to the Council on 12 February 1971 on the prevention and repression of frauds in agricultural imports and exports¹ are given below.

'A. AMENDMENT AND SIMPLIFICATION OF RULES AND PROCEDURES

I. Simplification of rules

Given the complexity of the agricultural rules it is not surprising that certain provisions should have been found wanting in the implementation stage and have been exploited in a manner contrary to the spirit in which they were framed and, hence to the detriment of the Community.

A number of measures have been taken at Community level to make good these deficiencies, in particular:

- Council Regulation (EEC) No 830/68 of 28 June 1968 (*OJ* No L 151, 30 June 1968) simplifying the CCT schedule by amending Regulations Nos 120/67, 121/67, 122/67 and 359/67, on the common organization of markets in cereals, pigmeat, eggs and rice.
- Measures to improve and harmonize the classification of certain agricultural products within the framework of the CCT (Regulations Nos 495/69 and 496/69, *OJ* No L 67, 19 March 1969), Regulation No 663/69, (*OJ* No L 68, 10 April 1969), Regulation No 1107/70, (*OJ* No L 16, 22 January 1970).

- As regards the interpretation of the CCT, progress has been made in compiling explanatory notes on the 24 chapters of the agricultural sector.

II. Simplification of procedures

Although it seems essential for the proper operation of the common agricultural policy that regulations should not be legally exploitable to the detriment of the Community, it is equally important that the procedures adopted should be as simple and uniform as possible. Over the past four years, however, a good many procedures have been introduced under the common agricultural policy involving the use of various administrative documents that complicate the task of the customs control offices and hence indirectly encourage malpractices.

After several years of preparatory work, a Community system² was set up with the object both of facilitating the movement of all goods within the six states and of strengthening the means of control over financial measures, particularly those applied to agricultural products. Existing procedures were also simplified by replacing them as far as possible by a system of Community transit for which a standard document was devised.

These Community transit declaration forms are now used for checking purposes in a good many cases.

¹ Commission SEC (71) final. See also the Commission's communication to the Council of 19 December 1967 on action taken or to be taken to prevent and suppress frauds in the import and export of agricultural products (SEC (67) 4967 final).

² Regulation No 542/69 of 18.3.1969 (*OJ* No L 77 29 March 1969).

B. CLOSER ADMINISTRATIVE COOPERATION

I. Through the Community transit system in general

It had become clear that fraudulent practices might not be discovered because of inadequate administrative cooperation. In order to improve direct relations between the customs authorities of the various states, the Commission took a decision in 1967 making it compulsory to return an additional copy of the DD4 certificate to the customs office from which the agricultural products had been despatched if the transport between two points in the Community involved crossing the territory of a third country.¹

On 17 October 1967, the Commission also recommended² that Member States should reduce as far as possible the number of authorities responsible at a national level for implementing agricultural regulations.

The introduction of the Community transit system further consolidated the procedures for administrative cooperation. Since the system only came into effect on 1 January 1970, it is not yet possible to assess its advantages in this respect, but initial reports confirm that contacts between the customs authorities of the Six have increased.

II. Through the control certificate procedure

Of the many implementing regulations adopted following the introduction of the Community transit system, special mention should be made of Regulation No 2315/69 of 19 November 1969³ on the use of Community transit documents, for the purpose of applying Community measures for verifying the use and/or destination of goods. This regulation introduces a Community control procedure and a control document for use whenever the import or export of a product or its movement within the Community is subject to control as to use or destination, and to a corresponding financial measure. The Commission has thus adopted this method of homogeneous control involving a standard Community document in place of the various procedures and documents previously used in the agricultural sphere.

Following the introduction of this regulation on 1 January 1970, the Commission adopted the following seven regulations adjusting to 19 agricultural regulations:

- Regulation (EEC) No 2586/69 of 22 December 1969 amending Regulation No 1041/67/EEC, containing detailed rules for the application of export refunds on products subject to a single price system.⁴ This regulation substitutes the procedure of the Community control certificate for that of the exit certificate introduced by Regulation No 1041/67/EEC mentioned above;
- Regulation (EEC) No 193/70 of 2 February 1970 establishing the procedure for giving effect to measures to promote the marketing of oranges and mandarines in the Community.⁵
- Regulation (EEC) No 267/70 of 12 February 1970 amending Regulations (EEC) No 1669/69 and (EEC) No 2061/69 on the document accompanying sugar which is to be or has been denatured in intra-Community trade.⁶
- Regulation (EEC) No 316/70 of 20 February 1970 amending Regulations (EEC) No 559/69, No 2085/69 and No 446/69 as regards the use of document T1/T2 No 5 in Community trade in certain cereals and products processed from cereals and rice.⁷
- Regulation (EEC) No 332/70 of 23 February 1970 amending 11 regulations on milk and milk products as regards the use of Community transit documents.⁸
- Regulation (EEC) No 546/70 of 24 March 1970 on the sale at a reduced price of butter for the export of certain fat mixtures.⁹
- Regulation (EEC) No 1152/70 of 18 June 1970 authorizing the sale to the processing industry of apples which have been subject to intervention, and laying down the conditions of sale.¹⁰

These rationalization measures should help to make controls in this field much more effective.

Implementing Regulation (EEC) No 1373/70, applicable to all sectors covered by the common organization of agricultural markets, contains two types of special provisions to prevent and combat fraud:

- it introduces standard Community certificates which are designed, produced, patterned and presented in such a way as to prevent frauds.

¹ Decision of 17 October 1967 (OJ No 258, 25 October 1967).

² Recommendation No 67/651/EEC (OJ No 259, 26 October 1967).

³ OJ No L 295 of 24 November 1969.

⁴ OJ No L 322, 24 December 1969.

⁵ OJ No L 26, 3 February 1970.

⁶ OJ No L 35, 13 February 1970.

⁷ OJ No L 41, 21 February 1970.

⁸ OJ No L 44, 25 February 1970.

⁹ OJ No L 68, 25 March 1970.

¹⁰ OJ No L 134, 19 June 1970.

- it introduces methods and procedures of administrative cooperation between the various administrations of the Member States and includes provisions to ensure that the necessary controls are carried out. For instance, a procedure for retrospective control of documents has been introduced; the competent authorities in the Member States are to supply each other with information on the certificates and irregularities in their use; information procedures are established whereby the Member States forward to the Commission a quarterly statement indicating the number and kind of irregularities and infringements which have come to their notice, as well as all specimens of the official stamps used by the issuing authorities concerned; both items of information are then passed on to the other Member States.

The Commission further adopted a second regulation on 23 December 1970 (Regulation (EEC) No 2637/70), supplementing Regulation (EEC) No 1373/70 by codifying in a single text all of the provisions relating to certificates applicable in each sector of the common organization of agricultural markets. The Commission also took this opportunity to harmonize the texts and to simplify the procedures under the relevant rules. The rules on the new system of certificates are thus contained in only two texts for covering all agricultural products, which facilitates the work of both operators and administrators.

Finally, the Commission had the relevant texts published in the Official Journal.

III. Through the introduction of the Community system of certificates for imports and exports and advance fixing

The efforts made to improve administrative cooperation through a Community system of certificates of import, export and advance fixing have been successful. These certificates, introduced under Council regulations on the common organization of markets for agricultural products, have a dual purpose: first, they are forward-planning trade documents which will make it easier to administer the agricultural markets and where necessary, to apply the safeguard clauses; secondly, in certain cases they provide a means of fixing in advance the rate of levies and refunds.

The regulations on the common organization of agricultural markets made it clear that at first these would be national documents applicable only in the territory of the issuing Member State; but from 1 August 1969 at the latest, they would be valid throughout the Community. This principle is obviously of great practical importance; it means that the rate of levy or refund in a given Member State is fixed in advance, and is binding on each Member State in which an operation is effected. It is thus a significant

contribution to economic integration in the sense that, for the first time, documents with a genuinely legal status will be valid throughout the Community. The Commission had to adopt implementing provisions to give effect to this principle. Work on this began in 1967 but was held up because of the various problems involved and understaffing at the Commission. Following three reports in succession, it was decided to introduce the system of Community certificates on 1 January 1971. On 10 July 1970 the Commission adopted the implementing regulation (Regulation (EEC) No 1373/70).¹ Allowing for the substantial procedural changes involved, not to mention possible alterations in the administrative organization of the Member States, a delay of several months was considered necessary before the system could be put into effect.

Finally the Commission also published a notice in the Official Journal (*OJ* No C 152, 31 December 1970) on the use of the certificates and notified the Member States of the rules of completion and assignment, which will make them easier to use and handle.

Once these measures have been introduced and the initial difficulties overcome, they will no doubt produce the expected benefits.

IV. Through the agreement on mutual assistance by customs authorities

By adopting the agreement on mutual assistance on 7 September 1967, the Member States gave an earnest of their intention to apply the principle of administrative cooperation on an even wider scale. The purpose of the agreement is to prevent and repress fraudulent practices at Community level; covering both levies and actual customs duties, it contains the following essential provisions:

- exchange of lists of goods known to be involved in import, export or transit traffic in infringement of customs regulations (Article 5);
- communication of all information likely to be of use to Member States on infringements of customs regulations particularly on new methods of detection;
- forwarding of copies or extracts from reports compiled by the research departments on special procedures employed (Article 9).

Although this agreement was not sponsored by the Commission, it was agreed that the Commission department responsible for customs matters would receive any information likely to be of interest. At this juncture this information will clearly make it easier to remedy deficiencies in Community regulations and take the necessary measures to prevent certain fraudulent transactions. The agreement has been implemented by five of the six Member States since 1 June 1970 but has not yet been ratified by Italy.²

¹ *OJ* No L 158, 20 July 1970.

² The agreement took effect in Italy on 1 January 1972.

Section IV — Current rules on the financing of the common agricultural policy

On 29 July 1969 the Council referred to Parliament a proposal on the final arrangements for the financing of the common agricultural policy.¹ Articles 8 and 9 of this proposal, dealing with frauds and Community control, were incorporated in a regulation adopted by the Council on 21 April 1970.²

Pursuant to these articles, the Council adopted, in February 1972, a special regulation to implement Article 8 on frauds.

More recently still, the Commission submitted a proposal for a directive on mutual assistance for the recovery of sums paid in error.

1. Council Regulation No 729/70

New arrangements for the financing of the common agricultural policy came into force on 1 January 1971. Instead of accounts for each Member State, in which book entries of completed operations were offset—in other words a clearing system in which only the debit or credit balance had to be settled—the Community itself was now assigned own resources with which it could not only intervene at the time the transactions took place but even advance funds to bodies acting on its behalf.

Since this meant greater responsibility for the Community, the means of supervision at its disposal had to be augmented.

These were specified in Articles 8 and 9 of Regulation No 729/70, which reads as follows:

Article 8

1. The Member States, in accordance with national provisions laid down by law, regulation and administrative action, shall take the measures necessary to:

- satisfy themselves that transactions financed by the Fund are actually carried out and are executed correctly;
- prevent and deal with irregularities;
- recover sums lost as a result of irregularities or negligence.

The Member States shall inform the Commission of the measures taken for those purposes and in particular of the state of the administrative and judicial procedures.

2. In the absence of total recovery, the financial consequences of irregularities or negligence shall be borne by the Community, with the exception of the

consequences of irregularities or negligence attributable to administrative authorities or other bodies of the Member States.

The sums recovered shall be paid to the paying authorities or bodies and deducted by them from the expenditure financed by the Fund.

3. The Council, acting by a qualified majority on a proposal from the Commission, shall lay down general rules for the application of this Article.

Article 9

1. Member States shall make available to the Commission all information required for the proper working of the Fund and shall take all suitable measures to facilitate the supervision which the Commission may consider it necessary to undertake within the framework of the management of Community financing, including inspections on the spot.

¹ Doc. 98, 1969-1970.

² OJ No L 94, 28 April 1970.

Member States shall communicate to the Commission provisions laid down by law, regulation or administrative action which they have adopted for the application of legal acts of the Community relating to the common agricultural policy insofar as those acts have financial consequences for the Fund.

2. Without prejudice to the supervision effected by Member States in accordance with national provisions laid down by law, regulation or administrative action and without prejudice to the provisions of Article 4 or to the provisions of Article 206 of the Treaty, or to any inspection organized on the basis of Article 209 (c) of the Treaty, officials appointed by the Commission to carry out inspections on the spot shall have access to the books and all other documents relating to expenditure financed by the Fund. They may in particular check:

- (a) whether administrative practices are in accordance with Community rules;
- (b) whether the requisite supporting documents exist and tally with the transactions financed by the Fund;

(c) the conditions under which transactions financed by the Fund are carried out and checked.

The Commission shall give due notice before the inspection is carried out to the Member State concerned or to the Member State on whose territory it is to take place. Officials of the Member State concerned may take part in the inspection.

At the request of the Commission and with the agreement of the Member State, inspections or inquiries concerning the transactions referred to in this Regulation shall be carried out by the competent authorities of that Member State. Officials of the Commission may also participate.

To make verification more effective the Commission may, with the agreement of the Member States concerned, arrange for administrative authorities of those States to participate in certain inspections and inquiries.

3. The Council, acting by a qualified majority on a proposal from the Commission, shall as far as is necessary lay down general rules for the application of this Article.¹

2. Regulation concerning irregularities and the recovery of sums wrongly paid

Article 9 of Regulation No 729/70 can be applied without the need for implementing measures. On the other hand, Article 8 of this regulation states—in paragraph 3—that the Council shall lay down general rules for the application thereof. On 15 October 1970 the Commission submitted a proposal that was examined by Parliament on 2 December 1972. The Council decision was taken on 7 February 1972.¹ The text reads as follows:

‘THE COUNCIL OF THE EUROPEAN COMMUNITIES

Having regard to the Treaty establishing the European Economic Community;

Having regard to Council Regulation (EEC) No 729/70² of 21 April 1970 on the financing of the common agricultural policy, and in particular Article 8 (3) thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament;

Whereas Article 8 of Regulation (EEC) No 729/70 lays down the principles according to which the Community intends to intensify the campaign against irregularities and recover the sums lost and whereas, in accordance with paragraph 3 of that Article, the

Council must adopt general rules for the application thereof;

Whereas in order that the Community may be better informed of the measures taken by Member States to combat irregularities, the national provisions to be communicated to the Commission should be specified;

Whereas with a view to learning the nature of fraudulent practices and the financial effects or irregularities and to recovering sums wrongly paid, provision should be made for irregularities to be communicated to the Commission every quarter; whereas such communication must be supplemented by information on the progress of judicial or administrative procedures undertaken with a view to recovery;

Whereas Member States and the Commission should cooperate more closely in order to prevent irregularities, although great discretion should be exercised in this respect;

¹ OJ No L 36, 10 February 1972.

² OJ No L 94, 28 April 1970, p. 13.

Whereas the overall results should be communicated to the Committee of the European Agricultural Guidance and Guarantee Fund every quarter and to the Council and the European Parliament annually;

Whereas in this connection it is necessary, mainly by reason of the particular criteria used for calculating Community financing, to waive transfer to the Community of any sums recovered by Member States in respect of expenditure eligible for refund under the Guarantee Section and relating to accounting periods prior to 1 July 1967;

Whereas aid granted by the Commission under the Guidance Section of the Fund for projects within the meaning of Article 13 of Council Regulation No 17/64/EEC¹ of 5 February 1964 on 'the conditions for obtaining aid from the European Agricultural Guidance and Guarantee Fund, as last amended by Regulations (EEC) No 728/70² and (EEC) No 729/70,³ is not covered by this Regulation by reason of the different nature of that expenditure;

HAS ADOPTED THIS REGULATION:

Article 1

The measures referred to in this Regulation relate to all expenditure by the European Agricultural Guidance and Guarantee Fund, hereinafter called the 'Fund'.

However, this Regulation does not cover expenditure connected with projects within the meaning of Article 13 of Regulation No 17/64/EEC or with common measures provided for in Article 6 of Regulation (EEC) No 729/70, where the Council has adopted for such measures specific procedural provisions which differ from the provisions of Article 8 of Regulation (EEC) No 729/70.

Article 2

1. Member States shall communicate to the Commission within three months of the entry into force of this Regulation:

- the provisions laid down by law, regulation or administrative action for the application of the measures provided for in Article 8 (1) of Regulation (EEC) No 729/70, and
- the list of authorities and bodies responsible for the application of those measures and the main provisions relating to the role and functioning of those authorities and bodies and the procedures which they are responsible for applying.

2. Member States shall communicate to the Commission without delay any amendments to the informa-

tion supplied in pursuance of the preceding paragraph.

3. The Commission shall study Member States' communications and shall inform the Fund Committee of the conclusions which it draws therefrom. It shall keep in contact with the Member States, where appropriate within the Fund Committee, to the extent necessary for the application of this Article.

Article 3

During the month following the end of each quarter, Member States shall communicate to the Commission a list of irregularities which have been the subject of the primary administrative or judicial findings of fact. To this end they shall as far as possible give detailed information concerning:

- the provision which has been infringed;
- the nature and amount of the expenditure;
- the common organization of the market and the products or measures concerned;
- the period during which or the moment at which the irregularity was committed;
- the practices adopted in committing the irregularity;
- the manner in which the irregularity was discovered;
- the national authorities of bodies which recorded the irregularity; and
- the financial consequences and possibilities of recovery.

Where some of this information, and in particular that concerning the practices adopted in committing the irregularity and the manner in which this was discovered, is not available, Member States shall as far as possible supply the missing information when forwarding subsequent quarterly lists of irregularities to the Commission.

Article 4

Each Member State shall communicate without delay to the other Member States concerned and to the Commission any irregularities which are liable to have effects outside its territory very quickly or which show that a new fraudulent practice has been adopted.

Article 5

1. During the month following the end of each quarter, Member States shall inform the Commission of all judicial or administrative procedures instituted with a view to recovering sums wrongly paid and

¹ OJ No 34, 27 February 1964, p. 586.

² OJ No L 94, 28 April 1970, p. 9.

³ OJ No L 94, 28 April 1970, p. 13.

shall supply the Commission with any information which is relevant in this respect.

2. At the same intervals the Commission shall be informed of the progress of the procedure referred to in the preceding paragraph and of the amounts which have been or are expected to be recovered, and, where appropriate, of the reason for abandoning legal proceedings.

3. Furthermore, as far as possible before a decision is given, the Commission shall be informed in detail of the reasons for partial or complete failure to recover sums due.

4. Where a judicial or administrative decision is given at the end of the proceedings, Member States shall communicate that decision or the main points thereof to the Commission.

Article 6

1. Where the Commission considers that irregularities or negligence have taken place in one or more Member States, it shall inform the Member State or States concerned thereof, and that State or those States shall hold an administrative inquiry in which servants of the Commission may take part.

The Member State shall communicate to the Commission the report and the inquiry findings. If the Commission does not take part in the inquiry, it shall be kept informed of its progress by means of the quarterly communications provided for in Article 5.

2. Where the inquiry does not show that there has been an irregularity or negligence, the Fund Committee shall be informed of the results of the inquiry and where appropriate shall study its implications for the Community. The Member State in question shall then have one month in which to make known its final reasoned position in the light of the study made by the Fund Committee.

3. Where the inquiry shows that there has been an irregularity or negligence, or where this is accepted by the Member State concerned following the procedure referred to in paragraph 2, the Member State shall institute as rapidly as possible an administrative or judicial procedure to establish formally that there has been an irregularity or negligence. It shall keep the Commission informed of the progress of the procedure in accordance with Articles 3, 4 and 5.

Article 7

1. The Commission shall maintain appropriate contacts with the Member States concerned for the purpose of supplementing the information supplied on the irregularities referred to in Article 3, on the procedures referred to in Article 5, and, in particular, on the possibility of recovery.

2. Without prejudice to such contact, the matter shall be put before the Fund Committee where the nature of the irregularity is such as to suggest that identical or similar practices could occur in other Member States.

3. Furthermore the Commission shall organize meetings at Community level for the appropriate representatives of the Member States in order to examine with them the information obtained under Articles 3, 4 and 5 and paragraph 1 above, in particular with regard to the lessons to be learned from it in connection with irregularities, preventive measures and legal proceedings. As far as necessary it shall keep the Fund Committee informed of this work and shall consult that Committee regarding any proposals which it intends to submit to the Council for the prevention of irregularities.

4. At the request of a Member State or, under the arrangements laid down in paragraph 3, of the Commission, the Member States shall consult each other where appropriate within the Fund Committee or any other competent body, for the purpose of closing any gaps which become apparent in the course of application of provisions in force and which prejudice Community interests.

Article 8

The Fund Committee shall be informed every quarter by the Commission of the order of magnitude of the sums involved in the irregularities which have been discovered, and of the various categories of irregularity, broken down by type and with a statement of the number. In a special chapter of the annual report on the administration of the Fund, provided for in Article 10 of Regulation (EEC) No 729/70, the Commission shall give the number of cases which have been notified and of those which have been closed, together with the sums recovered and the sums written off.

Article 9

Member States and the Commission shall take all necessary precautions to ensure that the information which they exchange remains confidential.

Article 10

Where the Guidance Section of the Fund has entered only partly into the financing of a project and in cases of partial recovery, the financial consequences of irregularities or negligence which cannot be charged to the administrative authorities or bodies of a Member State shall be shared by that Member State and the Fund in proportion to their financial participation.

Article 11

Where the irregularities relate to sums of less than 1000 u.a., Member States shall not forward the information provided for in Articles 3 and 5 to the Commission unless the latter has expressly requested it.

Article 12

1. Without prejudice to Member States' obligation to recover sums wrongly paid, irregularities and negligence relating to the accounting periods from 1962/63 to 1966/67 shall not entail repayment by Member States to the Community.

2. With regard to irregularities and negligence which relate to the period from 1 July 1967 to 31 December 1970, Member States shall declare the

amounts concerned in their claims for reimbursement, the detailed rules for which are to be adopted pursuant to Article 9 and 10 of Regulation No 17/64/EEC.

3. Irregularities and negligence relating to expenditure by the Guidance Section of the Fund before the entry into force of this Regulation, with the exception of the expenditure on projects under Article 13 of Regulation No 17/64/EEC, must be notified to the Commission. Member States shall forward information to the Commission regarding the irregularity or negligence recorded.

Article 13

Before the end of 1972 the Commission shall report to the Council on the application of this Regulation.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

It should be noted that the text adopted by the Council does not afford the Commission the full range of possibilities it wished to reserve for itself in its proposal:

- The Commission is kept informed in certain specific cases; in others it will itself solicit information from the Member States;
- not being required to deliver an opinion on Member States' legislation, the Commission will find it less easy to promote harmonization of existing national provisions;
- the Council did not agree that the Commission should be allowed to intervene or be represented in administrative and judicial procedures;
- the Commission will not be allowed to give its approval prior to the completion of procedures that would curtail the recovery of sums paid.

3. *Mutual assistance in connection with levies and the recovery of sums paid in error*

Regulation 283/72 had been in force for less than a year when difficulties arose due to the lack of coordination between the national legislations. On 15 December 1972 the Commission submitted a proposal for a directive to the Council on mutual assistance for the recovery of sums paid in error in the framework of the common agricultural policy and of agricultural levies and customs duties. This proposal calls for two comments:

- it could have been included in Chapter IV of this report since it also relates to the European Communities' own resources;
- it can be compared to the agreement referred to in Chapter IV on mutual assistance by the customs authorities of the six Member States, although this agreement has a number of limitations, as will be seen later.

The proposed directive was approved by Parliament on 16 March 1973.

(a) *Explanatory memorandum*

'A clear need has arisen for *common rules* on the recovery of certain claims for repayment in a Member State other than that in which they were substantiated.

If Community regulations are to be properly administered, it must be assured that they are applied in a consistent manner throughout the Community. More specifically, whenever a claim to repayment in favour of public authorities is established by a Community regulation, the implementation of this regulation is thwarted if recovery cannot be effected in any one Member State. The present situation is that recovery can be effected in the Member State where the claim was substantiated but not in any other.

One consequence of this situation is that it prejudices the recovery of customs duties, levies and other charges of equivalent effect introduced under the common agricultural policy, and also the recovery of sums paid in error by the EAGGF.

Article 8 of Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy¹ provides that Member States shall take the necessary measures to recover sums lost as a result of irregularities and negligence. On 7 February 1972, the Council adopted the first implementing regulation (Regulation (EEC) No 283/72 of the Council of 7 February 1972, *OJ* No L 36, 10 February 1972, p. 1), providing in particular for an exchange of information between the Commission and the Member States on irregularities and negligence and on the procedures for recovering the sums involved.

However, this regulation does not include any provision for the recovery, in another Member State, of sums paid in error under the EAGGF.

Although legislation in each of the Member States provides for the recovery of claims duly established within the country, this does not apply to claims established in another Member State. Member States cannot at present recover amounts paid by the EAGGF if the debtor or his distrainable assets are in another Member State. What makes the situation particularly serious is that the parties concerned can use export licences which are valid throughout the Community and not simply in the Member State where their business is based. The situation is similar with regard to aids, premiums, etc...

This situation is clearly detrimental to the EAGGF which, in accordance with Article 8 of Regulation (EEC) No 729/70, bears the financial consequences of irregularities or negligence, save where these are attributable to national administrative authorities or other bodies. It also jeopardizes the proper implementation of Community regulations and their equal application to all parties concerned.

The situation is exactly the same with regard to the recovery of agricultural levies. Even if non-recovery of these levies does not adversely affect Community revenue, since *recorded* own resources are now made available to the Community, it still means that Community provisions are not applied in full.

The upshot is that the Community regulations are not applied equally to all parties concerned, which leads to distortion of competition, and that the principle of a single agricultural market is partially waived. This concept requires not only that the same provisions should apply in all Member States, but also that they should apply in exactly the same manner to all parties concerned, wherever they are based. It seems incompatible with this principle that agricultural levies cannot be recovered because the debtor is based, or his distrainable assets are situated outside the creditor Member State. This holds all the more true in that existing regulations, especially those governing import and export licences, clearly encourage the internationalization of commercial transactions in agriculture. Just as internal frontiers must be abolished for economic and commercial activities, so too they must disappear as far as the administrative and customs consequences of these activities are concerned. The very existence of a customs union, and respect for the principle of equal treatment under customs law, thus require that customs duties should be recoverable in each Member State of the Community, no matter where they were actually substantiated.'

(b) *Text of the proposed directive*

'THE COUNCIL OF THE EUROPEAN COMMUNITIES

Having regard to the Treaty establishing the European Economic Community and in particular Articles 43 and 100 thereof;

Having regard to Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy¹ and in particular Article 8 (3) thereof;

Having regard to the Opinion of the European Parliament;²

Having regard to the Opinion of the Economic and Social Committee;³

Whereas it is not at present possible to enforce in one Member State a claim for repayment substantiated by a document drawn up by the authorities of another Member State;

¹ *OJ* No L 94, 28 April 1970, p. 13.

² *OJ* No C 2, 8 January 1970 p. 25.

³ *OJ* No C 12, 30 January 1970, p. 9.

Whereas the fact that national provisions relating to recovery are only applicable within national territories is in itself an obstacle to the establishment and functioning of the common market; whereas, in the specific case of the common agricultural policy, this situation prevents the rules on agriculture from being applied fully and fairly;

Whereas it is therefore necessary to adopt common rules on mutual assistance for recovery;

Whereas those rules should apply in respect of sums paid in error in connection with the common agricultural policy, and in respect of agricultural levies and customs duties;

Whereas it is necessary to lay down conditions governing the formulation of applications for recovery particularly as regards the documents required, and to stipulate recovery must be effected in accordance with the laws and regulations in the State in which the receiving authority is situated;

Whereas the person concerned may commence proceedings to contest the claim for repayment or the enforcement thereof; whereas, in such case, the receiving authority can suspend proceedings for enforcement unless the applicant authority has stated that all time limits for contesting the claim for repayment have expired;

Whereas the receiving authority must be able to authorize deferment of payment or payment by instalments and to take protective measures; whereas, however, the claims for repayment must not have any preference or priority in the state in which the receiving authority is situated;

Whereas it is necessary to determine under what circumstances the receiving authority should not be bound to grant the assistance requested and effect recovery; whereas an application from an applicant authority need not be granted if it would be contrary to public policy in the state where the request is made or if the applicant authority has not exhausted all available means of recovery in its own territory;

Whereas this Directive should not curtail mutual assistance between certain Member States under bilateral or multilateral agreements or arrangements; whereas detailed rules for the application of this Directive should be adopted by the Council on a proposal from the Commission;

HAS ADOPTED THIS DIRECTIVE:

Article 1

This Directive lays down the rules to be incorporated in the laws, regulations and administrative provisions of the Member States for the recovery of debts of the kind specified in Article 2.

Article 2

This Directive shall apply in respect of duly substantiated rights to the repayment of:

- (a) sums paid in error in connection with the common agricultural policy;
- (b) levies, premiums, supplementary and compensatory amounts, additional amounts and components and other charges imposed by the institutions of the Communities on trade with non-member countries in connection with the common agricultural policy and levies and other charges provided for in connection with the common organization of the market in sugar;
- (c) Common Customs Tariff duties and other charges imposed by institutions of the Communities on trade with non-member countries;
- (d) interests and costs in connection with the above-mentioned debts.

Article 3

For the purposes of this Directive, 'applicant authority' means an authority in a Member State which makes an application for assistance and 'receiving authority' means the authority in another Member State to which the application for assistance is submitted.

Article 4

At the request of the applicant authority, the receiving authority shall serve and give formal notice of all instruments and decisions relating to the recovery of the debt.

Article 5

1. At the request of the applicant authority, the receiving authority shall, where the document substantiating the right to repayment renders it enforceable, effect recovery of the debt.
2. Recovery may not be requested if the right to repayment or the document rendering it enforceable is being contested under the law of the Member State in which the applicant authority is situated.
3. The application for recovery shall be accompanied by an official copy or a certified copy of the document rendering the right to repayment enforceable and, where appropriate, by the original or a certified copy of terms and conditions on which the debt was guaranteed.
4. The applicant authority shall forward all other relevant documents and information to the receiving authority. Where the judgement or decision giving rise to the right to repayment is final, the applicant authority shall state this fact in its application.

5. Recovery shall be effected in accordance with the laws, regulations and administrative provisions applicable in respect of similar claims in the Member State in which the receiving authority is situated. The document rendering the right to repayment enforceable shall, where appropriate, be authenticated, recognized or supplemented by a document rendering it enforceable in the territory of the Member State in which the receiving authority is situated.

6. Repayment of the debt shall be made in the currency of the Member State in which the receiving authority is situated.

Article 6

1. Where the right to repayment is contested, proceedings shall be commenced by the person concerned before the competent authority of the Member State in which the applicant authority is situated, in accordance with the laws and regulations of that state. The person concerned at the same time shall give notice of the proceedings to the receiving authority.

— If the applicant authority states in its application that the judgment or decision giving rise to the right to repayment is final, the receiving authority may only suspend proceedings for enforcement if so requested by the applicant authority.

— If the applicant authority does not state in its application that the judgment or decision giving rise to the right to repayment is final, the receiving authority shall suspend proceedings for enforcement pending the decision of the competent authority; the receiving authority may take protective measures to secure the repayment of the debt.

2. However, where it is the enforcement measures in the Member State in which the receiving authority is situated that are contested, proceedings shall be commenced before the competent court or tribunal of that Member State, in accordance with the laws and regulations of that state.

Article 7

The receiving authority may, where the relevant provisions allow this, and by agreement with the applicant authority, grant the debtor deferment of payment or authorize payment by instalments.

Article 8

Rights to repayment shall have no preference or priority in the Member State in which the receiving authority is situated.

Article 9

On the request of the applicant authority, the receiving authority shall take protective measures. The provisions of Articles 5 and 6 shall be applicable 'mutatis mutandis'.

Article 10

The receiving authority shall be bound to:

(a) grant the assistance provided for in this Directive if enforcement of the right to repayment would be contrary to public policy in its country.

(b) undertake recovery of the debt where the applicant authority has not exhausted all available means of recovery in its own territory.

Reasons must be given for any refusal of assistance.

Article 11

The instruments and documents forwarded to the receiving authority may be used only for the purpose of this Directive.

Article 12

The Member States waive all claims against each other for reimbursement of costs arising out of the application of this Directive.

However, the Member State in which the applicant authority is situated shall be liable to the receiving authority for the pecuniary consequences of any proceedings commenced at its request by the latter authority which are pronounced to be unfounded.

Article 13

The Council, acting on a proposal from the Commission, shall lay down detailed rules for the provision of assistance, on the conversion and transfer of the sums recovered, on the fixing of a minimum amount in respect of sums to be recovered and on all other related matters.

Article 14

This Directive shall not affect any more extensive measures of mutual assistance which are now or may in the future be applied by certain Member States by virtue of agreements or arrangements.

The provisions relating to such agreements or arrangements shall be notified to the Commission which shall inform the other Member States thereof.

Article 15

The Member States shall not later than ... bring into force the measures necessary to comply with this Directive.

Article 16

Each Member State shall inform the Commission of the provisions which it has adopted to implement this Directive. The Commission shall forward this information to the other Member States.

Article 17

This Directive is addressed to the Member States.'

CHAPTER IV

CONTROL OF THE COMMUNITIES' OWN RESOURCES

On 21 April 1970, the Council, applying Article 201 of the EEC Treaty, decided to replace the contributions from Member States by what are known as the Communities' 'own resources'.

This decision also laid down that the financial regulations would specify how these resources were to be collected and checked, paid over and made available to the Commission.

These resources—at present, agricultural levies and customs duties—later, value added tax—are collected by the Member States on behalf of the Communities. The question, therefore, was how to share the task of controlling these resources.

By Regulation No 2/71, the Council made the Member States' administrations responsible for control, leaving the Community institutions no more than the possibility of exercising 'supplementary' controls to verify that sums due had been properly substantiated and collected.

Because of the nature of own resources, a good many Community measures, necessary in themselves, were related directly to the finances of the Communities. In this connection, the management of the customs union assumes a distinctive aspect. The same applies to organizations of agricultural markets based, as far as external relations are concerned, on levies.

It remains to be seen how provisions already adopted or to be adopted in the future with regard to control can be applied to the value added tax.

The background documentation for this chapter may be arranged as follows:

- I — The budget revenue of the European Communities:
 - 1. The decision of 21 April 1970 creating the European Communities' own resources
 - 2. Resources derived from new Member States
 - 3. Other available resources
- II — The Regulation implementing the Decision of 21 April 1970
- III — Provisions governing the control of the Communities' own resources:
 - 1. The harmonization of customs legislation

2. The agreement on mutual assistance between the customs authorities of the six Member States
3. Control exercised by the Communities
4. The recovery of debts

Section I — Budget revenue of the European Communities

This section deals only with sources of budget revenue other than the ECSC levy and funds placed at the disposal of the Associated African States and Madagascar.

At the present time, the Communities' budget revenue is governed by various texts which emphasize the temporary nature of current financial provisions.

These basic texts will be found below, complete with the corresponding totals from the draft budget for the financial year 1973.¹

1. *The Decision of 21 April 1970 creating the European Communities' own resources*

Article 1

The Communities shall be allocated resources of their own in accordance with the following articles in order to ensure that their budget is in balance.

Article 2

From 1 January 1971, revenue from:

(a) levies, premiums, additional or compensatory amounts, additional amounts or factors and other duties established or to be established by the institutions of the Communities in respect of trade with non-member countries within the framework of the common agricultural policy, and also contributions and other duties provided for within the framework of the organization of the markets in sugar (hereinafter called 'agricultural levies');

Contributions and other duties provided for within the framework of the organization of the markets in sugar amount to:	
Belgium	12 000 000 u.a.
Federal Republic of Germany	38 000 000
France	75 000 000
Italy	11 000 000
Luxembourg	—
Netherlands	12 000 000
	148 000 000 u.a.

¹ The budget for the 1973 financial year had still not been published in February. Norway's failure to join the Communities made it necessary to draw up an amendatory budget for both revenue and expenditure. This amendatory budget is under consideration.

Levies, premiums, additional or compensatory amounts, additional amounts or factors and other duties established by the institutions of the Communities in respect of trade with non-member countries within the framework of the common agricultural policy amount to:	
Belgium	77 210 000 u.a.
Federal Republic of Germany	166 370 000
France	61 000 000
Italy	239 700 000
Luxembourg	120 000
Netherlands	142 700 000
	<hr/>
	687 100 000 u.a.

(b) Common Customs Tariff duties and other duties established or to be established by the institutions of the Communities in respect of trade with

non-member countries (hereinafter called 'customs duties');

Customs duties and other duties mentioned in Article 2 (b) of the Council's Decision of 21 April 1970 amount to:	
Belgium	109 697 500 u.a.
Federal Republic of Germany	511 182 500
France	311 000 000
Italy	214 000 000
Luxembourg	3 270 000
Netherlands	154 750 000
	<hr/>
	1 303 900 000 u.a.

shall, in accordance with Article 3, constitute own resources to be entered in the budget of the Communities.

In addition, revenue accruing from other charges introduced within the framework of a common policy in accordance with the provisions of the Treaty establishing the European Economic Community or the Treaty establishing the European Atomic Energy Community shall constitute own resources to be entered in the budget, of the Communities, subject to the procedure laid down in Article 201 of the Treaty establishing the European Atomic Energy Community having been followed.

Article 3

1. From 1 January 1971, the total revenue from agricultural levies shall be entered in the budget of the Communities.

From the same date, revenue from customs duties shall be progressively entered in the budget of the Communities.

The amount of the customs duties appropriated to the Communities each year by each Member State shall be equal to the difference between a reference

amount and the amount of the agricultural levies appropriated to the Communities pursuant to the first subparagraph. Where this difference is negative, there shall be no payment of customs duties by the Member State concerned nor payment of agricultural levies by the Communities.

The reference amount referred to in the third subparagraph shall be:

- 50 % in 1971
- 62.5% in 1972
- 75 % in 1973
- 87.5% in 1974 and
- 100 % from 1 January 1975 onwards

of the total amount of the agricultural levies and customs duties collected by each Member State.

The Communities shall refund to each Member State 10% of the amounts paid in accordance with the preceding subparagraphs in order to cover expense incurred in collection.

2. During the period from 1 January 1971 to 31 December 1974, the financial contributions from Member States required in order to ensure that the

budget of the Communities is in balance shall be apportioned on the following scale:

— Belgium	6.8
— Federal Republic of Germany	32.9
— France	32.6
— Italy	20.2
— Luxembourg	0.2
— Netherlands	7.3

3. During the same period, however, the variation from year to year in the share of each Member State in the aggregate of the amounts paid in accordance with paragraphs 1 and 2 may not exceed 1% upwards or 1.5% downwards, where these amounts are taken into consideration within the framework of the second subparagraph. For 1971, the financial contributions of each Member State to the combined budgets for 1970 shall be taken as reference for the application of this rule, to the extent that these budgets are taken into consideration within the framework of the second subparagraph.

In the application of the first subparagraph, the following factors shall be taken into consideration for each financial year:

(a) expenditure relating to payment appropriations decided on for the financial year in question for the research and investment budget of the European Atomic Energy Community, with the exception of expenditure relating to supplementary programmes;

(b) expenditure relating to appropriations to the European Social Fund;

(c) for the European Agricultural Guidance and Guarantee Fund, expenditure relating to appropriations to the Guarantee Section and to the Guidance Section, with the exception of appropriations entered or re-entered for accounting periods preceding the financial year concerned. For the reference year 1970, such expenditure shall be:

— for the Guarantee Section, that referred to in Article 8 of Council Regulation (EEC) No 728/70 of 21 April 1970 laying down additional provisions for financing the common agricultural policy;

— for the Guidance Section, an amount of 285 million units of account apportioned on the basis of the scale laid down in Article 7 of that Regulation;

it being understood that, for calculating the share of the Federal Republic of Germany, a percentage of 31.5 shall be taken as the reference scale;

(d) other expenditure relating to the appropriations entered in the budget of the Communities.

Should the application of this paragraph to one or more Member States result in a deficit in the budget of the Communities, the amount of that deficit shall be shared for the year in question among the other Member States within the limits laid down in the first subparagraph and according to the scale of contributions laid down in Paragraph 2. If necessary, the operation shall be repeated.

The contributions provided for in Article 3 (2 and 3) of the Decision of 21 April 1970 amount to:

Belgium	113 800 410 u.a.
Federal Republic of Germany	502 516 213
France	579 709 860
Italy	342 892 010
Luxembourg	4 006 622
Netherlands	86 094 043
	<hr/>
	1 629 019 158 u.a.

4. Financing from the Communities' own resources of the expenditure connected with research programmes of the European Atomic Energy Community shall not exclude entry in the budget of the Communities of expenditure relating to supplement-

ary programmes or the financing of such expenditure by means of financial contributions from Member States determined according to a special scale fixed by a unanimous decision of the Council.

The contributions provided for in Articles 3 (4) and 4 (6) of the Decision of 21 April 1970 amount to:

Belgium	131 842.56 u.a.
Federal Republic of Germany	1 059 453.95
France	30 344.64
Italy	680 039.74
Luxembourg	2 893.92
Netherlands	666 277.19
	<hr/>
	2 570 852.00

5. By way of derogation from this Article, appropriations entered in a budget preceding that for the financial year 1971 and carried over or re-entered in a later budget shall be financed by financial contributions from Member States according to scales applicable at the time of their first entry.

Appropriations to the Guidance Section which, although entered for the first time in the budget for 1971, refer to accounting periods of the European Agricultural Guidance and Guarantee Fund preceding 1 January 1971 shall be covered by the scale relating to those periods.¹

Article 4

1. From 1 January 1975, the budget of the Communities shall, irrespective of other revenue, be financed entirely from the Communities' own resources.

Such resources shall include those referred to in Article 2 and also those accruing from the value added tax and obtained by applying a rate not exceeding 1% to an assessment basis which is determined in a uniform manner for Member States according to Community rules. The rate shall be fixed within the framework of the budgetary procedure. If at the beginning of a financial year the budget has not yet been adopted, the rate previously fixed shall remain applicable until the entry into force of a new rate.

During the period from 1 January 1975 to 31 December 1977, however, the variation from year to year in the share of each Member State in relation to the preceding year may not exceed 2%. Should this percentage be exceeded, the necessary adjustment shall be made, within that variation limit, by financial compensation among the Member States concerned proportionate to the share borne by each of them in respect of revenue accruing from value added tax or from the financial contributions referred to in paragraphs 2 and 3.

2. By way of derogation from the second subparagraph of paragraph 1, if on 1 January 1975 the

rules determining the uniform basis for assessing the value added tax have not yet been applied in all Member States but have been applied in at least three of them, the financial contribution to the budget of the Communities to be made by each Member State not yet applying the uniform basis for assessing the value added tax shall be determined according to the proportion of its gross national product to the sum total of the gross national products of the Member States. The balance of the budget shall be covered by revenue accruing from the value added tax in accordance with the second subparagraph of paragraph 1, collected by the other Member States. This derogation shall cease to be effective as soon as the conditions laid down in Paragraph 1 are fulfilled.

3. By way of derogation from the second subparagraph of paragraph 1, if on 1 January 1975 the rules determining the uniform basis for assessing the value added tax have not yet been applied in three or more Member States, the financial contribution of each Member State to the budget of the Communities shall be determined according to the proportion of its gross national product to the sum total of the gross national products of the Member States. This derogation shall cease to be effective as soon as the conditions laid down in paragraphs 1 or 2 are fulfilled.

4. For the purpose of paragraphs 2 and 3, 'gross national product' means the gross national product at market prices.

5. From the time of complete application of the second subparagraph of paragraph 1, any surplus of the Communities' own resources over the actual expenditure during a financial year shall be carried over to the following financial year.

6. Financing expenditure connected with research programmes of the European Atomic Energy Community from the Communities' own resources shall not exclude entry in the budget of the Communities of expenditure relating to supplementary programmes or the financing of such expenditure by means of financial contributions from Member States determined according to a special scale fixed pursuant to a decision of the Council acting unanimously.

¹ See 3 (b) below.

Article 5

The revenue referred to in Articles 2, 3 (1 and 2) and 4 (1 to 5) shall be used without distinction to finance all expenditure entered in the budget of the Communities in accordance with Article 20 of the Treaty establishing a single Council and a single Commission of the European Communities.

Article 6

1. The Community resources referred in Articles 2, 3 and 4 shall be collected by the Member States in accordance with national provisions imposed by law regulation or administrative action, which shall, where necessary, be amended for that purpose. Member States shall make these resources available to the Commission.

2. Without prejudice to the auditing of accounts provided for in Article 206 of the Treaty establishing the European Economic Community or to the inspection arrangements made pursuant to Article 209 (c) of that treaty, the Council shall, acting unanimously on a proposal of the Commission and after consulting the European Parliament, adopt provisions relating to the supervision of collection, the making available to the Commission and the payment of the revenue

referred to in Articles 2, 3 and 4 and also the procedure for application of Articles 3 (3) and 4.

Article 7

1. Member States shall be notified of this Decision by the Secretary-General of the Council of the European Communities and published in the Official Journal of the European Communities.

Member States shall notify the Secretary-General of the Council of the European Communities without delay of the completion of the procedures for the adoption of this Decision in accordance with their respective constitutional requirements.

This Decision shall enter into force on the first day of the month following receipt of the last of the notifications referred to in the second subparagraph. If, however, the instruments of ratification provided for in Article 12 of the Treaty amending Certain Budgetary Provisions of the Treaties establishing the European Communities and the Treaty establishing a Single Council and a Single Commission of the European Communities have not been deposited before that date by all the Member States, this Decision shall enter into force on the first day of the month following the Deposit of the last of those instruments of ratification.

2. Resources derived from new Member States

The amounts payable by the new Member States are laid down in the Act concerning the conditions of accession and the adjustments to the Treaties, attached to the Treaty of 22 January 1972.¹

Article 129

1. The financial contributions from Member States referred to in Article 3 (2) of the Decision of 21 April 1970 shall be apportioned as follows:

— for the new Member States: ²		
Denmark	2.42%	2.46%
Ireland	0.60%	0.61%
Norway	1.66%	—
United Kingdom	19.00%	19.32%

and for the original Member States in accordance with the scale laid down in Article 3 (2) of the Decision

of 21 April 1970 after the financial contributions of the new Member States specified above have been deducted.

2. For 1973, the basis for calculating the variations referred to in Article 3 (3) of the Decision of 21 April 1970 shall be:

- for the new Member States, the percentages referred to in paragraph 1;
- for the original Member States, their relative share for the preceding year, account being taken of the percentages for the new Member States specified above.

¹ The Acts on the accession of Denmark, Ireland, Norway and the United Kingdom to the European Communities are published in English in *Official Journal of the European Communities*, Special Edition, 27 March 1972.

² These are the figures as modified following Norway's decision not to accede.

Article 130

The Communities' own resources and also the financial contributions and, where appropriate, the contributions referred to in Article 4 (2, 3 and 4) of the Decision of 21 April 1970, shall be due from the new Member States to the following extent only:

- 45.0% in 1973,
- 56.0% in 1974,
- 67.5% in 1975,
- 79.5% in 1976,
- 92.0% in 1977.

The Communities' own resources payable by the new Member States have been calculated in the aggregate; a break-down according to category was not yet possible when the draft budget was being drawn up.

They amount to:	
Denmark	29 936 250 u.a.
Ireland	11 514 666
(Norway	26 392 500)
United Kingdom	364 631 078
	<hr/>
	432 474 494 u.a.
The contributions from the New Member States amount to:	
Denmark	16 506 657 u.a.
Ireland	—
(Norway	5 466 008)
United Kingdom	—
	<hr/>
	21 972 665 u.a.

3. Other available resources

(a) *The Treaty of 8 April 1965 establishing a Single Council and a Single Commission*¹

Article 20

1. The administrative expenditure of the European Coal and Steel Community and the revenue relating thereto, the revenue and expenditure of the European Economic Community and the revenue and expenditure of the European Atomic Energy Community, with the exception of that of the Supply Agency, the Joint Undertakings and that which must be entered in the research and investment budget of the European Atomic Energy Community, shall be shown in the budget of the European Communities in accordance

with the appropriate provisions of the Treaties establishing the three Communities. This budget, which shall be in balance as to revenue and expenditure, shall take the place of the administrative budget of the European Coal and Steel Community, the budget of the European Economic Community and the operating budget of the European Atomic Energy Community.

2. The portion of the expenditure covered by the levies provided for in Article 49 of the Treaty establishing the European Coal and Steel Community shall be fixed at eighteen million units of account.

ECSC levies appropriated in accordance with Article 20 of the Treaty of 8 April 1965 amount to	
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	18 000 000 u.a.
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¹ OJ No 152, 13 July 1967.

(b) *Regulation No 130/66/EEC of the Council dated 26 July 1966 on the financing of the common agricultural policy*¹

Owing to the delay in auditing the accounts, the contributions relating to the period 1968-69 (Guarantee Section) are still entered in the budget for 1973. These contributions are laid down in Article 11 of Regulation No 130/66.

Article 11

1. The expenditure of the Guarantee Section of the Fund shall be covered by financial contributions from the Member States calculated, for the first part, in proportion to the levies collected by each Member State in relation to third countries and, for the second part, as far as is necessary, according to a fixed scale.

2. The first part of the contributions of Member States shall be equal to 90% of the total amount of the levies collected by Member States in relation to third countries during the accounting period in question.

3. The second part of the contributions of Member States shall be calculated according to the following scale:

Belgium	8.1
Federal Republic of Germany	31.2
France	32.0
Italy	20.3
Luxembourg	0.2
Netherlands	8.2

The contributions provided for in Regulation No 130/66/EEC relating to the financing of the common agricultural policy (Guarantee Section) amount to:

Belgium	14 242 508 u.a.
Federal Republic of Germany	50 411 015
France	38 931 173
Italy	44 000 877
Luxembourg	258 550
Netherlands	22 155 877
	<hr/>
	170 000 000 u.a.

(c) *Deductions made from the incomes of officials*

Revenue from the tax on the wages, salaries and allowances of officials and other staff members of the Communities and staff contributions to pensions amount to 17 126 120 units of account.

(d) *Re-entry of lapsed appropriations*

A sum of 350 000 units of account for assistance to redundant workers in Italian sulphur mines has been re-entered in the budget for 1973. The sum was allocated on the credit side in accordance with Article 200 (1) of the EEC Treaty.

(e) *Miscellaneous revenue*: 8 838 820 units of account.

Revenues entered in the draft budget for 1973 are summed up in the following table:

¹ OJ No 165, 2 September 1966.

Agricultural levies*	687 100 000 u.a.
Sugar contributions	148 000 000
Customs duties*	1 303 900 000
Contributions from Member States*	1 629 019 158
Contributions from Member States to finance supplementary programmes of Euratom	2 570 852
Customs duties and agricultural levies collected by the new Member States	432 474 494
Contributions from the new Member States	21 972 665
ECSC levies	18 000 000
Contributions to financing the common agricultural policy (Guarantee Section) for 1968-69	170 000 000
Deductions from salaries	17 126 120
Re-entry of appropriations	350 000
Miscellaneous revenues	8 838 820
	4 439 352 109 u.a.

* These items are derived from the six 'original' Member States.

Section II — The Regulation implementing the Decision of 21 April 1970

On 2 January 1971, the Council adopted a regulation implementing the Decision of 21 April 1970 on the replacement of contributions from Member States by the Communities' 'own resources'. The text of this regulation, in an English translation, is as follows:¹

TITLE I

General Provisions

Article 1

The Communities' own resources within the meaning of the Decision of 21 April 1970 (hereinafter called 'own resources') shall be established by Member States in accordance with their own provisions laid down by law, regulation or administrative action and shall be made available to the Commission in accordance with this Regulation without prejudice to the provisions to be adopted in due course concerning revenue derived from value added tax.

Article 2

1. For the purposes of application of this Regulation, an entitlement shall be deemed to be established as soon as the corresponding claim has been duly determined by the appropriate department or agency of the Member State.

2. The competent department or agency of the Member State shall revise the entitlement established in accordance with paragraph 1 where the need for a rectification arises.

Article 3

Member States shall take all requisite measures to ensure that the supporting documents concerning established entitlements and the making available of own resources are kept for three years.

Article 4

1. Each Member State shall inform the Commission, at the latter's request:
 - (a) of the names of the departments or agencies responsible for establishing own resources and, where appropriate, their statutes;
 - (b) of the general provisions laid down by law, regulation, administrative action, or relating to accounting procedure, concerning the establishment of own resources and their being made available to the Commission.
2. The Commission shall pass such information to other Member States at their request.

Article 5

Each Member State shall draw up yearly a closing statement of account together with a report on the establishment and control of own resources, and shall forward this to the Commission before 1 June of the year following the financial year concerned.

¹ OJ Special edition, 1971 (I), pp. 4-9.

Article 6

1. Accounts for own resources shall be kept by the Treasury of each Member State and broken down into types of resources.
2. The established entitlements shall be entered in those accounts within a period of sixty days following the end of the month during which the entitlements were established.

Each Member State shall forward to the Commission, within the same period, a monthly state of those accounts showing the position as regards the entitlements established for the month concerned.

3. The established entitlements shall be entered in the accounts of the Communities as revenue to be collected insofar as the amounts in question have not been paid over.
4. The amounts actually paid over shall be entered as revenue in the budget of the Communities.

TITLE II

Provisions for making available and paying over the Communities' own resources

Article 7

1. The amount of own resources established shall be entered by each Member State on the credit side of the account opened with the Treasury for this purpose in the name of the Commission. This account shall be kept free of charge.
2. Each amount shall be entered gross. Within the thirty days following notification of each entry, the Commission shall issue a transfer order in favour of the Member State for the amounts corresponding to the standard refund of collection costs referred to in the fifth sub-paragraph of Article 3 (1) of the Decision of 21 April 1970.

Article 8

1. Own resources to be established by each Member State, together with its financial contribution, shall be the subject of a provisional estimate entered in the budget, account being taken of Articles 3 (3) and 4 (1) of the Decision of 21 April 1970.
2. Payment shall be made of the amount actually established by the Member State for the kind of resources involved; where appropriate, payment shall be made in the proportion fixed by the budget, subject to rectification when closing the accounts.
3. Adjustment shall be made for amounts which a Member State may have overpaid or which might still be owing.

Article 9

1. The entry referred in Article 7 (1) shall be made within a period of sixty days following the end of the month during which the entitlement was established.
2. Any delay in making the entry shall give rise to the payment of interest by the Member State concerned at a rate equal to the highest rate of discount ruling in the Member States on the due date. This rate shall be increased by 0.25% for each month of delay.

Article 10

1. The entitlements established under Article 2 (2) shall be entered in the monthly return corresponding to the date of revision and shall be added to or subtracted from the total amount of the established entitlements.

The provisions of Article 9 (2) shall also apply to these new entitlements.

2. The costs of collection referred to in the fifth subparagraph of Article 3 (1) of the Decision of 21 April 1970 shall be refunded, account being taken of the entitlements established under Article 2 (2).

Article 11

1. The Commission shall have at its disposal for implementation of the budget the amounts credited to its account. Orders and instructions which, in accordance with actual needs, it forwards for this purpose to the Treasury or to the appropriate department of each Member State shall be carried out as soon as possible.
2. In cases of actual liquidity difficulty and where all possibility of obtaining advances against the financial contributions of Member States has been exhausted, the Member States shall, at the Commission's request, make an advance on future resources not exceeding one-and-a-half month's estimated revenue.

Advances exceeding the amount indicated in the first subparagraph and justified by the requirements of a rectifying or supplementary draft budget may be authorized by the Council acting by a qualified majority on a proposal from the Commission. The method for settling the accounts shall be fixed at the same time as the authorization is given.

Article 12

Transfers of funds shall be made, so far as possible, from the currencies of Member States having a surplus revenue into the currencies of the other Member States. They shall be restricted to actual cash requirements.

TITLE III

Provisions concerning measures of control

Article 13

1. Member States shall take all requisite measure to ensure that the amounts corresponding to the entitlements established under Article 1 and 2 are made available to the Commission in accordance with this Regulation.

2. Member States shall not be required to place at the Commission's disposal the amounts corresponding to established entitlements solely where, for reasons of 'force majeure', these amounts could not be collected.

3. Every six months Member States shall communicate to the Commission, where appropriate within the framework of existing procedures, comprehensive information and questions of principle concerning the most important problems arising from the application of this Regulation, and in particular matters in dispute.

Article 14

1. Member States shall carry out the verifications and inquiries concerning established entitlements and the making available of own resources. The Commission shall make use of its powers in accordance with this Article.

2. Accordingly, Member States shall:

- carry out any additional measures of control the Commission may ask for in a reasoned request;
- associate the Commission, at its request with the measures of control which they are carrying out.

Member States shall take all steps required to facilitate these measures of control. Where the Commission is associated with these measures, Member States shall place at its disposal the supporting documents referred to in Article 3. In order to restrict as far as possible additional measures of control, the Commission may, in special cases, require that certain documents be put at its disposal.

3. The measures of control referred to in paragraphs 1 and 2 shall not prejudice the following measures:

- (a) the measures of control undertaken by Member States in accordance with their own provisions laid down by law, regulation or administrative action;
- (b) the measures provided for in Article 206 of the Treaty establishing the European Economic Community and Article 180 of the Treaty establishing the European Atomic Energy Community;
- (c) the inspection arrangements made pursuant to Article 209 (c) of the Treaty establishing the European Economic Community and Article 183 (c) the Treaty establishing the European Atomic Energy Community.

4. Before the end of 1973, the Commission shall report to the Council on the functioning of the system.

5. The Council shall, acting unanimously on a proposal from the Commission, determine:

- (a) the conditions which officials appointed by the Commission must satisfy when they carry out the verifications provided for in this Article, in particular with regard to professional secrecy and the procedure whereby they exercise their powers of investigation;
- (b) where required, other provisions for applying this Article.

Article 15

The provisions of Community law applicable to matters referred to in the first paragraph of Article 2 of the Decision of 21 April 1970, in particular regarding nomenclature, origin, value for customs purposes, Community transit and inward processing, shall be applied by the appropriate authorities of the Member States when establishing own resources.

TITLE IV

Procedure for application of Articles 3 (3) and 4 (1) of the Decision of 21 April 1970

Article 16

1. For the purpose of this Regulation, the 'share of a Member State' means the proportion of expenditure entered in the budget of the Communities and financed by means of own resources within the meaning of the Decision of 21 April 1970 deriving from that State and also, where appropriate, by means of the financial contributions of that State, calculated in accordance with the scale shown in Article 3 (2) of that Decision.

2. The upper limit of the share of each Member State for any given financial year shall correspond to its share in the financing of the budget of the Communities for the preceding financial year calculated in accordance with Article 3 (3) of the Decision of 21 April 1970, plus

- 1% until 30 December 1974;
- 2% between 1 January 1975 and 31 December 1977.

3. The lower limit of the share of each Member State for any given financial year shall correspond to its share in the financing of the budget of the Communities for the preceding financial year calculated in accordance with Article 3 (3) of the Decision of 21 April 1970 less

- 1.5% until 21 December 1974;
- 2% between 1 January 1975 and 31 December 1977.

Article 17

For the purpose of application of Article 3 (3) and 4 (1) of the Decision of 21 April 1970 and without prejudice to Article 3 (5) of that Decision, the following factors shall be taken into account:

- (a) the expenditure incurred during the financial year in question, plus the appropriations carried over to the following financial year, less the appropriations carried over from preceding financial years and written off, and also revenues other than own resources and financial contributions from Member States;
- (b) for each Member State, the resources for which an entitlement has been established during the financial year in question.

Article 18

1. Insofar as the shares of certain Member States do not fall within the limits referred to in Article 16 (2 and 3), the shares above and below the limits shall, where necessary, be adjusted to bring them within those limits; any deficiency in the budget shall then be apportioned among the other Member States in accordance with the scale laid down in Article 3 (2) of Decision of 21 April 1970.
2. This operation shall be repeated if necessary.
3. Any surplus resulting from the application of this Article shall be carried over to the following financial year.

Article 19

For budgets up to and including that for the financial year ending 31 December 1974, the adjustment provided for in Article 18 shall be carried out when the budget is finally passed and shall be finally adopted when the accounts for revenue and expenditure are submitted.

Article 20

1. From the financial year 1975 up to and including the year ending 31 December 1977, the adjustment to the budget provided for in Article 18 shall be carried out when the accounts for revenue and expenditure are submitted.
2. This adjustment shall give rise to financial compensation between the Member States concerned.

Article 21

1. The financial compensation referred to in Article 20 (2) shall be effected in accordance with the third subparagraph of Article 4 (1) of the Decision of 21 April 1970.
2. The Commission shall communicate to the Member States, during the month following the closure of the accounts for revenue and expenditure,

the compensation account which it has drawn up, showing the debit or credit balance of each Member State. Each debtor Member State shall pay to each creditor Member State part of the amount shown in its debit account, that part being proportionate to the share of the creditor Member State in the total amount entered in the credit account.

3. In the month following this communication, the debtor Member States shall pay to the creditor Member States the amount owing in the national currency of the latter at the parity declared to the International Monetary Fund.

Article 22

The percentages to be taken into account for the calculations under Articles 16 to 20 shall in each operation be rounded off at the fourth decimal place.

TITLE V

Procedure for application of Article 4 (2, 3 and 4) to the Decision of 21 April 1970

Article 23

1. This Article shall be applicable where it may be necessary to take provisional measures of derogation under Article 4 (2 and 3) of the Decision of 21 April 1970.
2. The gross national product at market prices shall be calculated on the basis of statistics established by the Statistical Office of the European Communities; it shall correspond, for each Member State, to the arithmetical average for the first three years of the five-year period preceding the financial year in respect of which Article 4 (2 and 3) of the Decision of 21 April 1970 is applied.

3. The gross national product shall be established in units of account at the parities declared to the International Monetary Fund.

If there is a change of parity in the course of a year, a parity based on the parities declared to the International Monetary Fund and weighted on a time basis shall be applied.

4. As long as the derogation provided for in Article 4 (2) of the Decision of 21 April 1970, is applied to one or more Member States, the Commission shall fix, in its preliminary draft budget, the estimated percentage of the budget to be covered by the financial contributions of the Member State or States concerned on the basis of the proportion of their gross national product to the sum total of the gross national products of the Member States, and shall establish the rate of the value added tax corresponding to the remainder of the budget to be covered by the other

Member States. The amounts shall be approved in accordance with budgetary procedure.

5. If at the close of the accounts for the financial year in question the Commission finds that the Member States which have paid financial contributions on the basis of the gross national product have, in terms of percentage, actually covered by means of those financial contributions more than their share, it shall establish the necessary adjustments, taking account of the provisions of the third subparagraph of Article 4 (1) of the Decision of 21 April 1970.

6. For the purposes of this Regulation,

(a) the gross national product at market prices is equal to the gross domestic product at market prices plus income from employment, property and business received from the rest of the world less the corresponding flow towards the rest of the world;

(b) the gross domestic product at market prices, which represents the final outcome of production by resident productive units, corresponds to the total production of goods and services by the economy, less the total intermediate consumption, plus import charges.

TITLE VI

Procedure for application of Article 4 (5) of the Decision of 21 April 1970

Article 24

1. The balance of one financial year to be carried over to the following financial year, in accordance with Article 4 (5) of the Decision of 21 April 1970, shall consist of the difference between

— expenditure incurred during the financial year in question, plus the appropriations carried over to the following financial year, less appropriations carried over from the preceding financial years and written off; and

— all the revenue credited to the accounts for the financial year in question, less that part of the revenue credited to the accounts for the preceding financial year which was not collected during the financial year in question.

2. The outstanding amounts within the meaning of the second indent of paragraph 1 shall be recorded separately in a suspense account and credited to the account for the financial year during which they are actually collected.

3. The balance to be carried over shall be finally determined, in accordance with budgetary procedure at the same time as the accounts for revenue and expenditure referred to in Articles 19 and 20 are closed.

TITLE VII

Provisions relating to the Advisory Committee, on the Communities' Own Resources, and final provisions

Article 25

1. An Advisory Committee on the Communities' Own Resources (hereinafter called 'the Committee') is hereby set up.

2. The Committee shall consist of representatives of the Member States and of the Commission. Each Member State shall be represented on the Committee by not more than five officials.

The Chairman of the Committee shall be a representative of the Commission.

Secretarial services for the Committee shall be provided by the Commission.

3. The Committee shall adopt its own rules of procedure.

Article 26

The Committee shall examine the questions raised by its Chairman, on his own initiative or at the request of the representative of a Member State, which concern the application of this Regulation, in particular:

(a) information and communications provided for in Article 4 (1) (b), 5 and 13 (3);

(b) cases of *force majeure* referred to in Article 13 (2);

(c) measures of control and inspection provided for in Article 14 (2).

Article 27

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

It shall have effect from the date of entry into force of the Decision of 21 April 1970.

Section III — Provisions governing the control of own resources

At the time of compilation of the present corpus, the body of rules on the control of own resources was still in a state of flux. Much remains to be done before customs laws can be harmonized and cooperation achieved between the authorities responsible for collecting these resources.

1. *The harmonization of customs laws*

Article 15 of Regulation No 2/71 lays down that Community customs legislation shall be applied to the establishment of own resources by the competent authorities in the Member States.

It would be impossible to cite here all the studies that have been made on this subject. We shall confine ourselves to the Written Question No 87/70, put by Mr Brouwer and Mr Westerterp (Christian-Democrat, Netherlands) on 15 May 1970, to which the Commission of the Communities did not reply until 1 July 1971, i.e. after it had laid down, on 28 April 1971, a general programme for approximating national customs laws.¹

The question ran as follows:

'1. In view of the agreement in principle reached in the Council on the financing of the Communities by resources of their own, in which customs revenue is to be gradually incorporated, and in view of the need to ensure smooth operation of the customs union through uniform rules for the levying of customs duties, does the Commission consider that the harmonization of customs laws must be expedited in order to solve, in particular, the following problems as soon as possible:

- exemption from customs duties;
- waiving and refunding of customs duties, and settlement of arrears;
- special customs arrangements whereby customs duties are either levied in part or not at all, (e.g. temporary imports other than those effected as part of processing traffic);
- fixing the dates of payment of customs duties;
- the position of debtors at Community level, bearing in mind that the creditor here is the Community and that Member States merely act as administrative agents for collection purposes;
- customs clearance procedure and export formalities?

2. Does the Commission agree with questioners that Community control to ensure that customs duties are properly levied should seek to establish not only that the national receiving authorities correctly report the revenues collected by them to the central administration of Member States, but also, and above all, that the national customs authorities accurately assess the amount of duty payable in each case?

3. Is the Commission aware of the article published on 26 June 1969 in the German periodical 'Blick durch die Wirtschaft' on the present situation regarding the harmonization of national customs laws, and of the Council's reply to Written Question No 422/69 by Mr Vredeling?²

Is it true that, out of a total staff of 5 261, the Commission has only about six Grade A and a few Grade B officials to carry out the tasks referred to in points 1 and 2?

4. In view of the present situation and of the problems which will certainly arise in the customs sector during the negotiations with the countries applying to join the Community, does not the Commission consider it desirable to expand substantially those of its departments responsible for customs matters?

¹ Written question No 87/70, OJ No 70, 16 July 1971. For the general programme of approximating national customs laws, see the Commission's *Fifth General Report* Sections 122 *et seq.*, and the *Bulletin of the European Communities*, No 6, 1971.

² OJ No C 38, 1 April 1970, p. 8.

The Commission's reply, dated 1 July, ran as follows:

'Points 1 and 2: The Commission fully shares the point of view put by the honourable members. It is felt that the proper functioning of the customs union and the allocation of customs duties to the budget of the Communities as own resources make it necessary first to draw up a common body of customs law to ensure that customs duties are assessed, substantiated and collected in the same manner in the Six Member States and, secondly, to introduce control measures in respect of these duties which will require Commission intervention.

The Commission has accordingly taken, or intends shortly to take, the steps required to proceed with both these courses of action.

In the first place, it has forwarded to the Council a draft regulation implementing the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources. This draft, approved on 2 January 1971, contains provisions to ensure, with the Commission's participation, control of the establishment and collection of customs duties as provided for in Article 6 of that Decision.

In the second place, the Commission has adopted a programme of action for harmonizing national customs laws, which it intends to forward to the European Parliament, the Council and the Economic and Social Committee and which it will carry out with the least possible delay. This programme embodies the various points raised in the first paragraph of the question put by the honourable members.

Points 3 and 4: The Commission has taken cognizance of the article published on 26 June 1969 by the German periodical 'Blick durch die Wirtschaft' on

the present situation regarding the harmonization of national customs laws, and of the Council's reply to Written Question No 422/69 by Mr Vredeling.

It is true that on 15 May 1970 the Commission, out of a total staff of 5 261, had only six Grade A and two Grade B officials to carry out the tasks referred to in points 1 and 2 of the question.

Conscious of the need to reconsider the size of the departments responsible for completing, improving and managing the customs union, the Commission has since taken a first series of steps aimed at gradually improving the situation referred to by the honourable members.

In particular, it has made the customs directorate a separate department—'Management of the Customs Union'—under the direct authority of Mr Spinelli, member of the Commission.

In addition, the Commission recently requested the Council to approve a supplementary budget in order to give this new department the administrative support needed to complete the harmonization of national customs laws and ensure efficient management of the permanent services to be provided in this sector. If the Council accepts the proposals recently submitted to it, the measures put in hand will very soon produce the results desired by the honourable members.

Furthermore, a division entitled 'Own Resources and Finance' has been set up under the Directorate-General for Budgets with responsibility for the control functions provided for in Article 14 of Regulation No 2/71 of the Council in conjunction with the department for the 'Management of the Customs Union' and the Member States.

2. The agreement on mutual assistance between the customs authorities of the six Member States

On 7 September 1967, the governments of the Member States of the European Community signed an agreement on administrative cooperation for the purpose of preventing or suppressing fraudulent operations with regard to levies and customs duties. In the case of five Member States, this agreement came into force on 1 June 1970, and with regard to Italy on 1 January 1972.

The agreement has certain limitations which should be pointed out here:

- (i) it is to be applied by the customs authorities, and covers only customs duties and levies. It concerns neither export refunds nor internal market intervention provided for under the organizations of agricultural markets;

- (ii) only two of the Communities' own sources of revenue are covered viz. customs duties and levies. Future revenue from the value added tax are beyond the scope of the agreement inasmuch as this tax is not levied at the external frontiers of the Community;
- (iii) the essential object of the agreement is to promote an exchange of information between the various customs authorities in order to facilitate the prevention, investigation and suppression of offences against the customs laws of the Member States;
- (iv) the Convention has so far been ratified by six Member States: new Member States would have to sign and ratify it.

The text of the agreement is as follows:

The Governments of the Member States of the European Economic Community,

Whereas violations of customs laws damage the economic and fiscal interests of their respective countries and the legitimate interests of trade, industry and agriculture and compromise the aims of the Treaties establishing the European Communities;

Whereas it is important to ensure that customs duties are correctly levied in order to guarantee the uniform application of the tariff arrangements provided for in these Treaties;

Persuaded that cooperation between the customs administrations would make for a most effective campaign against violations of customs laws and further endeavours to apply customs duties with greater exactitude;

Anxious to ensure the development and functioning of the customs union of the Contracting States through close collaboration between the customs administrations;

HAVE AGREED UPON THE FOLLOWING:

Article 1

1. The Contracting States shall assist one another, through their customs administrations and in the conditions set forth below, in ensuring the proper collection of customs duties and other charges on imports and exports and in preventing, investigating and suppressing violations of customs laws.
2. If, however, in a Contracting State the execution of certain provisions laid down in the present agreement falls within the competence of an authority other than the customs administration, this authority shall be regarded as the customs administration for the purposes of the agreement. In this connection, the Contracting States shall communicate to one another the relevant information.

Article 2

For the purposes of this agreement, 'customs laws' shall mean the laws and regulations relating to imports, exports and goods in transit, regardless of whether they concern customs duties and all other charges or measures of prohibition, restriction or control. The expression 'customs duties' also covers the levies introduced pursuant to the Treaty establishing the European Economic Community.

Article 3

The customs administrations of the Contracting States shall strive to harmonize the functions and working hours of the customs offices situated at their common frontiers.

Article 4

1. The customs administrations of the Contracting States shall communicate to one another, on request, all information likely to ensure the proper collection of customs duties and other charges on imports and exports, particularly information which will help to determine the customs value and tariff category of goods.
2. Where an administration does not have the information requested it shall institute enquiries under the laws and regulations applying in its country to the collection of customs duties and other charges on imports and exports.

Article 5

The customs administrations of the Contracting States shall exchange lists of goods in which traffic in violation of customs laws is known to occur on importation, exportation or in transit.

Article 6

Whether of their own accord or on request, the customs authorities of each Contracting State shall,

wherever possible, exercise special surveillance within their area of responsibility.

- (a) over the movements, particularly when entering or leaving their territory, of persons suspected of committing, professionally or habitually, violations of the customs laws of another Contracting State;
- (b) over places where abnormal quantities of goods are stored in such a way as to suggest that their whole purpose is for trade in violation of the customs laws of another Contracting State;
- (c) over vehicles, vessels or aircraft suspected of being used to violate the customs laws of another Contracting State.

Article 7

The customs administrations of the Contracting States shall supply one another, on request, with any certificate stating that goods exported from one Contracting State to another Contracting State have been legally brought into the territory of the latter State and indicating, where necessary, the customs category in which these goods have been placed.

Article 8

The customs administration of each Contracting State shall, of its own accord or on request, communicate to the customs administration of another Contracting State, in the form of reports, certificates or certified copies of documents, all information at its disposal on operations which have taken or are planned to take place and which constitute or appear to constitute a violation of the customs laws of this latter State.

Article 9

The customs authorities of each Contracting State shall communicate to the customs authorities of the other Contracting States all potentially useful information on violations of customs laws, particularly on new means or methods employed to commit them; they shall transmit to the said authorities copies or extracts of reports prepared by their investigation departments relating to particular methods used.

Article 10

The customs administrations of the Contracting States shall arrange for their investigation departments to liaise and exchange information to facilitate the prevention, investigation and suppression of violations of the customs laws of their respective countries.

Article 11

Duly authorized officials of the customs administration of one of the Contracting States shall, with the consent

of the customs administration of another Contracting State and for the purposes of this agreement, be entitled to obtain from the offices of this latter administration all information deriving from entries, registers and other documents kept for the purpose of implementing customs laws. These officials shall be authorized to make a copy of these entries, registers and other documents.

Article 12

At the request of the courts or authorities of a Contracting State to which violations of customs laws have been referred, the customs administrations of the other Contracting States may authorize their officials to appear as witnesses or experts before the aforesaid courts or authorities. Within the limits fixed by the authorization, these officials shall give evidence on the observations made by them in the exercise of their duties. The summons to appear shall state in what case and capacity the official is to be heard.

Article 13

1. The customs administration of a Contracting State, shall, at the request of that of another Contracting State, instigate all official enquiries, and in particular arrange for the hearing of persons suspected of violations of customs laws, and also of witnesses or experts. It shall communicate the results of these enquiries to the applicant administration.

2. These enquiries shall be conducted under the laws and regulations of the State to which application was made.

Article 14

Officials of the customs administration of a Contracting State responsible for the investigation of violations of customs laws may, on the territory of another Contracting State and with the consent of the competent officials of the customs administration of this State, be present at operations carried out by these latter officials to investigate and establish similar violations wherever these are of interest to the former administration.

Article 15

The customs administrations of the Contracting States may, in their reports and written evidence and also in the course of court proceedings, adduce as proof, the information gathered and the documents consulted under the conditions specified by this agreement. The probative force of such information and documents and the use made of them in legal proceedings depend upon national law.

Article 16

When, in the cases provided for by this agreement, the officials of the customs administration of one Contracting State are in the territory of another Contracting State, they must be able at any time to give proof of their presence in their official capacity. While in this territory, they enjoy the protection guaranteed to officials of the customs administration of this State by national laws and regulations. They enjoy the same status of these latter officials as regards the penal consequences of offences committed against or by them.

Article 17

The customs administration of a Contracting State, shall at the request of that of another Contracting State notify the parties concerned, or have them notified by the appropriate authorities, in accordance with the rules in force in this State, of all acts or decisions of the administrative authorities relating to the implementation of customs laws.

Article 18

The Contracting States shall mutually waive all claims to the refunding of costs arising from the implementation of this agreement, except the allowances payable to experts.

Article 19

1. The customs administrations of the Contracting States shall not be bound to render the assistance provided for by this agreement in cases where such assistance is likely to run counter to public policy or other essential interests of their State.

2. When assistance is refused, the reasons shall be given.

Article 20

1. Information, communications and documents obtained may be used only for the purposes of this agreement. They may not be communicated to persons other than those required to use them for these purposes unless the releasing authority has given its explicit consent and provided that the legislation applying to the receiving authority does not forbid such communication.

2. Request, information, experts' reports and other communications obtained by the customs administration of a Contracting State under this agreement shall enjoy the same protection as accorded by the national law of this State to documents or information of like nature.

Article 21

No request for assistance may be made if the customs administration of the applicant State would be unable to provide such assistance itself if so requested.

Article 22

The assistance called for in this agreement shall be provided directly between the customs administrations of the Contracting States. These administrations shall agree on practical methods of application.

Article 23

1. Nothing in the provisions of this agreement shall prevent more extensive mutual assistance between Contracting States under other agreements or arrangements.

2. This agreement shall apply only to the European territories of the Contracting States.

Article 24

1. This agreement shall be ratified or approved and the instruments of ratification or approval shall be deposited with the Ministry of Foreign Affairs of the Italian Republic, which shall notify all the signatory States thereof.

2. It shall come into force, with regard to Contracting States which have deposited their instruments of ratification or approval, on the first day of the third month following the deposit of the second instrument of ratification or approval.

3. It shall come into force, with regard to States which ratify or approve it at a later date, on the first day of the third month following the deposit of their instrument of ratification or approval.

Article 25

1. This agreement shall be concluded for an unlimited period.

2. Any Contracting State may denounce it at any time three years after it has come into force for this State, by addressing notification to the Ministry of Foreign Affairs of the Italian Republic, which shall notify the other Contracting States of the denunciation.

3. The denunciation shall take effect on the expiry of a period of six months starting from the date on which the Ministry of Foreign Affairs of the Italian Republic receives notification of such denunciation.

This agreement drawn up in a single copy in German, French, Italian and Dutch, all four texts being equally authentic, shall be deposited in the archives of the government of the Italian Republic, which shall forward a certified true copy to each of the signatory States.

3. Community Control

Article 6 of the Decision of 21 April 1970 granting the Communities resources of their own stipulates that the Council shall make provision for supervising their collection.

Articles 13 to 15 of Regulation No 2/71, quoted earlier, reserve control over collection for the Member States, without prejudice, however, to the controls exercised by the Audit Board or those provided for or to be provided for by financial regulations. Article 14 lays down, in addition, that officials appointed by the Commission must comply with certain requirements in carrying out verifications in association with the measures of control undertaken by the Member States.

(a) *Rights and obligations of officials appointed by the Commission*

In implementation of Article 14 (5) of Regulation No 2/71, the Commission has proposed the following measures to the Council:¹

Article 1

The Commission shall entrust the verifications and enquiries with which it is associated to officials whom it specifically appoints. These tasks concern the establishment and the making available of own resources as referred to in Article 14 (1) of Regulation No 2/71 of the Council dated 2 January 1971.

These officials shall be given written terms of reference stating their identity and qualifications. A list shall be communicated to the competent authorities of the Member States.

Article 2

The officials appointed by the Commission and associated with the competent authorities of the Member States responsible for carrying out the measures of verification and control:

- (a) shall accomplish their task of investigation, taking due account of administrative provisions applying to the national departments, agencies and authorities;
- (b) shall not divulge any secret information, in any form whatsoever, except to authorized persons.

Article 3

The departments and agencies responsible for establishing the Communities' own resources and placing them at the Communities' disposal as well as the competent authorities of the Member States responsible for carrying out the necessary verifications and measures of control shall provide the officials appointed by the Commission with the assistance they require to discharge their duties and draw up their report.

These officials shall, in particular, verify:

- (a) the conditions in which the operations of establishing, entering in the accounts and making available of the Communities' own resources are carried out and supervised;
- (b) the measures taken by the Member States to ensure that own resources are established and made available in accordance with Community regulations; and
- (c) the existence of the necessary supporting documents and their conformity with the operations referred to above.

(b) *The report of a parliamentary delegation*

On 5 February, the Committee for Finance and Budgets received the report of a delegation which it had sent to Naples to look into the methods employed for establishing and collecting the Communities' own resources. Extensive quotations from this report are given hereafter.²

¹ Doc. No 112/72. See the report by Mr Aigner on behalf of the Committee for Finance and Budgets, Doc. No 139/72, and the Resolution of 10 October 1972, OJ No C 112, 27 October 1972.

² PE 32.210.

'On 18 and 19 October 1972, a delegation from the Committee for Finance and Budgets made up of Mr Pêtre (Christian-Democrat, Belgium), Mr Beylot (European Democratic Union, France), Mr Koch (Socialist, Germany) and Mr Durand (Liberal, France) went to Naples to follow the work of responsible officials of the Commission of the Communities. The latter's task was to conduct, pursuant to Article 14 of Regulation No 2 of the Council dated 2 January 1971 and in association with the responsible authorities of the Member States, the verification and enquiries relating to the establishment and making available of the Communities' own resources by the authorities of the Member States.'

...

'Throughout the visit, the Italian authorities repeatedly expressed their appreciation of the fact that, for the first time, a parliamentary delegation—and, what was more, a delegation from the European Parliament—had joined them in examining such fundamental problems. This point should be drawn to the Committee's attention, for it is in itself sufficient justification for this visit and for further visits which might well be made to other important central customs offices in the Member States.'

'These authorities were immediately informed that the aim of the parliamentary delegation was to form on the spot a clearer opinion of the problems encountered by the authorities in the Member States in establishing, collecting and making available the Communities' own resources and that for this purpose, the delegation expected the Commission officials to describe the tasks they set themselves; the delegation also expressed its appreciation to the Italian authorities for the information they had provided.'

'It was only proper that these remarks should be made, first because the Commission officials are, as the above-mentioned Article 14 of Regulation No 2/71 itself states, associated with the verifications carried out by the national authorities and, secondly, because the Communities' provisions for determining the rights and obligations of officials appointed by the Commission to duties of this nature are not yet in force.'

...

'A. PROCEDURE FOR ESTABLISHING THE COMMUNITIES' OWN RESOURCES

These resources are *established* by a series of administrative measures taken by the customs offices with the object of determining the various components which comprise the basis of assessment.

This is done entirely by the customs administration placed under the authority of the Ministry of Finance and the Treasury. The normal procedure is as follows:

- (a) the customs declaration, stating the nature and origin of the goods concerned, is first accepted;
- (b) the goods are subjected to a customs examination, with special reference to their classification with regard to the tariff, value or quantity, and origin;
- (c) the information obtained during stages (a) and (b) provides the basis for clearing the goods—i.e. establishing the precise amount of credit to apply to the basis of assessment—with regard to the amount of the agricultural levy or the CCT duty rate. All the duties applicable are entered separately in the customs declaration at this stage;
- (d) during the next stage, the tax credit is entered in the accounts. This consists in recording in a special register the customs declaration, which becomes equivalent to a customs certificate and constitutes the sole documentary evidence of the legal status of the goods, together with the corresponding credit;
- (e) finally, the amount due is collected by the customs accounts department on the basis of the duties established during the preceding stages. Payment is due before the goods are actually delivered, although exceptions may be made (deferment of payment up to a maximum of eighteen months may be authorized, but a surety is always demanded before the goods are delivered).'

...

'B. APPLICATION OF THE ABOVE PROCEDURES TO AGRICULTURAL LEVIES AND CUSTOMS DUTIES

The agricultural levies applied by the frontier customs offices in each Member State are as notified by telex to each capital by the Commission and immediately transmitted to the frontier customs offices. At Naples, the amount of these levies is displayed on a public noticeboard. *The rate of the levy applied is that of the date of submission of the import declaration.*

Receipts from levies are entered in the accounts by the frontier customs offices. Following a series of book entries in strictly supervised central offices (these are made using official forms showing acceptance by one office and transmission to the next) they arrive at the Italian Treasury, which then makes payment to the Commission within the time-limits laid down in Regulation No 2/71 implementing the Decision instituting the Communities' own resources.

As regards the establishment, collection and payment of customs duties, the procedure applied is that described above for the agricultural levies.'

'C. APPLICATION OF THE PROVISIONS CONCERNING THE ESTABLISHMENT AND COLLECTION OF THE COMMUNITIES' OWN RESOURCES

It must be emphasized that, particularly in the case of the agricultural levy, the Community text gives a somewhat vague definition and that this may give rise to difficulties.¹

A clearer definition was attempted in a letter sent by the Commission to Member States a year ago, listing those duties that cannot be classed as agricultural levies. While its legal basis is admittedly open to question, the letter has certainly helped the Member States to reduce considerably the problems raised by the definition.

During their visit to Naples, the Commission officials went into these problems. They studied the work of an office specially set up by the Directorate of Customs at Naples to deal with the levies, and observed the methods by which this office verified goods and classified them with regard to the categories of the customs tariff. They found that it is impossible at Naples to import agricultural produce into the Community without observing the following two conditions:

- (a) an import certificate must be produced;
- (b) the goods must actually enter the port.

The rate of levy applied to these imports is that valid at the moment when these two conditions are fulfilled. The Commission officials also looked into the conditions in which the rates of levy transmitted by the Commission are applied. This is not a minor problem since even telex transmission may take some time and so give rise to difficulties.

The Commission officials also reported on their findings with regard to the levying of customs duties on goods for inward processing. The application of the relevant arrangements raises serious problems, particularly with regard to the determination of the basis of assessment in cases where part of the goods has been re-exported to third countries after processing.

This is a complex sphere in which irregularities may well occur.

The officials naturally inquired how the Italian authorities decide when to apply the arrangements for inward processing, how they are applied, and what is done to meet the difficulties arising when goods are re-exported. They also verified the rates of levies applied by the Italian authorities since June 1972 in the cereals sector in relation to the directives issued by the Commission.

A check was also made of the accounts of own resources for the same period and their payment to the

Communities. This task was made easier by the fact that daily returns are available to the customs authorities for accounting control purposes. An analysis of customs receipts made it possible to ascertain to what extent the actual daily takings tally with the entries in the books. In the accounting control process it was possible to check all the signatures appended to each of the documents on its way first to the central treasurer's office in Naples and then to the Treasury. These accounting data were also made available to the parliamentary delegation for checking against the books and accounting vouchers.

D. THE CAMPAIGN AGAINST FRAUDS

The parliamentary delegation stressed that the entire European Parliament was paying close attention to the problem of frauds involving the European Agricultural Guidance and Guarantee Fund, often on the basis of falsified customs declarations or import certificates. The delegation enquired about the extent to which the financial authorities collaborate with the judiciary for the purpose of suppressing such offences. The Inspector-General of the Ministry of Finance explained that the financial and customs administration comprises an administrative department and a fiscal police division engaged in the prevention and suppression of irregularities in this field. This body, the 'Guardia di finanza', is a specialized military police force—a point of especial importance in view of the fact that these irregularities are often the work of persons intimately acquainted with administrative practices. It is composed of about thirty thousand men whose essential duty lies in uncovering irregular practices and, in a wider sense, combatting customs and fiscal evasions.

Members of the customs administration also enjoy police powers within each customs area. The Italian customs official is directly responsible to the state, also for sums collected on behalf of the Communities. This responsibility also extends to cases of error and negligence.

The Italian authorities engaged in combatting fraud collaborate with the customs authorities of the other Member States of the Community on the basis of an agreement on mutual assistance between customs administrations, signed in Rome in 1967. This agreement will evidently have to be revised and adjusted to the enlarged Communities.

It often happens that the customs authorities at Naples, as soon as any suspicion of irregularities arises, ask for information from the customs authorities of other Member States: this collaboration has proved effective, especially with regard to false invoices.

Irregularities due to fraud come under the penal code.

¹ See Decision of 21 April 1970, Article 2, page 96.

4. *The recovery of debts*

The preceding chapter has already dealt with the combatting of fraud and the recovery of sums paid in error by the Community under the common agricultural policy. Although it has recognized that the recovery of such debts may be the subject of a Community regulation the Council has not so far agreed to a similar regulation with regard to the Communities' own resources. Since such a step seems indispensable to the proper execution of the Communities' budget, the Commission, which is responsible for implementing the budget, recently submitted a proposal for mutual assistance between the authorities of Member States in this sphere.

(a) *The Commission's original proposal*

In May 1970, the Commission, in its proposed regulation implementing the Decision on the Communities' own resources,¹ had envisaged the following article, to be included as Article 14:

Article 14

1. The Member States, acting in accordance with their national provisions laid down by law, regulations and administrative action, shall take the steps necessary to

- (a) ensure the regularity of operations entailing entitlement to recovery of the Communities' own resources.
- (b) ensure that operations attracting tax are effectively taxed and that the corresponding revenue is collected in full.
- (c) prevent and institute proceedings for irregularities.
- (d) recover sums lost as a result of irregularities or negligence.

The Member States shall notify the Commission of

measures taken in this connection and particularly of the progress of administrative and judicial proceedings.

2. Failing full recovery of the revenue from operations on which duties have been established, the financial consequences shall be borne by the Member State responsible for recovery, unless this State proves that these consequences do not result from irregularities or negligence attributable to the departments or agencies responsible for recovery.

3. The financial consequences of failing to recover the revenue from operations on which no duties have been established shall be borne by the Communities, except those resulting from irregularities or negligence attributable to the departments or agencies of the Member States.

4. The Council, acting by a qualified majority on a proposal from the Commission, shall, where necessary, lay down the general rules for applying this Article.

This Article is not to be found in the text of the Regulation as adopted by the Council.

(b) *Mutual assistance in the recovery of debts*

The proposed directive of the Commission on mutual assistance in the recovery of sums paid in error under the common agricultural policy, and of agricultural levies and customs duties has already been quoted in Chapter III, Section IV. It should be referred to insofar as it concerns levies and customs duties—resources which are paid into the budget of the Communities.

¹ Doc. No 63, 1970-1971. The proposal eventually became Regulation No 2/71, reproduced in Section II of this Chapter.

CHAPTER V

RULES OF THE AUDIT BOARD

In April 1970, the Member States decided to increase the powers of the European Parliament in two clearly defined areas: adoption of the budget and control of its implementation. As a result of its increased responsibilities Parliament has given special attention to the rules of the Audit Board, on the basis of whose work Parliament, after the Council, gives the Commission a discharge in respect of its implementation of the budget.

The procedure adopted by the Audit Board in the exercise of its functions is at present being amended by the general financial regulations.

Certain practical aspects of the Audit Board's functioning remain to be defined, aspects which Parliament has felt obliged to study with particular care since the Board became the instrument of its new powers.

The following documents are presented in this chapter:

I — Texts defining the Rules of the Audit Board

1. Article 206 of the EEC Treaty
2. The decision of 15 May 1959 relating to the Rules of the Audit Board
3. The financial regulations establishing the procedure to be adopted for presenting and auditing accounts

II — Practical procedures to be adopted by the Audit Board in the exercise of its control functions

1. Mr Gerlach's report
2. The opinion of the European Parliament

Section I — Texts laying down the Rules of the Audit Board

On 22 April 1970, the Member States concluded a treaty modifying the allocation of the budgetary powers provided for in the Treaties establishing the Common Market, Euratom and the ECSC.

The new allocation affects not only the power to discuss the draft budget, but also the right to give a discharge on the financial management and accounts of the European Communities.

1. *Article 206 of the EEC Treaty*

The old version of Articles 206 EEC, 180 ECSC, and 78 ECSC conferred on the Council the right to grant a discharge in respect of the accounts. This right is henceforth vested in Parliament as well as in the Council.

A comparative table of the old and revised texts is given below:

Old Article 206

The accounts of all revenue and expenditure shown in the budget shall be examined by an Audit Board consisting of auditors whose independence is beyond doubt, one of whom shall be chairman. The Council shall, acting unanimously, determine the number of the auditors. The auditors and the chairman of the Audit Board shall be appointed by the Council, acting unanimously, for a period of five years. Their remuneration shall be determined by the Council, acting by a qualified majority.

The purpose of the audit, which shall be based on records and, if necessary, performed on the spot, shall be to establish that all revenue has been received and all expenditure incurred in a lawful and regular manner and that the financial management has been sound. After the close of each financial year, the Audit Board shall draw up a report, which shall be adopted by a majority of its members.

The Commission shall submit annually to the Council and to the Assembly the accounts of the preceding financial year relating to the implementation of the budget, together with the report of the Audit Board. The Commission shall also forward to them a financial statement of the assets and liabilities of the Community.

The Council shall, acting by a qualified majority, give a discharge to the Commission in respect of the implementation of the budget. It shall communicate its decision to the Assembly.

Revised Article 206

Paragraphs 1-3 unchanged.

The Council and the Assembly shall give a discharge to the Commission in respect of the implementation of the budget. To this end, the report of the Audit Board shall be examined in turn by the Council, which shall act by a qualified majority, and by the Assembly. The Commission shall stand discharged only after the Council and the Assembly have acted.

2. *Decision of 15 May 1959 establishing the Rules of the Audit Board*

The Audit Board is still governed by the Council decision of 1959 determining its composition, incompatibilities, and the conditions governing the performance and termination of duties.

Article 1

The functions defined both in Article 206 of the Treaty establishing the European Economic Community and in Article 180 of the Treaty establishing the European Atomic Energy Community shall be exercised by a single Audit Board. The Board shall exercise its functions in the general interest of the Communities, shall have full autonomy and shall act on its own responsibility.

The Audit Board shall meet regularly and at least every two months.

Article 2

The Audit Board shall consist of six auditors who shall be chosen as a rule from among persons having the status of an official or servant or a legal person governed by national or international public law. Their independence must be beyond doubt and they must possess recognized qualifications and ability in the field of accountancy, economics and finance or the auditing of public accounts.

Only nationals of Member States may be members of the Audit Board.

Article 3

The auditors shall be appointed by the Councils, acting unanimously, for a period of five years.

The Council shall, acting unanimously, appoint one of the auditors to be Chairman of the Audit Board for the same period.

Article 4

The auditors shall, in the performance of their duties, neither seek nor take instructions from any Government or from any other body.

They shall refrain from any action incompatible with their duties.

Article 5

The office of auditor shall be incompatible with any other office in the service of the Communities.

When entering upon their duties the auditors shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom, and in particular their duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

Article 6

The duties of an auditor shall end on non-renewal of his appointment, on his death or on his resignation.

Where an auditor resigns, his letter of resignation shall be addressed to the Chairman of the Audit Board for transmission to the Presidents of the Councils. This latter notification shall constitute notice of vacancy.

An auditor who ceases to perform his duty before the end of his normal term shall be replaced for the remainder of that term. The Councils may, acting unanimously, decide that such a vacancy need not be filled.

Article 7

If an auditor no longer fulfils the conditions required for the performance of his duties, or if he has been guilty of serious misconduct, particularly if he has violated one of the obligations set out in Article 5, the Court of Justice may compulsorily retire him, on application by the Councils or the Audit Board. In the event of such serious misconduct, the auditor may also, subject to the same conditions, be declared to have forfeited any pension rights or other benefits in their stead.

The Court of Justice may provisionally suspend the auditor from office on application by the Councils or the Audit Board.

An auditor who has ceased to perform his duties before the end of his normal term shall be replaced for the remainder of that term. The Council may, acting unanimously, decide that such a vacancy need not be filled.

Article 8

In the performance of their duties as auditors, the auditors shall enjoy the benefit of Articles 11 to 14 and Article 17 of the Protocols on the Privileges and Immunities of the European Economic Community and of the European Atomic Energy Community.

Article 9

The Audit Board shall adopt its own rules of procedure.

Article 10

The Councils shall, on a proposal from and in agreement with the Audit Board, appoint the executive staff to be placed under the Board's authority.

Save as otherwise agreed by the Audit Board, its staff shall not engage in other employment, whether gainful or not.

Save as otherwise provided by the Councils, the rules set out in the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the Communities shall apply to such staff.

For the purpose of certain auditing duties of a special nature and of limited duration, the Audit Board may enlist the help of experts.

3. Financial regulations establishing the procedure to be adopted for presenting and auditing accounts

On 15 December 1969, the Council laid down financial regulations containing several articles on the duties of the Audit Board. Amendments to these regulations have been proposed by the Commission,¹ in the light of which the European Parliament has proposed several amendments of its own.² These amendments are shown overleaf.

A number of textual innovations have been made:

- (i) The Audit Board may, at its request, be present when the Commission carries out control measures relating to the common agricultural policy, the recovery of own resources and to any fund set up by the Community. The question arises here of whether the European Development Fund may be regarded as having been 'set up' by the Community (Article 87) since it has its origin in an agreement concluded between the Community and the AASM. The agreement provides for a specific sum to cover the full range of Community aid but the EDF was set up by an internal agreement between the Member States.
- (ii) Paragraph 1 of Article 89 has been amended by Parliament with the object of requiring the Commission to facilitate the Audit Board's examination of departments involved in the management of Community finances and in the expenditure of funds on behalf of the Communities;³
- (iii) Paragraph 4 of Article 89 authorizes the Audit Board to verify the internal control measures performed by each institution;
- (iv) The last two paragraphs of Article 89 extend the competence of the Audit Board to organizations outside the institutions;
- (v) The Audit Board may, on its own initiative or at the request of the Council or of Parliament, draw up reports on specific questions relating to closed financial years and accounts (Article 90, paragraph 3);
- (vi) Parliament has proposed an addition to Article 90 reserving itself the right to call on the Council or Commission for reports on specific problems relating to budget years that have not yet been closed;
- (vii) Article 92, paragraphs 2 and 3, stipulates that the institutions must consider measures to be taken to meet observations made in the decisions giving discharge.

¹ Doc. No 247/72.

² Doc. No 298/72.

³ In this connection see Mr Gerlach's report in Section II of this chapter.

Amendments proposed by Parliament

Article 85

The Audit Board shall enjoy complete independence in deciding on the organization of its work to perform its tasks. The Audit Board shall act and take decisions on the collegial principle.

The Audit Board and the officials in its departments shall form a single unit for administrative purposes.

The Audit Board may delegate verification tasks to its staff. Delegations of power shall be notified by the Audit Board itself or by one of its members to the authorities with which the seconded agent will be working.

Article 86

(unchanged)

Article 87

(unchanged)

Article 88

(unchanged)

Article 89

The Commission and the other Community institutions shall provide the Audit Board with every facility and give it all the information it considers necessary to accomplish its task, with particular reference to control of depart-

ments which are involved in the management of Community finances and commit expenditure for the account of the Communities. They shall in particular make available to the Audit Board all documents relating to the award of contracts and all cash and material accounts, all receipts and vouchers, as well as all relevant administrative documents, all documentation relating to revenue and expenditure, all inventories, and all establishment plans of departments which it may consider necessary for verification of the management accounts against documents or on the premises.

(Unchanged)

Article 90

(Unchanged)

All the institutions shall address their replies to the Audit Board. Institutions other than the Commission shall at the same time forward their replies to the latter. The Audit Board shall append to its annual report *an assessment of the standard of financial management.*

(Unchanged)

The European Parliament may request the Commission or the Council to submit reports or analyses concerning specific problems even where these relate to financial years for which accounts have not yet been closed.

Article 91

(Unchanged)

(deleted)

Article 92

By 30 April of the following year, the Council and the Assembly shall give a discharge to the

Article 85

Commission in respect of the implementation of the budget. If this date cannot be met, the Council or the European Parliament shall inform the Commission of the reasons why this decision has had to be postponed.

The institutions shall take all necessary measures to give effect to the observations contained in the decisions on discharge. At the request of the Council or of the European Parliament they shall report on the actions taken as a result of these observations, and in particular on the *instructions* given by them to their departments involved in implementation of the budget. These reports shall also be communicated to the Audit Board.

(Unchanged)

(b) *The opinion of Parliament on the draft financial regulations*

At its sittings of 13 and 14 February 1973, Parliament debated the report submitted by Miss Flesch (Liberal, Luxembourg) on behalf of the Committee for Finance and Budgets.¹ The debate was dominated by three main issues:

- (i) the *provisional* nature of the financial regulations in preparation which are based on the premise that the Council remains the principal budgetary authority but that other provisions must be introduced in 1975 when Parliament's budgetary powers are to be strengthened;
- (ii) the need to develop internal control;
- (iii) a difference of views on the concept of external retrospective control reflected in an amendment tabled by Mr Gerlach and Mr Aigner.

Speaking of the need for stronger *internal control* Mr Aigner said:

'The new financial rules do not take sufficient account of the fact that the collection of own resources and execution of the vast majority of the Community's tasks are not the responsibility of the Commission, but of Member States administrations on behalf of the Communities. The only provision is that the Audit Board may be present at the audits at its request. I need do no more than refer to Articles 13 and 14 of the Council Regulation No 2/71. Apart from these provisions, all the new financial rules are set out as if the collection of all revenue and the execution of all tasks was the sole responsibility of the Community's departments. And that is not so.'

'And here a reproach I have to make to the Commission—not for the first time, as you know—is that it has not organized the internal supervision to be sufficiently independent, that it has not given it the necessary latitude, and in my opinion the internal supervision must also be expanded into a Community supervisory service, together with the supervisory services of the Member States. In other words, not only co-operation in the external audit, but above all co-operation—at Member State level—in internal supervision.'

Mr Aigner and Mr Gerlach tabled an amendment to Article 90 of the draft financial regulations relating to the concept of *retrospective control*. The amendment read as follows:

'The Council and the European Parliament may request from the Audit Board reports or analyses in

the matter of specific problems and also with reference to financial years not expired.'

Mr Deniau, Member of the Commission, had this to say on the subject:

'The Commission is obviously in a rather delicate position. It is at one and the same time the guardian of the Treaties and is therefore responsible for the general balance between the institutions, and it is the main organ controlled or affected inasmuch as under Article 205 of the Treaty it is the Commission which is responsible for executing the whole budget of the Communities. Furthermore, it is obviously the budget section which more immediately concerns it which is by far the most important.

opposing each other, the various controls which may exist must be complementary in their functions and independent in their organization and operation.

In this matter, therefore, I am completely willing and determined to strengthen the controls.

The *internal control* forms part of the execution of the budget and is thus the *sole responsibility of the Commission*. The function of this control is essentially of a preventive character. It is a question of enlightening the Commission as to the legality of acts of a budgetary nature and their compliance with the principles of good financial administration so as to give a warning which may enable it to avoid any errors or abuses which might be committed. Should its financial controller refuse his endorsement—and I would say at once that here again I personally consider that the

This being the case, the work must be divided up in a completely clear way and far from rivalling or

¹ Doc. 298/72.

powers, authority and methods of investigation of our financial controller should be strengthened—it is up to the European Commission, as you know, to take the final decision and possibly overrule this refusal to endorse, for reasons which may be of general interest. In exercising this responsibility the Commission naturally remains subject to the control of the budgetary authority through the discharge procedure.

On the other hand, the supervision effected by the Audit Board is external and a posteriori. This emerges clearly from Article 206 of the Treaty: just as Article 205 made the European Commission responsible for the execution of the budget, so Article 206 states explicitly that the accounts for the total revenue and expenditure shall be examined by an Audit Board and that it shall make its report after the end of the financial year. What is involved is an assessment which may be a very broad one, of all the legal and economic aspects of the budgetary administration of the Community once it is completed. It thus goes without saying that an intervention by the Audit Board in the execution of the current budget would be contrary to the terms of Article 205, which reserves this responsibility for the European Commission.

It seems to me of vital importance to separate these two types of control, each one having a highly important mission which it must be fully able to perform, and which missions are complementary. The text submitted to you for consultation duly observes this principle. It is this which has enabled the Commission to accept the numerous and by no means negligible amendments which this draft introduces in respect of the powers of the Audit Board and the conditions governing their exercise. In this extension we are no doubt limited by the Treaties of which I have just recalled the basic provisions and by the actual status of the Audit Board, which it will be up to the budgetary authority to modify if necessary.

Within this double limit, however, the strengthening of the external control as proposed is already significant. It is this which has enabled the Commission to assent to these provisions, more especially by reason of the considerable improvement which Article 85 of

the new financial regulation gives to the working methods of the Audit Board. Henceforth the Commission has the assurance that the controls will be effected at a high level when important matters are at stake, and that the executive tasks of the control will be carried out under the authority of the Audit Board itself.

Thus most of the objections which the Commission could feel about a practice which has hitherto been somewhat faulty, against extending the powers of the Audit Board, become pointless, a fact which I personally welcome. The present text seems to me good, clear and coherent.

'I believe it is not possible, as I have already said, to mix two functions together. And, as much as I should like the Audit Board, an institution for which I have the greatest respect, to have its powers increased and its vocation to some extent transformed into a kind of European Audit Office, I believe it is not wise to mix statutorily the function of an Audit Office with that of a body or organ which is certainly less eminent, which might for instance be the general Inspectorate of Finance. These are not the same functions, nor the same tasks. The one is bound to the Executive and the execution of the budget, the other is a control effected a posteriori, on the basis of vouchers and, where necessary, on the spot once the financial year is closed. In any case this would place us in an extremely difficult position as regard the strict interpretation of the Treaty.

With regard to the complementary nature of these two controls, however, I believe that a number of important steps have already been taken and, as you know, it is now planned—and I personally am very happy about it, for I have always favoured this solution—that all cases in which the European Commission overrules a refusal by its financial controller to give his endorsement must be submitted to the Audit Board. For if the European Commission does overrule such a refusal, it must have very good reasons for doing so, and in my opinion it is most advisable that it should explain these reasons to others. I feel this point is one of the most important improvements in the text we have before us.'

Speaking on behalf of the European Democratic Union, Mr Offroy called for the institution of a 'dialogue' between the Committee for Finance and Budgets and the Audit Board:

'If, for instance, once every three months the members of the Audit Board could discuss with the members of the parliamentary Committee for Finance and Budgets the question of the execution of the budget and the control effected by this Board, such a dialogue would be of value for it would certainly make it possible to discern on what points the European Parliament

should exercise its vigilance. We could then report to the Parliament on these various points. These necessary personal contacts between the members of the Audit Board and the members of the parliamentary Committee should thus be added to the relations provided for in the draft regulation.'

But as far as the amendment was concerned, Mr Offroy shared Mr Deniau's view:

'This amendment is contrary, not only to Article 205 quoted by Mr Deniau but also to Article 206 of the Rome Treaty, which indicates that the control must

be effected by the Audit Board after the closing of each financial year. By providing for controls during the financial year, the amendment thus runs formally

counter to the provisions of the Rome Treaty, and I hope that Parliament will not adopt it. It seems to me that there is on the part of the authors of this amendment a confusion between what we call in our country the Inspectorate of Finance and the Audit Office. The Inspectorate of Finance comes under the executive authority and obviously acts during the execution of the budget, by forestalling any obstacles which might arise in applying the budgetary rules. The Audit Office, on the contrary, acts after the winding up of the budget, to check whether the rules have been applied. There must not be any confusion between these two bodies, and that is why I think it advisable, on this

point, to abide by the amendments proposed by the Committee for Finance and Budgets.

I should like to point out, moreover, as a member of the Committee for Finance and Budgets and as Rapporteur on the budget of the European Communities, that after having been discussed and rejected by the Committee the proposal of Mr Aigner and Mr Gerlach has finally not been incorporated in the report and proposals of Miss Flesch. We should therefore keep to the amendments proposed by Miss Flesch.'

Mr Gerlach (Socialist, Germany) justified his amendment by referring to common practice in national Audit Offices:

'The proposed amendment that I am moving here, has nothing at all to do with Article 205, but takes up a practice that is common in national Audit Offices.

I should like to refer you to an article written by the President of the Federal Audit Office: '15,000 million without adequate supervision: we need a European Audit Office' by Mr Schäfer, President of the Federal Audit Office. In it he shows, giving very precise and detailed evidence that we must expand the functions of the existing Audit Board into a type of European Audit Office. I quote from the law constituting the Federal Audit Office in the Federal Republic. Paragraph 88 (2) reads: On the basis of audit results, the Federal Audit Office can advise the Bundestag, the Bundesrat, the Federal Government and individual Federal Ministers. Translated into our terms, this means that the

European Audit Office, or to use current terminology the Audit Board, can advise Parliament and the Council of Ministers on the basis of audit results. My proposal says no more than this and it does not in any way affect the Commission's budgetary rights.

I find it very surprising that the Commission has changed its view of the Audit Board in this way. I am very pleased, but it has no consequences. It does not accept genuine supervision as it really should, but rejects any supervision of the efficiency of the budget management and accounting. And we, the Parliament as an authority and also the Council of Ministers, want to commission the Audit Board with reports and analyses so that it can introduce additional checks at our request, as a result of our own decisions, and not merely when the accounts are closed.'

To settle the matter Mr Bertrand (Christian Democrat, Belgium) proposed a change in the amendment:

'I should also like to request those moving the amendment to make a small alteration, that would make it possible for an analysis or report to be given regarding specific problems. This can be asked of the Commission or of the Council. The text of the amendment, however, runs: 'The Council and the European Parliament may request from the Audit Board reports or analyses in the matter of specific problems, and also with reference to financial years not expired. This is where unlawfulness starts. The Audit Board cannot, according to Article 206, prepare any reports on unexpired financial years, in view of the fact that they cannot have sight of the complete receipts and expenditure accounts. I should therefore like to ask those moving the amendment to agree to the following wording:

Commission or the Council reports or analyses in the matter of specific problems and also with reference to unexpired financial years.' Then partial satisfaction is achieved. And in this way the first step can be taken.

I should further like to propose to those moving the amendment that they bring up this problem again at a time when we are looking at the proposals regarding the extension of the budgetary powers of Parliament together with the Commission. Then will be the moment for, in fact, proceeding further than provided for under Article 206. I would have nothing against it if recourse were made to Article 235 of the Treaty in order to effect an amendment of Article 206, as a result of which the audit could be tightened and an audit office could be set up such as we have in our national parliaments.'

'The European Parliament may request from the

Following the debate the changed amendment proposed by Mr Bertrand¹ was added to Article 90 of the draft financial regulations despite opposition from Mr Gerlach.

¹ See page 121.

Section II — Practical procedures to be adopted by the Audit Board in the exercise of its control functions

During its meeting on 14 May 1971, the Committee for Finance and Budgets found that a detailed examination of the manner in which the Audit Board exercised its functions in practice was essential and instructed Mr Gerlach (Socialist, Germany) to look into the matter.

1. Mr Gerlach's analysis

In 1971 two memoranda, one from the Commission and the other from the Audit Board, both of them relating to the powers of the Audit Board and the procedures employed in exercising them, were referred to the Committee for Finance and Budgets.

In his analysis, Mr Gerlach listed the points which had given rise to divergent interpretations.

Serious divergences of interpretation have arisen on the following provisions:

- (i) the accounts of *all* revenue and expenditure shown in the budget shall be examined... (Art. 206, para. 1 of the Treaty establishing the EEC);
- (ii) the nature of the retrospective control exercised by the Audit Board;
- (iii) verification of sound financial management;
- (iv) the audit performed on the spot and the availability of documents in accordance with Article 206, para. 2 of the Treaty establishing the EEC and the aforementioned Article 8 of the financial regulations;
- (v) the delimitation of the internal and external audit functions;
- (vi) the contacts of the Audit Board with the Community institutions and in particular with the budget authorities.

(a) *The question of the 'global audit' of budget accounts, revenue and expenditure*

In accordance with Article 206, para. 1 of the Treaty establishing the EEC, 'the accounts of *all* revenue and expenditure shown in the budget shall be examined by an Audit Board...'. In the abovementioned memorandum from the Commission on the Audit Board's powers, reference is made to the Board's undertaking a 'global audit', the word 'global' being intended to mean 'carried out *en bloc*' rather than 'complete, relating to all the accounts'. The Commission thus places a highly restrictive, if not one-sided interpretation on the idea contained in the Treaty of an audit of the accounts of '*all* revenue and expenditure'.

The Audit Board considers that the expression 'global audit'—which is not found in the Treaties—is ambiguous. In its view, the use of the word 'all' simply means that no revenue or expenditure may be excluded from the audit; in no way does it imply that the audit should be restricted or carried out *en bloc*.

A 'global audit' would mean that the audit is not performed in minute detail. However, an audit cannot be effective unless that is the case and at the very least the door should be left open for such detailed examination in certain cases.

Strictly speaking, the audit *procedures* are not specified. Neither the Commission nor the Audit Board can deduce from this provision of the Treaty practical audit procedures that would indicate how the audit should be performed, since it has already been established that it relates to the accounts of all revenue and expenditure.

(b) *The problem of 'retrospective control'*

In its memorandum the Commission states that the Board performs its audit retrospectively since it cannot in any circumstances cover revenue that has not yet been collected or expenditure that has not yet been finally committed.

In this connection the Commission recalls Art. 205, para. 1 of the EEC Treaty, which provides that the Commission shall, in accordance with the provisions of the regulations issued pursuant to Art. 209, implement the budget *on its own responsibility* and within the limits of appropriations. Any intervention on the part of the Audit Board before completion of the legal acts resulting in budget revenue and expenditure would be incompatible with the provisions of the treaties.

The Audit Board states on the one hand 'that the Board acts after revenue and expenditure have been entered in the accounts. In addition to estimates of expenditure and revenue, commitments, payments, substantial claims etc., accounting also includes items which represent mandatory accounting stages in the implementation of the budget...'

The provisions relating to the presentation and auditing of the accounts lay down a fundamental principle, viz. that the Board's audit is performed *retrospectively*.

Nevertheless, it may be asked whether verification of 'sound financial management' does not in part require concomitant control measures.

(c) *Verification of 'sound financial management'*

This is a problem which it is important to resolve within the framework of the new financial regulations, despite the Commission's observation that it does not appear easy to formulate a satisfactory definition of sound financial management. It would be interesting to know what proposals the Commission has advanced in this matter, pursuant to its obligations.

The Commission considers that in pursuance of this principle, as set out in Art. 206, para. 2, of the EEC Treaty and in Art. 2 of the financial regulations of 30 July 1968 on the establishment and implementation of the budget of the European Communities, and on the responsibilities of the authorizing officers and accounting officers,¹ the powers of the Audit Board do not extend to the organization and operation of the departments of the institutions as such, since this could inhibit all freedom of action.

For its part, the Audit Board makes the following statement on this subject: 'Furthermore, it is also the Audit Board's task to establish that the financial management is sound; for this purpose the Audit Board not only requires access to the book entries, it must also be able to obtain adequate and up-to-date information on the methods and procedures governing administrative and financial management'.

The comments made by Mr von der Groeben and Mr von Boeckh on the Treaty establishing the EEC are interesting in this context. In para. 10, they remark on the subject of Art. 206: 'contrary to the provisions of the Treaty establishing the ECSC (Art. 78, para. 6, second sub-paragraph, BGBl II, 1952, p. 445), according to which the auditor of that Community simply checks that accounting operations and financial management are properly conducted, the Audit Board must not only establish that revenue and expenditure are legal and in order but also satisfy itself as to the soundness of the financial management. Apart from the legal aspect, therefore, the audit is also concerned with the *economic aspect* of financial management. In order to be able to satisfy itself as to the soundness of the financial management, the Audit Board must also check that the budget measures were appropriate. The

term financial management should doubtless be taken to mean not only the actions of the administrative departments of the Community with regard to the budget, but also the budgetary implications of the staffing and material resources of the administrative departments themselves.

This is in clear contradiction with the Commission's view on this question.

The problem is to delimit the activities of the Audit Board.

There are three aspects to the limitations on the kind of public financial audit under consideration here:

- (a) limits as to the extent and frequency of the financial audit;
- (b) limits in time;
- (c) limits with regard to the institutions (or persons) subject to audit.

The problem of sound financial management has a bearing on all three points. For instance, an analysis of the establishment plan is useful in verifying that financial management has been sound and this is but one example with reference to staff utilization and mobility. Here again, the Commission appears to hold a different view.

However, the principal of sound financial management must also be viewed from the standpoint of business management (cost effectiveness). This raises problems of organization and the achievement of maximum efficiency with the same or even less manpower and equipment.

Concomitant control, involving scrutiny of the procedures employed and, for example, an analysis of how internal financial control operates (new provisions designed to modernize the public audit system—which could also be applied in the Member States—might prove necessary here) constitutes a requirement to which consideration should be given with an eye to future revisions of the Treaty.

Views may also differ with regard to the limitation under point (a) i.e. *the frequency of financial control*. On the one hand, the institution subject to the audit must have freedom to organize its assigned administrative tasks, in other words, there must be no interference with this freedom or with financial management. On the other hand, the activities of the institution subject to the audit must be readily intelligible.

It seems desirable that the concept of 'sound financial management' should not be interpreted in an excessively restrictive manner. The power of discharge and control of the management of expenditure, including the administrative expenditure of Parliament, call for more than mere investigation of the accountancy aspects of financial management.

A sufficiently broad interpretation of the concept of

¹ See *OJ* No L 199, 10 August 1968.

sound financial management would also be in closer keeping with the Commission's own interests.

In economics, the concept of sound financial management implies an effort to achieve a given objective with the least possible resources, or, conversely, to obtain the best possible result with available resources. *It is generally accepted that an external audit does not comprise an evaluation of the specified objective, but consists only in establishing to what extent the resources employed to achieve that objective are consistent with sound management.* However, political control of the implementation of the budget must establish whether due regard has been given to the overall objectives of the budget and their relationship with one another.

A close definition of the concept of sound management is thus difficult, if only because it is often impossible to make an accurate arithmetical comparison between the resources employed and the result obtained; this is frequently the case with administrative activities. Owing to the special nature of the activities of the Community institutions, cost effectiveness analyses are difficult to make. Plainly, the concept of sound financial management cannot provide self-evident premises for decision-making from which exact inferences can be drawn. *For this reason the problem of sound financial management must be considered afresh for certain groups of cases, or even for each individual case.* For a proper assessment of sound financial management, none of the evaluation criteria must be left out of account.

The members of the Audit Board in their capacity as 'judges' must therefore exercise considerable caution in this area, but should, at the same time, take a broader view of their duties under the Treaty establishing the EEC.

The problems discussed recently by the Committee for Finance and Budgets in connection with the management of public funds in the Communities have shown that sound financial management requires unremitting attention.

(d) *Audits performed on the spot and availability of records*

In accordance with Article 206, paragraph 2, of the Treaty establishing the EEC, the audit performed by the Audit Board shall be based on records and, *if necessary*, on the spot.

The Commission takes the view that the audit should be based on records and that the Audit Board's fact-finding powers ought *essentially to take the form of requests in writing, on-the-spot audits being carried out only in exceptional circumstances.*

The Audit Board contends that 'the difficulties which have arisen stem on the contrary from a refusal to allow records held by the management departments

to be consulted (for example, the refusal by the EAGGF departments to allow inspection of files relating to 'guidance' projects financed from 1964 appropriations but still not closed at the end of 1970).'

For the purpose of administrative simplification, it will often be preferable to perform audits on the spot rather than in the form of written requests. The written procedure can involve too many formalities. Examination of files and direct access to the departments concerned are a commonplace feature of comparable activities exercised by national audit bodies.

Apart from establishing whether they should constitute the exception—which can certainly not be inferred from the text of the Treaty—it may also be asked who is to decide whether on-the-spot audits are necessary or not. *This decision should lie with the audit body rather than the institution concerned.*

The Treaty provision stipulating that the audit shall be based on records and, *if necessary*, on the spot, certainly suggests that on-the-spot audits should be restricted, but not that they should be exceptional.

In particularly important and delicate matters a member of the Audit Board should be present at such audits and the only assignment given to officials should be to carry out preliminary research.¹

(e) *Delimitation of and co-operation between internal and external control*

In the Commission's view, co-operation between internal financial control by the institutions and the Board's external audit can be disputed on legal grounds. It considers that the *two are totally separate* as regards both procedures and the nature of the operations involved. Consequently, referral by the internal financial control department to the Audit Board—as proposed by the Committee for Finance and Budgets should the financial Controller refuse his endorsement—would exceed the Board's powers. Since the Audit Board's control is retrospective, and internal control carried out concomitantly, the two functions should be clearly distinguished.

The Audit Board has pointed out that '*the Audit Board's lack of information on internal control gives cause for concern with regard to the financial management of the Communities. It restricts the effectiveness of the audits, leads to gaps and duplication of effort and prevents the Audit Board from assessing the effectiveness of internal control.*'

While direct relations between internal control and external audit are desirable to ensure a satisfactory exchange of information in this field, there must be no sharing of responsibilities as a result.

¹ This will be settled in the new Article 85 of the general financial regulations, see page 121.

To avoid duplication of work, it seems reasonable that the Audit Board should be informed of any gaps revealed by internal control. This applies also to the rules governing internal control.

The Audit Board's contention that internal control and external audit pursue the same aim cannot be accepted without reservation. The fact is that internal control is itself subject to the much more searching external audit. It is concerned with the implementation of the budget and for the time being at any rate, serves what is more or less a 'security' purpose.

Close collaboration between the two is necessary and desirable, and is in fact the rule, if not the guiding principle behind the concept of auditing, in several Member States.

In the final analysis, the Audit Board must be in a position at all times to evaluate the effectiveness of internal control and must therefore be informed without delay of all relevant provisions.

(f) *Contacts between the Audit Board and Community bodies, in particular the budget authorities*

The Commission infers from Article 206 para. 3 of the Treaty establishing the EEC which stipulates that 'the Commission shall submit annually to the Council and to the Assembly the accounts of the preceding financial year relating to the implementation of the budget, together with the report of the Audit Board', that 'it was not the intention of the treaties to establish under this system direct relations between the Audit Board and the institutions in whom the power of decision in budgetary matters is vested'. It goes on to stress that: 'a direct contact is established only between the Audit Board and the Commission on the one hand, and

between the latter and the institutions authorized by the treaties to give it a discharge in respect of the implementation of the budget, on the other'.

The Audit Board strongly disputes this view: 'there is nothing in the treaties which restricts either directly or indirectly, direct contacts between the Audit Board and the various institutions of the Communities. It would at the very least be surprising if, under the discharge procedure, for example, the budget authority were to receive explanations direct from the institution subject to the audit, but could not from the control body.

On the contrary, direct contacts with the budgetary authorities are basic to the role of the external audit body, one of whose essential tasks is to provide these authorities with valid information to the fullest necessary extent'.

In the exercise of its supervisory function, Parliament, by its very structure, is largely dependent on the Audit Board, and this makes direct relations essential. These should even go so far as to include the possibility for the Audit Board to carry out special investigations in specific cases, at the request of Parliament. Conversely, the Audit Board ought to be entitled to pass information to the budgetary authorities independently of the annual report, and to establish the required contacts should anomalies be brought to its notice.¹

In the Member States such relations between the Control bodies (audit offices) and the government and Parliament are regarded as normal and useful.

The Commission's position on this matter is legally untenable and is not supported by present practice. It represents a retrograde step in relation to the present situation, and would probably not be in the interests of the Commission itself.'

2. The opinion of the Committee for Finance and Budgets

On 23 February 1973, the Committee for Finance and Budgets discussed and adopted unanimously a motion for a resolution submitted by Mr Gerlach. The motion was to be debated at the March part-session of the Parliament but was deferred to a later date. The motion reads as follows²:

The European Parliament,

- (i) having regard to its resolution of 10 June 1971³, and especially point 16 thereof to the effect that the exercise by the Audit Board of its powers should be more clearly defined in conjunction with all the institutions and bodies concerned so

that the responsibility of each Community institution becomes apparent in the course of auditing and budgetary management,

- (ii) having regard to the statute laid down by the Council in 1959 for the Communities' Audit Board,⁴

¹ When the general financial Regulations were debated in February 1973, an amendment to this effect was rejected by Parliament and a new paragraph added at the end of Article 90 - See page 186.

² Doc. 321/72.

³ OJ No C 66, 1 July 1971, p. 43.

⁴ OJ No 46, 17 August 1959.

- (iii) having regard to the views of the chairmen of the national audit offices, as put to the Committee for Finance and Budgets on 14 and 15 September 1972;
- (iv) having regard to the new proposals concerning the European Communities' budgetary arrangements with regard to the Audit Board (especially Articles 85 to 92, Doc. 247/72),
- (v) having regard to the powers conferred upon it by Article 206 of the EEC Treaty,
- (vi) having regard to the report of the Committee for Finance and Budgets (Doc. 321/72),

A. *General principles*

1. Considers that if it is to carry out responsibly the obligation imposed on it by Article 206 of the EEC Treaty to give a discharge in respect of the implementation of the budget, the Audit Board, as the external audit body of the Communities, must be given the necessary powers not only in budgetary law but also in practice;
2. Considers that the importance of the Community budget and the mass and complexity of budget operations, including those within the Community Fund, call for improved practical arrangements for the performance by the Audit Board of its duties;
3. Calls for the statute laid down by the Council in 1959 for the Audit Board to be revised in accordance with the progress already achieved in the European Communities' budgetary arrangements and with regard to the Community's financial autonomy based on its own resources;
4. Calls for revision of the Treaty provisions so that the Audit Board is made into a European Audit Office by analogy with national audit offices;
5. Therefore agrees with the Commission that the new budgetary arrangements, in so far as they affect the Audit Board, should be only provisional;

B. *Practical auditing arrangements*

6. Agrees with the Commission of the Communities that the work of the Audit Board consists basically in retroactive supervision of the financial and budgetary management of the Communities but—having regard also to point 3 of this resolution—calls for exceptions to this principle, since Parliament's supervisory function must be constantly safeguarded, especially in the budgetary field;

7. Demands therefore:

- (i) that the work of the Audit Board should not be confined to drawing up its annual report;
 - (ii) that Council and Parliament, as the budgetary authorities, may require the Audit Board to investigate given situations even before the accounts relating to the budget have been closed and while the budget is being implemented;
 - (iii) that the Audit Board may inform Council and Parliament, as the budgetary authorities, of serious cases even before the completion of the financial year;
8. Considers that special provisions must be issued to enable the Audit Board to establish the soundness of financial management, and that for this purpose it must be given wide-ranging powers to enable it, as an external body, to acquire a deep insight into the organization and administration of the Community organs and institutions. In many cases it will not be sufficient for the Audit Board, or any staff to whom it may delegate its powers, to depend solely on records: 'Financial management must include not only those activities of the Community's administrative departments which directly affect the budget, but also all the financial effects of the expansion—both in regard to personnel and in a material sense—of the departments themselves';¹
 9. Calls attention, however, to the generally accepted view that it is not part of the external auditing function to comment on the purpose for which funds are allocated, but solely to establish whether the funds used for that purpose meet the requirements of sound management;
 10. Emphasizes that it is the Audit Board's duty to satisfy itself as to the efficiency of internal financial audit, and that this calls for a special liaison between external and internal auditing which should not, however, obliterate the line of demarcation between the two;
 11. Firmly opposes any delay in producing correspondence or other documents likely to throw light on the accounts;
 12. Considers that the audits performed by the Audit Board on the spot, as provided for in the Treaties, are by no means of an exceptional character requiring greater formalities, but an essential part of any public accounting procedure;
 13. Welcomes the provision in Article 89 of the new financial regulations that 'the grant of subsidies to bodies outside the Community shall be subject to acceptance by the recipient of examination by the Audit Board of use made of such grants';
 14. Instructs its President to forward this resolution and the committee's report to the Commission and Council of the European Communities.

¹ Commentary on Article 206 of the EEC Treaty/Von der Groeben; Boeckh.

CHAPTER VI

EXPERIENCE OF EXTERNAL AUDITING IN THE MEMBER STATES

The European Parliament has intimated on several occasions that it would welcome the establishment of a European Audit Office. It would therefore seem useful to conclude this document with a report on the various audit offices or similar bodies in the various countries, together with extracts from the proceedings of a meeting organized by the Committee for Finance and Budgets with the directors of the audit offices or their representatives.

- I — Brief description of the bodies responsible for external auditing in the Member States
- II — The views of the audit offices in the Member States on:
 - 1. Control of revenue
 - 2. Control of expenditure
 - 3. Cooperation between the audit offices and the national parliaments

Section I — Brief description of the bodies responsible for external auditing in the Member States

The bodies responsible for external auditing of the budget in the Member States vary both as regards their juridical constitution and their authority. The following brief account of each of these national bodies is not a comparative study of the legislation in the nine countries, but simply a description of their main features. There is a slightly more detailed analysis of the audit offices in three Member States: the Federal Republic of Germany, France and the United Kingdom.

1. FEDERAL REPUBLIC OF GERMANY

In its present form the 'Bundesrechnungshof' is the outcome of a long and continuous development starting with the institution of the Prussian 'Oberrechnungskammer' in 1714, which after 1824 became an independent auxiliary body responsible only to the Crown.

After Hardenberg's constitutional and administrative reforms its independence was undisputed and in 1871 it became the 'Rechnungshof des Deutschen Reiches'; reorganized after the First World War, it faded into relative insignificance under the Third Reich. Paradoxically enough, it was at this time that a debate arose as to whether the 'Rechnungshof' should not become the fourth (supervisory) power in the state.

On the basis of the 'Reichshaushaltsordnung' (Imperial Budget Order) a new 'Gesetz über Errichtung und Aufgaben des *Bundesrechnungshofs*' (Act relating to the establishment and responsibilities of the Bundesrechnungshof)¹ was passed on 27 November 1950.

The constitutional basis of the activities of the 'Bundesrechnungshof' as the external audit body of the Federal Republic is called today, is to be found in Article 114 of the Basic Law. Under Article 114 (2) its members enjoy judicial independence and its powers are regulated by federal legislation. The regulation of these powers was revised within the framework of the 'Bundeshaushaltsordnung' (Federal Budget Order)² (especially Arts. 88-104 and Art. 114) and in the 'Haushaltsgrundsätze-gesetz' (Act relating to the basic principles of the budget—Arts. 42-47) as part of the German budget reform.

Finally it should be noted that as the country has a federal structure, the 'Land' audit offices are responsible for controlling local finance. They may also act on behalf of the Federal Government by administrative delegation.

The significant fact is that the historical development of the various audit offices has increasingly led to a shift in emphasis from a purely book-keeping check of budget accounts and economy to a control of the expediency of expenditure and current auditing. Today the Bundesrechnungshof supervises the whole budgetary and economic management of all Federal organs and authorities. There is also an increasingly large field in which the Bundesrechnungshof provides an advisory service to the government and parliament, putting its experience at their service and establishing for itself a place in the area of conflicting interests surrounding the Executive and Legislature.

I — ORGANIZATION OF THE BUNDESRECHNUNGSHOF

1. *Members of the Bundesrechnungshof*

Under Section 11 of the Act regulating the establishment and responsibilities of the Bundesrechnungshof its members are the President, the Vice-President and the Directors, together with a number of specially appointed 'Ministerialräte' (Ministerial Advisors). They enjoy juridical independence and as far as their legal status is concerned, particularly as regards reassignment, removal from office and disciplinary procedure, they are subject to the special regulations applying to judges of the Supreme Federal Court.

The members are appointed by the President of the Federal Republic on the sole recommendation of the Federal Minister of Finance, the remaining officials being appointed by the President of the Bundesrechnungshof.

At the present time the Bundesrechnungshof has 49 members.

¹ *Bundesgesetzblatt* p. 765.

² The date of both is 19 August 1969 (*Bundesgesetzblatt* I, pages 1273 and 1284 respectively).

The President and Vice-President, as well as the directors and ministerial advisers must be at least 35 years of age. As a rule such officials will be qualified judges or senior administrative officials.

In order to be appointed members, and thus attain juridical independence, ministerial advisers must be heads of an audit department.

2. *Organization of the work of the Bundesrechnungshof*

The President directs and supervises the entire work of the Rechnungshof; he is responsible for the organization of the administration, for the assignment of duties and for representing the Rechnungshof in its relations with outside bodies.

At the same time he is the Chairman of the Board of the 'Deutsche Revisions- und Treuhandgesellschaft mbH' (German Auditing and Trust Company) and federal inspector of administrative economy, a post which is rapidly gaining in importance within the framework of evaluation activities.

The President is assisted by a presidential department with a statutory organization. This is significant in as far as the principle of collegiality is made subservient to the principle of responsible management. The presidential department deals with all matters which do not fall within the scope of the auditing activity of the Bundesrechnungshof as such.

The federal structure of the Republic is reflected in the 'Vereinigter Senat', consisting of members of the Bundesrechnungshof and the supreme auditing authority in each of the Länder.

The Bundesrechnungshof itself is organized in divisions, each responsible for a different area of auditing. A division consists of five members. The 'Großer Senat' is the highest decision-making authority in the Bundesrechnungshof. It not only lays down the rules of procedure but also meets when matters arise which touch on the competence of more than one division.

Decisions in the 'Großer Senat' and in the other divisions are by majority voting, abstentions not being allowed. The chairman has a casting vote; the chairman of each division is the President, who may be represented by the Vice-President.

II — RESPONSIBILITIES OF THE BUNDESRECHNUNGSHOF

The responsibilities of the Bundesrechnungshof are laid down in the 'Gesetz über Errichtung und Aufgaben des Bundesrechnungshofs' (Act relating to the establishment and tasks of the Bundesrechnungshof), the 'Bundshaushaltsordnung' (Federal Budget Order) and the 'Haushaltsgrundsatzgesetz' (Act relating to the basic principles of the budget).

Under these acts the Bundesrechnungshof is responsible for auditing the entire budgetary and economic management of the Federal Republic including state-operated funds and corporations.

Parallel with the traditional checking of accounts to ensure that budget management is in line with the basic principles of good order and appropriateness, there is now also what is known

as a running audit, which is carried out by preliminary audit branches working within the major federal departments on the directions of the Rechnungshof.

In accordance with Article 90 of the 'Bundeshaushaltsordnung' the purpose of this audit is to ascertain compliance with the regulations and basic principles applicable to budgetary and economic activities, and especially whether

- (1) the Budget Act and the budget estimates are being properly implemented,
- (2) revenue and expenditure are justified and supported by documentary evidence and budget accounts and those of special funds are properly established,
- (3) due and proper economy is observed,
- (4) the task could be carried out with less staff or material expenditure, or in another way, more effectively.

The Rechnungshof also examines measures which may have financial implications.

A further responsibility of the Bundesrechnungshof is to advise, on the basis of auditing experience, the Bundestag, the Bundesrat, the Federal Government and the individual federal ministers. 'In as far as the Bundesrechnungshof advises the Bundestag or the Bundesrat, it shall at the same time inform the Federal Government'. (Article 88, Bundeshaushaltsordnung).

The advice may be given at the initiative of the Bundesrechnungshof or at the request of the body advised.

As the financial activities of the Federal Republic are no longer completely covered by the budget estimates and the budget accounts, the Bundesrechnungshof also has to audit the entrepreneurial activities of the Federal Republic, bearing commercial principles in mind.

Finally, one of the most important tasks of the Rechnungshof is to sum up the conclusions of its audits in an annual report for the Bundestag and the Bundesrat; this report is also forwarded to the Federal Government and forms the basis for the discharge which the latter is given.

The specific provisions of the Bundeshaushaltsordnung Article 97 (2) are:

'The comments shall state':

- (1) Whether the figures in the budget accounts and the statement of special funds tally with the books and whether the audited revenues and expenditure are properly documented,
- (2) In what significant cases the regulations and basic principles of budgetary and financial management have not been observed,
- (3) What substantive complaints have arisen from the audit of corporations with their own legal personality,
- (4) What measures are recommended for the future.

In accordance with Article 97 (3) of the Bundeshaushaltsordnung, the comments can also refer to future or previous budget years.

The Rechnungshof also audits the budgetary and financial activities of legal entities under private law if they are in receipt of statutory federal subsidies, or are administered by the State or if audit has been agreed upon with the Bundesrechnungshof.

III — CONTROL PROCEDURES APPLIED BY THE BUNDESRECHNUNGSHOF

1. *Auditing by preliminary audit branches*

Preliminary auditing covers not only revenues, expenditure, commitments to expenditure, assets and debts but also extends to activities for which formal accounts have not yet been established. Article 100 of the Bundeshaushaltsordnung expressly mentions 'measures' which may have financial implications. The preliminary auditing branches are directly responsible to the director of the authority in question; the heads of the preliminary audit branches are, however, appointed and dismissed on consultation with the Bundesrechnungshof and must comply with the professional instructions of the latter.

By this process expenditure can be audited more speedily and closer to the actual date of disbursement.

2. *Scope of audits*

The Rechnungshof can limit the audit as it sees fit and leave accounts unaudited, but this does not mean that its audits are limited to 'accounts'. In this way, it is easier to submit audit results in good time to the parliamentary bodies responsible for issuing a discharge.

3. *Timing and nature of audit, obligation to provide information and the consequences of the results of the audit*

Under Article 94 of the Bundeshaushaltsordnung the timing and nature of the audit is determined by the Rechnungshof which may have the necessary on-the-spot investigations made by its agents. It may also call on the assistance of experts.

'In agreement with the Federal Minister responsible, the Bundesrechnungshof may also set up audit offices within the federal administration.' (Bundeshaushaltsordnung Article 94 (3))

Any required documents must be forwarded or presented to authorized officials on request within a specified period.

Another important provision is that the departments concerned must comment on the results of the audit within a period laid down by the Rechnungshof.

Audit results which raise basic issues or matters of substantial financial significance are communicated to the Minister of Finance.

Results which have a significant bearing on the discharge given to the Government are incorporated in the annual report.

4. Payment of compensation and matters of particular importance

Claims for compensation are referred immediately by the Bundesrechnungshof to the responsible authorities.

Article 99 of the Bundeshaushaltsordnung contains a provision which has considerably improved Parliament's supervisory powers: 'On matters of particular importance the Bundesrechnungshof may inform the Bundestag, the Bundesrat and the Federal Government at any time'.

5. Parliamentary discharge procedure and the position of the Bundesrechnungshof

The provisions of Article 114 of the Basic Law and Article 114 of the Bundeshaushaltsordnung make it clear that parliamentary control is not confined to a decision for or against discharge of the Federal Government in respect of the accounts but rather should help to redress existing and prevent future misappropriations of public funds.

The conclusions suggested by audits must be reflected in positive measures resulting from the interaction of Rechnungshof and Parliament.

The attendance of a representative from the Bundesrechnungshof at meetings of the Bundestag Rechnungsprüfungsausschusses (audit committee) is a practical illustration of this interaction.

The provisions of Article 114 of the Bundeshaushaltsordnung are of such great importance that they are quoted below in full:

'(1) The Federal Minister of Finance shall in the course of the next financial year render account to the Bundestag and the Bundesrat of all revenue and expenditure, and of assets and liabilities, with a view to the discharge of the Federal Government (Article 114 (1) of the Basic Law). The Bundesrechnungshof shall report directly to the Bundestag, the Bundesrat and the Federal Government.

(2) Having regard to the opinion of the Bundesrat, the Bundestag shall establish the essential facts and decide on measures to be introduced.

(3) Individual matters may be referred back to the Bundesrechnungshof for further classification.

(4) The Bundestag shall specify a date by which the Federal Government shall report to the Bundestag and the Bundesrat on the measures introduced. If measures do not achieve their intended purpose, both the Bundestag and Bundesrat may reconsider the matter.

(5) Either the Bundestag or the Bundesrat may expressly disapprove of certain items.'

The above provisions and, not least, the publication of the reports of the Rechnungshof ensure that the comments appended to the audit made by the Bundesrechnungshof are not merely intellectual exercises but contribute to continual improvement in the use of public funds. The ideal of careful management that inspired the Prussian Oberrechnungshof mentioned earlier has thus evolved into a modern system of control of public finance by an audit office.

IV — THE FEDERAL AUDIT OFFICE (BUNDESRECHNUNGSHOF) AND THE PROVINCIAL AUDIT OFFICES (LANDESRECHNUNGSHÖFE)

Under Article 109 of the Basic Law the Federation and 'Länder' have separate budgets which they administer independently of each other.

As part of the 1969 budget reform, Article 109 (3) of the Basic Law was redrafted to allow the introduction of the necessary legislative powers to make basic budget legislation applicable equally to the Federation and the 'Länder', thus ensuring uniform budgetary administration.

From the point of view of financial management, however, the responsibilities of the Federation and the 'Länder' cannot be as clearly demarcated as provided for in the constitution and this does not simply apply to cases of 'joint expenditure' where in any event the principle of separation is infringed. The result is that there are numerous areas of overlap in the submission of accounts and auditing by the federal and provincial Audit Offices. Article 45 of the Basic Budget Law makes due allowance for this fact:

'If more than one Audit Office is responsible, the audit shall be carried out jointly. Inasmuch as the constitution does not require the audit to be performed by a specified Audit Office, responsibilities in this field may be delegated by agreement between the Audit Offices.'

A distinction should be made between cases where the Federal Audit Office and one of the provincial Audit Offices are responsible for a joint audit and those in which auditing responsibilities are delegated by the Federal Audit Office to a provincial Audit Office—or vice versa—under Article 93 of the Federal Budget Order. Under Article 45 of the Basic Budget Law, each Audit Office acts as of right in the case of overlapping responsibilities whereas in the case of Article 93 it acts by delegation.

Article 43 of the Basic Budget Law is also important in this connection. It stipulates that, without prejudice to more extensive provisions contained in provincial legislation, the Audit Offices may investigate departments which do not come under Federal or provincial administration if:

- (1) they are responsible for sections of the budget or receive compensatory payments from the Federal Government or the 'Länder';
- (2) they administer federal or provincial funds or assets;
- (3) they receive payments from the Federal Government or the 'Länder'.

If the departments in question transfer funds to third parties, the latter may also be audited by the Audit Offices.

2. FRANCE

The French 'Cour des Comptes' is a jurisdictional organ, independent of both government and parliament, which was set up by the Law of 26 September 1807. Frequent changes have since been made in its organization powers and operating procedures. Its present statutes were codified by the Law of 22 June 1967, supplemented by the Decree of 20 September 1968.

Originally the role of the 'Cour des Comptes' was solely to ensure that public accounts were properly kept. However, since 1936 its responsibilities have gradually been extended to the administrative control of sound and orderly management on the part of public authorities.

I — ORGANIZATION

As a jurisdictional body the 'Cour des Comptes' is broadly organized on the lines of the other large French jurisdictional bodies such as the Supreme Court of Appeal and the Council of State.

1. *Membership*

The 'Cour des Comptes' is composed of civil servants with the rank of magistrates appointed for life. It consists of approximately 200 magistrates incorporated in the following hierarchical system:

- the first president,
- divisional presidents,
- conseillers-maîtres (senior counsellors),
- conseillers-référendaires (referendaries first and second class),
- auditors (first and second class).

The 'Cour' also has an office of public prosecutions headed by a procurator general, who is assisted by advocates-general. There is a general secretariat for internal administration.

The members of the 'Cour' are appointed by decree issued by the President of the Republic. The first president, divisional presidents and senior counsellors are appointed by a decree issued by the Council of Ministers.

Most of the auditors are recruited from the graduates of the 'Ecole Nationale d'Administration', and, following promotion, subsequently make up the majority of the counsellors. However about 30 per cent of the counsellors are recruited from among outside civil servants, mainly from the staff of the Ministry of Finance.

2. *Organization*

The 'Cour' is divided into five divisions, each subdivided into sections. Each division has a president and its complement of senior counsellors.

In theory the first four divisions are able to deal with matters of any kind, but in practice each has its traditional responsibility for certain categories of accounts.

The fifth division, called the 'social division' audits the accounts of the Ministry of Social Affairs, social bodies and the social security system.

Magistrates from the 'Cour des Comptes' (especially auditors and conseillers-référendaires) are often seconded to other government authorities or semi-public bodies.

II — POWERS

The 'Cour des Comptes' is responsible for auditing public expenditure (a retrospective control).

This audit takes on two distinct forms: jurisdictional control of the accounts of public accountants, and administrative control of the management of public funds.

1. *Jurisdictional competence of the 'Cour des Comptes'*

The 'Cour' audits the accounts of the principal public accountants on an annual basis. It examines and assesses these accounts for conformity with the budget, but is not competent to judge the liability of the accountants this being the jurisdiction of the Minister of Finance.

The jurisdictional competence of the 'Cour' extends to all public accounts presented in the form of general accounts including those of local authorities. It has no control over the budgets of the parliamentary assemblies or expenditure paid out of special funds.

The jurisdictional competence of the 'Cour' is a matter of public law and it has an automatic right of access to all public accounts. It enjoys extensive powers of investigation and enquiry (submission of documents, interrogation of officials, etc.).

Its decisions have the force of 'res judicata' and are hence self-executing. However appeals may be made through internal channels (to the divisions meeting jointly) or to a higher court i.e., the Council of State.

2. *Administrative competence*

As stated in Article 47 of the 1958 Constitution, 'the 'Cour des Comptes' shall assist Parliament and the government in the supervision of the implementation of finance acts'.

Within this context the 'Cour' is in fact responsible for the verification of the sound and proper management of all bodies subject to public accounting regulations: the State, local authorities and public administrative establishments.

This supervision extends to bodies which are not subject to public accounting regulations but receive subsidies from public money and also to all social security institutions.

The administrative supervision carried out by the 'Cour des Comptes' is not in any way jurisdictional. Its competence is limited to the reporting to the government, parliament and the public of irregularities or cases of inefficiency observed in the management of public bodies.

III — HOW THE 'COUR DES COMPTES' WORKS

The 'Cour' works differently according to whether it is exercising jurisdictional or administrative powers.

1. *Jurisdictional control*

Public accounts are examined by a 'conseiller-référendaire' who checks them to see that they are in order. His work is reviewed by a 'conseiller-maître' and then submitted to the competent division. If the accounts are found to be in order the division accepts the accountant's figures by issuing a 'discharge order'.

If the division discovers irregularities which the accountant is unable to explain, the 'Cour' declares him to be in 'debit'. He then has to pay the amount of the debit, otherwise he is liable to compulsory distraint. The Minister of Finance may, however, discharge the accountant if he considers that the irregularity is due to 'force majeure'. He may also, for reasons of expediency, grant the accountant remission of all or part of the debit.

2. *Administrative control*

The administrative control carried out by the 'Cour' is designed to facilitate the examination of public accounts. It may take one of several forms.

(a) *Representations to the Parliamentary assemblies*—there are two ways in which this is done — the 'Cour' addresses a report to Parliament on each draft budgetary law. The report is accompanied by a statement to the effect that the individual accounts of the accountants tally with the general accounts of the Ministries and the Treasury drawn up by the Ministry of Finance; — the first president of the 'Cour' may inform parliamentary committees of findings it has made in examining public accounts. The 'Cour' may also carry out specific enquiries at the request of the parliamentary financial committees.

(b) *Representations to Ministers and officials*: if the 'Cour' discovers serious irregularities or malpractices in the financial operations of a ministerial department, the first president informs the Minister in a special official letter (known as a 'référé').

If a less serious error is ascertained the office of public prosecutions of the 'Cour' addresses an internal memorandum to the official responsible.

(c) *The annual public report of the 'Cour'*: Every year the 'Cour' addresses a general report on all the accounts which it has checked to the President of the Republic, and this report is also laid before the parliamentary assemblies. It contains an assessment of the soundness and quality of administrative management and records the principal errors or abuses ascertained.

The report is published in the Official Gazette and widely commented on in the press.

N.B. The 'Cour des Comptes' has functional links with four public bodies which, although they have a separate legal constitution, are in fact presided over by the first president of the 'Cour'

or by one of his divisional presidents; three of them also number among their members 'conseillers-maîtres' of the 'Cour'. The bodies referred to and their activities are as follows:

- (i) financial control: *Commission de vérification des comptes des entreprises publiques* (public enterprises audit committee) created by Law of 6 January 1948;
- (ii) jurisdictional control: *Cour de discipline budgétaire et financière* (disciplinary tribunal for budgetary and financial matters) created by the Law of 25 September 1948;
- (iii) advice on management: *Comité central d'enquêtes sur le coût et le rendement des services publics* (central committee of enquiry into the costs and effectiveness of public services) created by the decree of 9 August 1946;
- (iv) fiscal advice: *Conseil des impôts* (tax board) created by the decree of 22 January 1971.

3. UNITED KINGDOM

'The Comptroller-General of the Receipt and Issue of Her Majesty's Exchequer and the Auditor-General of the Public Accounts' is an independent public officer responsible to the House of Commons. His position and duties are mainly determined by the Exchequer and Audit Departments Acts of 28 June 1866 and 19 August 1921.

The Comptroller and Auditor General heads the Exchequer and Audit Department whose main functions are to control receipts and issues of public money, and to audit departmental accounts. Most of the Comptroller and Auditor General's activity is in fact devoted to the audit of public accounts whereas his control over Treasury payments has become a constitutional formality. The reports made by the Comptroller and Auditor General are annually considered by a select committee of the House of Commons called the Public Accounts Committee.

I — ORGANIZATION OF THE EXCHEQUER AND AUDIT DEPARTMENT

1. *The Comptroller and Auditor General*

He is appointed by the Crown on the Prime Minister's advice. He holds his office during good behaviour and is removable only in pursuance of an address from both Houses of Parliament. He is frequently an ex-Treasury official who will end his career in this post. Free from responsibility to any Minister, he is an officer of Parliament, primarily responsible to the House of Commons and the servant of that House. To emphasize his independent position, his salary is charged to the 'Consolidated Fund' by an act which does not require annual renewal. His status is somewhat analogous to that of the Parliamentary Commissioner for Administration (the British 'Ombudsman') and to that of Supreme Court Judges.

The Comptroller and Auditor General has wide discretionary powers and, though it is his job to aid the House, the responsibility for his actions is his alone and the annual reports he writes are mainly his personal comments.

Finally, it should be noted that although the Comptroller and Auditor General heads the Exchequer and Audit Department which is composed of civil servants, he is not one of them.

2. The Exchequer and Audit Department

This department consists of some 500 auditors of different ranks. The hierarchy within the Department is as follows:

- the Secretary,
- the Deputy Secretary,
- the Directors of Audit,
- the Deputy Directors,
- the Senior Auditors,
- the Auditors and Assistant Auditors.

Auditors are recruited in the main from school-leavers and are given internal intensive courses of training for three years. They do not necessarily possess professional accountancy qualifications.

The Department is made up of 9 divisions, each controlled by a director of audit. One is a headquarters division while the other 8 conduct the audit and, for this purpose, government departments are divided between them. The great majority of auditors are housed and work in the account branches of the departments whose accounts they audit.

II — RESPONSIBILITIES OF THE COMPTROLLER AND AUDITOR GENERAL

Beyond his formal control over public money, the Comptroller and Auditor General is mainly responsible for auditing a comprehensive series of public accounts.

1. Control over public money

The Comptroller General controls receipts and issues of public money. He alone can authorize the Bank of England to give credit to the Treasury for payments out of the 'Consolidated Fund'—which is the account at the Bank of England through which all the public revenue passes. He will only give this authority when satisfied that the requirements of the Treasury have been sanctioned by Parliament. In practice however this control has become a mere formality and requires only a very small part of the staff of the Exchequer and Audit Department.

2. Audit of public accounts

As Auditor General, the Comptroller's duty is to examine departmental and other accounts with a view to ensuring that all expenditure is properly incurred—that no payments are made

which go beyond any relevant statutory authority and that Treasury sanction has been obtained wherever necessary. He then reports to the Public Accounts Committee of the Commons.

In addition, the Auditor General has developed, almost from the beginning, extra-statutory or discretionary authority to examine governmental expenditures with a view to drawing attention to any cases of waste, inefficiency or extravagance, and this is one of his most important functions.

The annual accounts scrutinized by the Auditor General are numerous, and consist not merely of those of Government Departments. These include, among others, all accounts made under Treasury regulations (mainly the 'appropriation' and 'Consolidated Fund' accounts)—trading, manufacturing and commercial accounts of public authorities—accounts of some state owned or sponsored corporations or companies as well as those of various bodies receiving grants in aid—accounts of the National Health Service, etc. The scope and extent of the Comptroller's examinations vary according to directions given by Parliament in each case.

III — PROCEDURE OF THE AUDIT CONDUCTED BY THE COMPTROLLER AND AUDITOR GENERAL

The Comptroller and Auditor General conducts an external and a posteriori audit of public accounts. In practice, the majority of auditors of the Exchequer and Audit Department are in fact housed and work in the account branches of the Departments whose accounts they audit. The large Departments have a number of the Auditor General's staff permanently in the building engaged on a running audit and working closely with the departmental accounting officers. This enables the Auditor General to keep abreast of expenditure and explains how the audit is usually almost completed before the appropriation accounts are formally submitted to the Auditor General.

The Auditor General relies increasingly on test audits to uncover instances of waste or lack of control over expenditure. Eventual adjustments are usually made on the advice of auditors without the need for more special action. It is only when a serious matter comes to light that a formal inquiry in the shape of a 'reference sheet' is instituted. The extent of inquiries and the amount and type of information requested are matters for the discretion of the Auditor General.

The sanction behind this control is the report to the Public Accounts Committee which can—in the last resort—propose to the House of Commons that it hold the Accounting Officer of a Department personally responsible for defalcation.

In practice the Committee's work depends almost entirely upon the audit carried out by the Comptroller and Auditor General. The Comptroller sits with the Public Accounts Committee and this strengthens considerably the Committee's position when it interrogates the departmental accounting officers.

Most of the accounts audited by the Comptroller and Auditor General are for financial years ending on 31 March. The reports he makes are normally considered by the Public Accounts Committee of the House of Commons during the course of the following year.

4. *BELGIUM*

The 'Cour des Comptes' in Belgium is independent of the government and its main responsibility is budgetary control on which it reports to both Houses of Parliament. Article 116 of the Belgian constitution briefly specifies the principal functions of the 'Cour', and its organization is governed by the basic law of 29 October 1846.

I — ORGANIZATION

The 'Cour' is composed of a first president, a second president, 8 counsellors (one of whom acts as public prosecutor) and two clerks. It comprises two divisions, one Flemish and the other Walloon.

The presidents, counsellors and clerks are elected for a term of 6 years by the Chamber of Representatives which may also dismiss them. The 'Cour' has a staff of approximately 350 officials which it recruits itself. The 'Cour' draws up its own budget and submits it to Parliament.

II — RESPONSIBILITIES

The 'Cour' carries out three distinct kinds of budgetary control:

1. *Jurisdictional control*

The 'Cour' scrutinizes the accounts of the accountants at the end of the financial year and establishes the extent of their liability in the event of irregularities. It may impose a fine and even bring about the suspension or dismissal of the accountant. Its decisions may be referred to the supreme court of appeal on the grounds of infringement of procedure or of the law.

2. *Preliminary administrative control*

This takes the form of endorsement of payment orders signed by the Ministers. Several categories of expenditure, notably fixed expenditure resulting automatically from current legislation (e.g. salaries, pensions, etc.) do not, however, require the prior approval of the 'Cour'.

The 'Cour' scrutinizes expenditure for regularity but not for expediency. If it considers an item of expenditure to be improper it advises the Council of Ministers but the latter may decide to override this opinion. In this case, the 'Cour' gives its endorsement 'subject to reservation' and informs both Houses of Parliament.

3. *Retrospective administrative control*

This is carried out as and when the budget implementation accounts are audited. The 'Cour' informs both Houses of its findings and submits 'cahiers d'observations' (commentaries) to them annually.

Under the Law of 17 June 1971, the 'Cour' may require any information and documents needed for administrative control purposes to be submitted to it within a period of three months. The same law also makes provision for on-the-spot checks.

The 'Cour' also scrutinizes the 'Compte général de l'Etat' (public accounts) before they are presented to the Parliament; these contain a record of all budget, state fund and Exchequer transactions effected during the previous year.

5. DENMARK

I — ORGANIZATION OF AUDITING

The auditing of all Government accounts is the responsibility of two authorities working in collaboration. They are (a) the Government Auditors and (b) the Heads of the Audit Departments of the Ministry of Economic and Budgetary Affairs (Head Auditors).

Government Auditors are elected from among members or past members of the Danish Parliament.

Head Auditors are appointed by the King on the recommendation of the Minister for Economic and Budgetary Affairs, to whom they are directly responsible. They are at the disposal of the Minister to whom they are attached for the auditing and inspection of accounts and they report direct to the Minister. Decisions taken by the Minister also fall within their competence.

At the request of the Government Auditor's Office, the Audit Departments are obliged to institute inquiries and draw up reports on any matters concerning the accounts about which the Government Auditors may require information. The Government Auditors may also summon the department heads to discuss such matters verbally.

A further body is the Government Accounts Board, which is composed of the Government Auditors, the Heads of the Auditing Departments and the Head of the Budget and Accounts Department of the Ministry of Economic and Budgetary Affairs.

The Government Accounts Board's task is to coordinate the work of the Government accounting and auditing bodies. The Board may deal with questions concerned with the elaboration of uniform auditing procedures or which are deemed to be of common interest to members for the performance of their duties.

In addition to their work on the Government Accounts Board, a number of provisions in the Accounts Act and the Government Auditors Act establish links between the two Government auditing authorities.

II — AUDITORS' DUTIES

The auditors' duties are:

(A) *critical auditing*

to check

- (1) that individual items in the accounts are consonant with current legislation, regulations, other valid provisions or contracts entered into,
- (2) that no expenditure has taken place unless authorized in the Budget or other legislation on appropriations,
- (3) that appropriations are used in accordance with the terms and conditions governing them,
- (4) that sound economic principles are observed in the administration of State finances and in the management of the activities to which the accounts relate;

(B) *auditing of figures and bookkeeping*

to check

- (1) that the accounts have been correctly presented as regards figures and bookkeeping procedures, and that items of both revenue and expenditure have been properly documented,
- (2) that each item of revenue and expenditure has been entered correctly,
- (3) that no item has been carried over from one financial year to another without due authorization.

III — ASSIGNMENT OF AUDITING DUTIES

The auditing of the accounts submitted by subordinate Government bodies and officials is carried out by the appropriate central administrative body. Such auditing is, by its very nature, limited to checking figures and bookkeeping procedures and to examining critically transactions effected by the subordinate body without prior approval having been asked or obtained from the central administrative body.

Further, the Auditing Departments audit all Government accounts. The auditing of the Government accounts themselves is carried out by the Government Auditors, partly, however, on the basis of statements from the Auditing Departments.

There are no general provisions covering the assignment of duties as regards the inspection of stocks of goods and supplies.

IV — THE GOVERNMENT AUDITORS' REPORT ON THE GOVERNMENT ACCOUNTS
AND ITS CONSIDERATION BY THE DANISH PARLIAMENT

The Government accounts together with the Government Auditors' report must be submitted to and passed by the Danish Parliament. The report concludes with a recommendation that the Government accounts be approved.

The Parliamentary Committee on Finance discusses the Government Auditors' report, paying special attention to matters on which the Auditors have commented. The Committee's report ends with a recommendation that the Government accounts be approved.

6. IRELAND

Prior to the establishment of the Irish Free State in 1922 the duties of audit and control were carried out by the Comptroller and Auditor General of the United Kingdom in accordance with the Exchequer and Audit Department Acts of 1866 and 1921.

The Constitution of the Irish Free State (1922) provides for the appointment of a Comptroller and Auditor General to control all disbursements and audit all accounts of money administered by the Parliament. The Comptroller and Auditor General Act (1923) outlines briefly the responsibilities of the Comptroller and Auditor General and provides that, unless otherwise specified by the Irish Parliament, he should perform such duties as were conferred on him by the British Exchequer and Audit Departments Acts.

The present structure of control and audit over public funds in Ireland remains very similar to that of the United Kingdom.

I — ORGANIZATION OF THE DEPARTMENT OF THE COMPTROLLER AND AUDITOR GENERAL

The Comptroller is appointed by the President of Ireland on the nomination of the House of Deputies. He is a constitutional officer responsible to Parliament and independent of the Executive Government.

The staff in the Comptroller Department is headed by a Secretary and Director of Audit assisted by two Deputy Directors. It is divided in audit groups which are housed in the Government Departments whose accounts they audit.

II — RESPONSIBILITIES OF THE COMPTROLLER AND AUDITOR GENERAL

He is responsible for the control of all disbursements and for the audit of all accounts of moneys administered by or under the authority of the Parliament.

1. *Control of disbursements*

The Comptroller and Auditor General grants credits on the 'Central Fund' to the Minister for Finance on the basis of requisitions made by the Minister. Before granting any credit, the Comptroller checks that the purpose and the amount of the credit have been approved by Parliament.

2. *Audit of Accounts*

The Comptroller audits a series of public accounts including the appropriation accounts furnished by the government Departments. In the examination of these accounts, he carries out a threefold audit:

- (i) an accountancy audit, to satisfy himself as to the arithmetical accuracy of the accounts, to check the relevant vouchers and detect eventual fraud, wasteful or improper expenditure;
- (ii) an appropriation audit, to ensure that monies have been spent on the right services and within the financial limits imposed by Parliament;
- (iii) an administrative audit, to ensure that all expenditure has been regularly authorized by the Department of Finance.

The Comptroller and Auditor General submits annually to the House of Deputies his report on the appropriation accounts. He is then required by law to draw attention to a specific series of eventual irregularities but he may also draw attention to cases of wasteful or improper expenditure.

7. *ITALY*

The Italian 'Corte Dei Conti' was created by the Law of 14 August 1862 unifying the systems in force at the time in the different Italian States, particularly in Piedmont. Subsequently a series of texts was drafted defining its statutes in more detail and these were codified by the Decree of 12 July 1934.

Article 100 of the 1948 Constitution states that the 'Corte' shall exercise preliminary control to ensure that government measures comply with the law of the land and retrospective control of the management of the state budget, and that it shall submit its findings direct to both Houses of Parliament.

I — ORGANIZATION

By virtue of the law of 29 December 1961, the 'Corte' is composed of a president, divisional presidents, counsellors, senior referendaries and referendaries. It also includes a procurator general assisted by deputy procurators general.

The President of the 'Corte' is nominated by the Council of Ministers and appointed by decree of the President of the Republic. The Council appoints the divisional presidents and the counsellors, and the referendaries are recruited by competition. The members of the 'Corte' have the status of judges and are appointed for life.

The 'Corte' comprises 13 divisions, according to the nature and object of their control duties. Three divisions carry out administrative control and the other 10 exercise jurisdictional control.

II — RESPONSIBILITIES

Financial control is exercised by the 'Corte' in three distinct forms:

1. *Jurisdictional control*

This applies not only to the accounts presented by the accountants but also to operations effected by central government officials—and as an instance of appeal, to those effected by local government officials—the purpose being to ascertain the extent of any misappropriation of public funds on their part in the exercise of their duties.

The 'Corte' may order accountants and civil servants to make good any financial prejudice caused by them. Appeals against its decisions may be made to the supreme Court of appeal but only in cases involving incompetence.

The 'Corte' also exercises, through appeals to higher authority, jurisdiction in the matter of pensions.

2. *Preliminary administrative control*

Before their entry into force the 'Corte' examines all decrees signed by the President of the Republic and by Ministers—except for those exempt from such control under special legislation.

The decrees thus examined are certified and recorded by the 'Corte' but it may refuse to do so when a decree is not held to be in order; the government may, however, demand certification by special decision of the Council of Ministers, in which case the 'Corte' grants certification subject to reservation and submits the matter to Parliament. The Council of Ministers, however, may not require the Court to certify a decree involving expenditure not provided for in the budget.

3. *Retrospective administrative control*

The Court examines the accounts of authorizing officers and once a year, scrutinizes the general accounts of the state and the accounts of public enterprises and corporations under independent management.

The 'Corte' discusses these accounts at meetings attended by all its divisions and transmits its decision to Parliament through the government. The 'Corte' also makes comments and proposals for reform of financial and administrative management in the Ministries, but there is no annual public report.

8. LUXEMBOURG

The creation of the Luxembourg 'Chambre des Comptes' in 1840 was confirmed in the 1868 Constitution, Article 105 of which reads: 'There shall be a 'Chambre des Comptes' responsible for the examination and approval of the accounts of the general administration and of all accountants with respect to the public Treasury'. The organization and responsibilities of the 'Chambre' were laid down in detail in the Laws of 19 February 1931 and 27 July 1936.

I — ORGANIZATION

The 'Chambre des Comptes' is composed of 5 life members: a president, two counsellors and two deputy counsellors. They are appointed by the Grand Duke from a triple list of candidates submitted by the Chamber of Deputies. The latter has sole authority to dismiss or suspend a member of the 'Chambre des Comptes'.

II — RESPONSIBILITIES

1. The 'Chambre' exercises *jurisdictional control* over all the state accountants. Appeals against its decisions in this matter may be made to the Council of State.
2. The 'Chambre' also exercises *administrative control* over all Treasury operations, the management of state finances and the management carried out by the state accountants.

Preliminary administrative control is exercised over the payment orders; the 'Chambre' checks that they are in line with the budget, verifies the validity of the claim and the accuracy of the supporting documents. If the 'Chambre' refuses its endorsement, the government may refer the matter to the Council of State for arbitration. However the 'Chambre' may always refuse to endorse payments which exceed budget appropriations. In exercising this control the 'Chambre' may make any inspection required to verify that an item of expenditure is legally in order.

At the end of the financial year the 'Chambre' closes the accounts of the receivers and scrutinizes the general account of revenue and expenditure submitted to it by the Ministry of Finance. The general account is then presented to the Chamber of Deputies along with the comments of the 'Chambre des Comptes'.

The 'Chambre des Comptes' may at any time raise with the Chamber of Deputies any question which it considers worthy of interest. It may also give its opinion on any matter put before it by a member of the government.

9. THE NETHERLANDS

The Dutch Constitution (Arts. 180 and 193) provides for an 'Algemene Rekenkamer'; whose organization and responsibilities were to be specified in further legislation. This legislation is contained in the Law of 21 July 1927, although it should be noted that a proposal to widen the responsibilities of the 'Rekenkamer' to include control of cost-effectiveness was presented by the Government to the States General on 7 September 1964 but failed to win approval.

I — ORGANIZATION

The 'Rekenkamer' is composed of three members—one president and two deputies. They are assisted by approximately 150 auditing officials.

The members of the 'Rekenkamer' are appointed by the Sovereign from a triple list of candidates established by the Second Chamber of the States General. Appointments are made until retirement age and the appointees can only be dismissed in cases specified by law, by order of the Supreme Court.

II — RESPONSIBILITIES

The Dutch 'Algemene Rekenkamer' exercises both jurisdictional and administrative authority.

1. *Jurisdictional control*

The 'Rekenkamer' examines the accounts of all public accountants. If it discovers anomalies, it may impose on the responsible accountant a fine not exceeding half of his annual salary. Furthermore a fine of 300 guilders may be imposed on an accountant whose accounts or supporting documents are overdue. An accountant sentenced to a fine may request the 'Rekenkamer' meeting in plenary session, to review the decision.

2. *Administrative control*

Administrative control by the 'Rekenkamer' is carried out only after the relevant operations have been completed.

The 'Rekenkamer' examines all receipts and expenditures of the Kingdom (except those relating to secret funds and 'extraordinary' expenditure). In so doing, it may refuse to endorse expenditure if it is considered improper and if the explanations of the Minister responsible are not found satisfactory. In such cases an act of the States General is required to charge the expenditure to the budget. The 'Rekenkamer' may appoint a committee made up of its members to carry out any enquiry in the administration and public services into the auditing of an account. The 'Rekenkamer' presents an annual activity report to the Sovereign covering the financial year just ended. This report is subsequently submitted to the States General.

Finally the 'Algemene Rekenkamer' receives for approval a general statement of all State revenue and expenditures as established by the Minister of Finance. This statement is then presented to the States General together with the comments of the 'Rekenkamer'.

In submitting the bill of 7 September 1964, the government provided for further consolidation of control by the 'Rekenkamer' over the efficiency of the management of the financial affairs of the state, a control which it had already exercised to some extent in supervising the legitimacy of public accounts.

Section II — The views of the audit offices of the Member States

On 14 and 15 September 1972 the Committee for Finance and Budgets held a meeting in Brussels which was attended by the presidents or representatives of the audit offices of the six Member States of the European Communities. The purpose of the meeting was not simply to discuss the organization of external auditing in each country and in the Community, but also to examine the possibilities of improving financial control of the Community budget. The discussion was based on a working document outlining a number of problems, viz. control of revenue, control of expenditure, control of sound financial management, the limits of internal and external auditing, cooperation between the audit offices and their national parliaments, and the best organization, function and statutory basis for a European auditing institution.

A report on this meeting was drawn up by the Secretariat of the European Parliament.¹ For reasons of space the following account will be confined to extracts from this report referring to:

- (i) control of revenue;
- (ii) control of expenditure;
- (iii) cooperation between the national audit offices and their national parliaments.

Before these points are considered it should be pointed out that at the end of the meeting a proposal had been made to set up a working party to examine the problems involved in the control of the revenue and expenditure of the European Communities. The working party was to include several members of the Committee for Finance and Budgets of the European Parliament, representatives of the audit offices, and representatives of the Council, the Commission and the Audit Board.

¹ PE 31.192.

The following representatives of the audit offices of the Member States were present at the meeting:

Netherlands

Mr Peschar, President
Mr Poot, Counsellor

Belgium

Mr Vrebos, President
Mr Stockmans, Counsellor

Federal Republic of Germany

Mr Schäfer, President
Mr Gräfe, Counsellor

France

Mr Jacoud, Secretary General

Italy

Mr Greco, President
Mr Di Stefano, Member of the Corte dei Conti

Luxembourg

Mr Maul, President
Mr Zeimet, Counsellor

Several members of the Audit Board were also present:

Mr Freddi, President
Mr Simons and Mr Bernard.

1. *Control of Revenue*

(a) *Questions raised*

The following questions were raised in connection with the collection of revenue:

1. Have the audit offices of the Member States taken and do they still take practical measures to control revenue from:
 - agricultural levies (assigned to national budgets up to 1 January 1971);
 - the common customs tariff (partly national revenue up to 1 January 1975);
 - V.A.T. (this will basically remain national revenue, even after 1 January 1975).
2. What methods and procedures are applied for this purpose?
3. Can the governmental or parliamentary institutions request the audit offices to carry out checks in this area?
4. When the above revenue becomes entirely the Communities' own resources (agricultural levies as from 1 January 1971; customs revenue as from 1 January 1975) how should the situation be viewed and how could it develop in law and in practice, bearing in mind especially that collection will remain in the hands of the national administrations?
5. Consequently what arrangements should be made for collaboration between national and community departments for the control of common funds collected by the national authorities?
6. How should the Audit Board of the Communities carry out its task of examining 'the accounts of all revenue', (EEC Treaty, Article 206)?
7. On what basis should collaboration be established between the national audit offices and the European Audit Board, with particular reference to revenue from V.A.T. which will be a source of both national and common revenue?

(b) *The answers*

The presidents of the audit offices or their representatives gave the following answers:

Mr Peschar (Netherlands) observed that the 'Algemene Rekenkamer' already audits the collection of Dutch revenue to be paid to the European Communities. He explained that:

- (i) officials of the 'Algemene Rekenkamer' visit the collecting offices and the tax inspectors' offices to carry out spot checks to verify whether the bases of assessment have been properly determined;

- (ii) generally speaking the 'Rekenkamer' complies with requests from Parliament to audit this revenue;
- (iii) apart from the distinction which would have to be established in the Netherlands administration between amounts which are the European Communities' own resources and are collected by the Dutch authorities, and amounts intended for the Dutch Treasury, no other legal measure will be required;
- (iv) there are no serious objections to making the reports established by the national internal control bodies available to the Community's audit services;
- (v) there should be close links between the Audit Board, the Community's internal control services and the national internal and external control authorities, based on a full exchange of information allowing the Audit Board to form an opinion on the revenue in question in full knowledge of the facts without having to review the entire range of audit operations;
- (vi) cooperation between the national audit offices and the Audit Board should be so arranged that the work involved in auditing revenue in the Member States is kept within reasonable bounds and confined to essentials.

Mr Schäfer (Germany) explained his views on the control of revenue. Under the Basic Law of the Federal Republic, customs receipts and expenditure effected within the framework of the European Communities are both the exclusive province of the Federal Government. Value added tax is the joint responsibility of the Federal and Land Governments. Although the latter are involved in this, the constitution allows the Bundesrechnungshof to audit receipts from this source too viz. income from VAT. While VAT falls within the competence of the financial authorities in the Länder, and customs duties come under the federal authorities, the Bundesrechnungshof may nevertheless exercise a right of control in the matter.

As regards the control of Community resources, the accounts are checked in the main customs offices, at least in the case of customs revenue, and in the finance department services. Here the Bundesrechnungshof makes spot checks to ensure that receipts have been correctly established, levied in good time and transferred regularly to Brussels. It also ascertains, on the evidence of the supporting documents, that the amounts entered in the accounts have been accurately appropriated to the federal budget. It should be noted that the receipts submitted for audit to the Bundesrechnungshof must first be scrutinized by the administration. The administrative departments responsible for this preliminary or internal scrutiny as it is known must comply with the instructions of the Bundesrechnungshof, to whom they submit a report of their findings.

The federal government and the parliament may request the Bundesrechnungshof to undertake certain

enquiries and deliver opinions but they cannot issue mandatory orders since the Bundesrechnungshof is an independent institution, subject only to the law of the land. However the Bundesrechnungshof generally complies with the requests of the government and the parliament as long as this does not affect the exercise of its powers of control.

Even if receipts from the taxes in question i.e. the agricultural levies, customs duties and VAT, should one day become entirely the Communities' own resources, there will be no need to adapt either the relevant legal regulations or current practice, since by virtue of Article 1 of EEC Regulation No 2/71 of 2 January 1971, these resources 'shall be established by Member States in accordance with their own provisions laid down by law, regulation or administrative action', and, by virtue of Article 6 of the same regulation, accounts 'shall be kept by the Treasury of each Member State'. Article 13 states that Member States shall take all requisite measures to ensure that the amounts corresponding to the entitlements are made available to the Commission. Furthermore, Article 14 requires the Member States to carry out the verification of these entitlements and resources; the reference here being without doubt to internal administrative controls.

It would be possible to audit the Communities' own resources in the following manner:

1. On the basis of paragraph 79 (3) of the budget regulations, control of the regular communications addressed by the federal treasury to a Community department on the collection of the Community's own resources;
2. Verification of the accounts kept by the national authorities;
3. Possibly, agreement of the European Communities to decisions of a discretionary nature for example in the matter of payment deadlines, and compensatory measures in the event of specified amounts being exceeded;
4. In as far as the staff build-up in the European Community permits, the latter could take part in the administrative controls to be effected in the Member States.

On the evidence of the documents held by the Community, the Audit Board would check whether the funds due to the Community have been collected in a proper manner and within the prescribed periods; it could also carry out verifications of the accounts of the national departments, in accordance with Article 206 (2) of the EEC Treaty. For lack of staff, however, the Board would not be in a position to control even a small proportion of the departments in question. Even with more staff it would still have to rely largely on the findings of the national audit offices in reaching a verdict on the regularity of the receipts.

With regard to funds deriving from Value Added Tax—the rate of which is established with reference to a specified basis of assessment and may not exceed

a certain percentage as long as this basis remains in relation to the gross national product as indicated in the publications of the Statistical Office of the European Community (see Article 4 of the Council Decision of 21 April 1970)—the Audit Board may itself work out the amounts to be transferred and ascertain whether the Member States have properly met their commitments. However, if overall receipts from VAT are used as a basis for assessing contributions, it would be preferable for the national audit offices to carry out the verification. In this case the Audit Board would only have to check on the basis of the figure supplied whether the Member State had paid its compulsory share of receipts from VAT. As the Community's share is to be less than or equal to one per cent of these receipts, local controls by the Audit Board or the future Audit Board of the Communities might be superfluous, for given the prime interests of each of the Member States, adequate control would doubtless be provided by national audit offices.

Mr *Greco* (Italy) explained that under Article 13 of the Code of the 'Corte dei Conti' of 1934, the 'Corte' is responsible for the scrutiny of state expenditure and the surveillance of the collection of public revenue. There is a fundamental difference between these two functions; the surveillance of the collection of revenue consists solely of an examination of the recapitulatory statements of such receipts as submitted periodically by the various administrative authorities. With regard to the establishment and control of expenditure, the 'Corte' is authorized to initiate action: which is not the case with the control of revenue.

Consequently the 'Corte dei Conti' would be wholly unable to accede to Government requests to verify revenue, since it has no power to carry out detailed control of revenue.

In any event Community controls of own resources will have to be carried out in cooperation with national administrative departments at least for as long as the recovery of this revenue remains in the hands of the national administrations.

Cooperation between the national audit offices and the Audit Board of the Community may take the form of on-the-spot checks, carried out jointly or separately. However, given the disparities in the relevant legislation of the six Member States, it would certainly be desirable to harmonize national provisions governing control in general and audit offices in particular.

Mr *Di Stefano* (Italy) explained, in answer to a number of questions, that the monies received by the regions are derived receipts that are discussed and approved by Parliament and then transferred from the State budget to the regional budgets. They are therefore subject to national control, being scrutinized at administrative level by internal control departments, and also in a more general way to control by the 'Corte dei Conti' on the basis of recapitulatory statements.

Practical cooperation between the national audit offices and the Communities' external audit authority

in the control of revenue could be carried out by regular contacts and exchanges of information and reports. Official cooperation, on the other hand, must be authorised by legislation not only establishing the principle of such cooperation but also specifying its scope and procedures. Furthermore if it is agreed that such cooperation should be uniform for all the audit offices in the Member States, it will be necessary to initiate a process of harmonization of legislation on this point. If, for example, the other audit offices are empowered to scrutinize receipts, the 'Corte dei Conti' should be given the same powers. Harmonization of legislation with the object of standardizing control of receipts and expenditure throughout the Community raises difficult, if not insuperable problems, and presupposes a firm political will to resolve them.

In 1960 the audit offices of the various countries of the EEC set up a permanent contact committee which meets once a year to exchange information derived from practical experience. It has discussed on more than one occasion the problem of external control of the management of the Communities. The next meeting of this Committee is due to take place in Paris in October when the topic for discussion will be 'the problem of financial control raised by the replacement of direct national budgetary appropriations by resources transferred to and reallocated by the Community authorities'.

Mr *Vrebos* (Belgium) made the following observations: The Belgium 'Cour des Comptes' scrutinized all the operations of the central department for quotas and licences whose task it is to collect agricultural levies. The sum accruing from levies and other dues is paid into a Community account with the Belgian Treasury. The 'Cour' examines the accounts of the customs administration department and undertakes spot checks to determine whether rates are being applied correctly and whether the established duties have been collected. In the case of VAT, receipts are scrutinized locally by means of spot checks of individual files in the financial administration department.

The 'Cour des Comptes' is authorized by law to carry out its investigations on the spot and to demand any statement of accounts or information which it considers necessary.

The 'Cour des Comptes' does not act on behalf of the Government: but is the agent of Parliament. Favourable consideration is given to government requests for a more searching examination in a given sector.

There has been no change since 1 January 1971 in the control of agricultural levies, customs duties and VAT by the Cour des Comptes. All these operations are recorded in the accounts which are audited by the Cour des Comptes or allocated to a special section of the state budget which is also scrutinized by the 'Cour des Comptes'.

If the Audit Board of the Communities wished to carry out independent control, it would have to inform the government administration, assign the task to external auditors (i.e. the 'Cour des Comptes' or

the 'Chambre des Comptes') in those sectors which they control, or request copies of the audit reports drawn up by these bodies. The Belgian Government would have no objection to this.

Mr Jacoud (France):

In France the Communities' own resources are collected by the customs authorities and at some future date perhaps in the case of VAT, by the Tax Department of the Ministry of Finance; there is no extensive control of these resources in France.

The statutes governing the French 'Cour des Comptes' confer the right to examine State revenue in the same way as expenditure but the 'Cour' has exercised it only to a very limited extent, firstly because of its restricted means and staff and hence the requirement to concentrate on expenditure, and secondly because, in the French administration, public receipts are scrutinized most thoroughly and effectively through the hierarchical control measures applied by the tax-collection departments and also by the Inspectorate General of Finance, which is largely concerned with the control of receipts.

Government and parliamentary institutions may request the 'Cour' to check the control of receipts but this option has not been exercised.

Various arrangements are possible for control by community services and national services; the agents or commissioners of the Audit Board could be authorized, with the agreement of the governments, to carry out control operations in the States—either on the evidence of supporting documents or on-the-spot—in cooperation with the internal control departments at present engaged in this form of control or with the audit office. Alternatively, the present control authorities—the internal control departments or the audit offices could be employed as the agents of the national control authorities and their findings submitted to the Community authorities.

Mr Maul (Luxembourg):

The collection of revenue as such is not subject to direct control by the 'Chambre des Comptes'. The public accountants present monthly statements to the 'Chambre des Comptes' and these are scrutinized for accounting accuracy. But this scrutiny is based only on supporting documents and is not carried out on the spot. The 'Chambre des Comptes' is not authorized to verify the payment or assessment of monies collected.

The 'Chambre des Comptes' may be commissioned to verify accounts in certain spheres, but it is not usual practice.

The fact that all Community revenue will become own resources will not require any change in the present system if the collecting authorities remain national. Control will continue to be based on supporting documents—at the 'Chambre des Comptes' for as long as collection remains the task of public accountants

who are subject to some extent at least, to the control of the 'Chambre des Comptes'.

Cooperation between national and community departments already exists in the matter of internal control. The authorized agents of the European Commission have paid several visits to Luxembourg to carry out an audit on the basis of information supplied to them by the internal control departments.

Whether it would be possible to expand national control by the 'Chambre des Comptes' beyond the limits fixed by present legislation, in other words whether, in the case of revenue constituting the Communities' own resources, this control could be carried further than is the case for specifically national resources is a matter which can only be settled by the amendment of existing legislation. The point is that the 'Chambre des Comptes' is at present governed by its statutes, under which it is Parliament's control body for national revenue and expenditure, or at least that part which goes through the public accountants. If its authority is to be extended beyond this, and more specifically, if a change is required in control procedures, it is likely that present legislation would have to be amended. This applies particularly in the case of revenue from VAT which will in future be both a national and a Community source of income. In Luxembourg VAT is collected by the 'Administration de l'Enregistrement' (Recording Office), the collectors being public accountants over whom the 'Chambre des Comptes' exercises its control solely on the basis of supporting documents and not as to the actual performance of the relevant operations. If it were desired to extend this control, its legal basis would have to be altered.

Mr Coppé, Member of the Commission of the Communities, pointed out that what had been said on the control of revenue should be viewed in the light of the provisions of Article 14 of Regulation No 2/71 implementing the decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources, viz. that Member States shall carry out the verifications and inquiries concerning established entitlements and the making available of own resources and further that Member States shall carry out any additional measures of control the Commission may ask for in a reasoned request and that the Commission may request to be associated with these measures of control.

Mr Spénale, Chairman of the Committee for Finance and Budgets, considered that what was meant here was internal Community control although this was not stated explicitly. He observed that the legal bases required for external control of revenue were not adequate in many of the Member States. As revenue was collected at national level it was only natural that it should be subject to national control; it would thus be unnecessary to set up new control services. But those items which fall outside the scope of national external control bodies should be controlled by a European control authority. For this reason contacts should be established at Community level between the audit offices and the Community's external control

body, especially after 1975 when the budget of the Communities will be financed entirely from own resources and the problem of cooperation will become crucial.

Mr Schäfer stated that the comments on Article 14 of Regulation No 2/71 did not refer to external control, (i.e. the control exercised by the Bundesrechnungshof), but to internal control. He agreed with Mr Coppé that,

in the Federal Republic, paragraph 93 (2) of the 1969 Regulation on the Federal Budget (Bundeshaushaltsordnung) was a possible basis for external control. 'In agreement with foreign, supranational or inter-governmental control authorities, the 'Bundesrechnungshof' may delegate or assume responsibility for carrying out the various controls if it is so authorized by international treaties, administrative agreements or the federal government.'

The Audit Board expressed the following point of view (in a written reply):

'As long as revenue is collected by national administrations, it will remain subject to control by the national authorities responsible for controlling the said administrations. However this does not mean that there will be no gaps in this control especially in view of the differences in the collection systems in the Member States.

Furthermore, with respect to Community resources, the Community must be able to meet its own responsibilities and itself ensure effective control of this revenue.

Two sets of control are thus found side by side, just as there are parallel management services. In order to ensure that this arrangement works without duplica-

tion of effort, cooperation between national and Community control bodies is essential to the control of both revenue and expenditure.

The Community Regulations have recognized the need for such cooperation between national and Community controls but so far it has been introduced solely for internal control.

With regard to external control no arrangements have been made for the Audit Board to exercise its own rights of control over the officials with management responsibility or to ascertain the effectiveness of controls already carried out.'

2. Control of expenditure

(a) Questions

The Committee for Finance and Budgets had submitted two series of questions, the first concerning expenditure in general and the second relating to the common agricultural policy. In general:

1. To what extent are the Audit Offices of the Member States involved in the control of Community expenditure?
2. What is the position of the Audit Offices on the request made by the European Parliament that a Community control and inspection authority be set up (for example on the basis of Article 9 of EEC Regulation No 729/70)?
3. How could such a control service function so as to avoid duplication of effort?
4. To what extent could such a control service coordinate the verifications carried out in the Member States?
5. What division of work would the Audit Offices recommend with a view to cooperation between the Community's Audit Board, a Community control and inspection service, and the Audit Offices of the Member States?
6. What is the opinion of the Audit Offices concerning the possibilities of increasing the effectiveness of the control of Community resources on the basis of present legislation (on the national or Community level)?

With regard to the common agricultural policy:

1. Do the Audit Offices take part in the control of such expenditure?
2. Do the customs authorities cooperate with the Audit Offices in connection with frauds associated with the import and export of agricultural products?
3. Are the inspections performed by the Audit Offices or with their participation done on the spot or are they based solely on records?
4. Has direct financing by the EAGGF of expenditure associated with the common organization of agricultural markets resulted in any changes in the activities of the Audit Offices in this area?
5. To what extent does the control of resources allocated to this sector by the Member States overlap with that of Community expenditure?

(b) Replies

'Mr Schäfer (Germany) pointed out that the powers of the Federal Audit Office with respect to the control of expenditure derive both from co-financing by the Federal Republic under the national budget, and from the fact that the resources are administered by the Federation and disbursed by its administrative departments, the Federation being answerable to the Community, where applicable, for any mismanagement of resources. Since the 'Länder' are also involved in financing structural measures in agriculture, the Audit Offices of the 'Länder' must be considered, together with the Federal Audit Office, as responsible for financial control. Thus, certain Community resources of the EAGGF are provided, for example, from the budget of the Land of Bavaria, notably refunds paid for the production of potato starch and potatoes for starch production. It is thus logical that the Bavarian Audit Office should be entitled to exercise control in this particular area. As regards the regulations governing the common agricultural market, the Federal Audit Office has been granted, under paragraph 28 of the national legislation implementing the common organization of markets, a right of supervision and information with respect to those who are required to provide information.

The call for the creation of a Community control and inspection service is to be welcomed in this connection.

This control body would be particularly active in Member States which cannot or will not act in a given field. In particular, it could be associated with procedures involving two or more Member States; it could also participate in verifications devolving upon national administrations, i.e., national internal audit authorities.

After an initial period, the control service could exercise its right to enquire into the areas subject to its control; it should have the authority to invite the relevant departments in the Member States to undertake enquiries and inspections, to follow them up, and possibly to coordinate them with its own enquiries and parallel enquiries performed in the Member States. This possibility is provided for in the common agricultural policy sector by Article 9 of EEC Regulation No 729/70.

The allocation of responsibilities between the Audit Board and the national Audit Offices could be determined by agreement. It would be difficult to include the recommended Community control and inspection service in this allocation, since the latter would be concerned with the supervision of administration.

The effectiveness of the control of Community resources can scarcely be improved other than progressively, given the present legislative bases and the fact that a strengthened Audit Board would not be able to exercise adequate control without the assistance of the national Audit Offices. For example, enquiries in the agricultural sector, to be effective, not only require familiarity with Community regulations and a perfect command of the language of the country, but also a good knowledge of the functioning of the national administration, its methods of working, the administrative law of the country, and business experience, not to mention commercial accounting qualifications. Moreover, the questions that arise are always of a specialized nature, e.g., the cereals market; finally, a sound relationship with the administration is essential to success.

The first measure required to make control more effective would be to draw up a precise list of control bodies and procedures, and to make a quality analysis of control and the rules governing its implementation in the countries of the EEC. The Commission already has background material on the subject, and this should be made available to all the countries. If appreciable differences come to light as a result of this measure, it would be necessary to consider the possibility of improving the enquiry procedure in the countries concerned.

It should be possible for the authorities responsible for the control of administration, the Audit Board, and the Audit Offices to establish direct contact in the relatively near future.

Although national legislation makes no provision for the reports drawn up by the Audit Office to be passed to the Audit Board, there is no legal obstacle to prevent it.

The best solution would be to shun all legal formalism and reach a gentleman's agreement providing for members of the Audit Board to be accompanied by members of the national Audit Offices during inspections carried out in the Member States.

Mr *Maul* said that the Luxembourg 'Chambre des Comptes' was involved only to a very limited extent in the control of Community expenditure.

The Ministry of Agriculture is the only body authorized to make disbursements under the 'Guarantee' section of the EAGGF, i.e. refunds and interventions. These take the form of payment orders issued by the Ministry of Agriculture, which are submitted to the Audit Office for inspection before payment. Subsequent audits are based exclusively on records and do not constitute a check of the actual operations involved. Nor as a rule at least do they take the form of on-the-spot audits, for according to the law, the Audit Office is not allowed to perform such audits unless a serious doubt arises as to the facts of the case. However, such inspections are a very rare exception.

With regard to the 'Orientation' section, the Community meets certain expenditure in the form of a capital contribution to which a national subsidy is added.

In this case, the expenditure is also effected through the national budget and both payment and control are handled in the same way as with the 'Guarantee' section. Applications are, it is true, made through the ministry which has projects and estimates scrutinized by its technical departments—who also carry out an on-the-spot control. However, the Audit Office is not involved in this control.

On the basis of the foregoing it would be necessary to amend current legislation and to extend the Audit Office's powers of control over Community expenditure. But even if such a change were made, the 'Chambre des Comptes' would not at present be equipped for the task since it does not have the professionally qualified staff required for on-the-spot audits and the necessary substantive checks.

Mr *Peschar* (Netherlands) agreed entirely with the views expressed by Mr Schäfer and with his approach to the problem. He referred to the proposal to amend Dutch agricultural legislation by involving the Audit Office in the control of Community expenditure as of 1 January 1971. In his opinion the creation of a Community control and inspection service deserved the fullest support.

He suggested that question 3 should be put in the following terms: 'How can this control service be made to operate without entailing double auditing and hence wasted effort?'. Double audits cannot be condemned out of hand and may even prove extremely useful; this depends which items of expenditure policy are to be subjected to internal and external audits. There is only one way of avoiding all unnecessary work and that is to concert and concentrate efforts towards a single end. In some cases, for instance, it would be

rational in allocating responsibilities to distinguish between lawfulness and legality on the one hand and effectiveness on the other.

The possibilities of increasing the effectiveness of control over the application of Community resources are somewhat limited in the present state of legislation. Even if perfectly organized, a European Audit Board would probably be unable at present to assume on its own responsibility for external control. All sorts of practical difficulties are involved, of course, but if we really wish to attain this objective, it would be a serious mistake to forgo such an excellent opportunity to cooperate with the institutions existing in the various countries.

Mr *Stockmans* (Belgium) said that the Belgian 'Cour des Comptes' controlled Community expenditure to the extent that it is included in the accounts subject to control (for example refunds, certain EAGGF expenditure and subsidies).

He considered it desirable to set up a control and inspection service or a similar organization and shared Mr *Peschar's* opinion on double auditing and other points. He added that the Community's Audit Board could count on the cooperation of the 'Cour des Comptes' in carrying out inspections and enquiries within the country.

Mr *Jacoud* (France) intimated that the 'Cour des Comptes' was involved in the control of expenditure and so-called operational expenditure for the financing of Community policies. The situation was complex, in that the powers of the 'Cour' did not always reach to the end of the expenditure cycle, which of course is where the greatest interest lies from the audit standpoint. The French 'Cour des Comptes' is directly responsible when expenditure is made through a public accounting officer, for example in a situation in which the Ministry of Agriculture might finance an equipment operation partially from Community funds. It has indirect authority, with some reservations, but under conditions that allow it to obtain sufficient information, to carry out an audit when, to take a hypothetical illustration, expenditure is incurred at the level of a commune or a small local authority but, because of the small amount involved, is not submitted for audit to the 'Cour des Comptes' and comes instead under the authority of the Paymaster General. The Audit Office may nevertheless, in pursuance of Article 33 of the decree of 1968, exercise a certain right to scrutinize expenditure made by a private association. It is conceivable that Community expenditure could be ultimately effected either through a private association or group such as a cooperative. In the majority of cases, however, especially with regard to agricultural expenditure which, I believe, accounts for 90% of Community outgoings, the 'Cour des Comptes' has no direct powers. Such expenditure comes under the Public Enterprise Audit Committee and not the Audit Office. This committee does, of course, work closely with the Audit Office. Its chairman is one of the six presidents of the Audit Office. Many of the inspectors or members of the committee

are also members of the Audit Office. However, the committee is not a jurisdictional body, its function being to advise the Finance Minister on the regulation of the budgets of public establishments and national enterprises.

As regards the transmission of work to the Community's control authorities, this would seem to me to be possible, subject to specific or general approval by the government. Since such transmission while not prohibited, is not covered by current provisions, and since it involves contact with a supranational authority, we consider that approval by the French government, either on a general basis or in specific cases, is necessary. Quite clearly, such approval is even more essential where the Audit Committee is concerned.

I believe that cooperation between the commissioners or agents of the European Audit Board and the members of the Audit Office or the Audit Committee inspectors is possible, again subject to prior approval. This could assume various forms, for example joint enquiries, or the supply of documents for information.

Mr *Greco* (Italy) considered that the relationship between Community expenditure and national expenditure (e.g. the Orientation section of the EAGGF) should be governed by the principle that Community institutions should control that part of the expenditure financed by the Community, the 'Cours des Comptes' being responsible for national expenditure.

Under Community regulations, financing by the Community is already subject to control by the Commission department responsible for internal control. Consequently, the setting up of another Community control and inspection service would not be desirable to the extent that this would tend to render unwieldy the

present internal control structure, which is adequately defined by Community texts.

To increase the effectiveness of the control of the use of Community funds on the basis of legislation at present in force throughout the Community, the powers of the Community's Audit Board should be laid down in an appropriate regulation and a clear indication given of how these powers should be exercised. Furthermore, internal control considerations demand proper application of Articles 4 and 9 of Regulation No 729/70, the first of which stipulates that Member States must submit annual reports prepared by accounting authorities and bodies to the Commission and the second that officials of the Commission shall have the right to carry out on-the-spot audits.

With respect to the control of expenditure under the guarantee section of the EAGGF, the Italian Audit Office exercises control over national expenditure which gives rise to refunds made to promote exports to third countries.

It is not concerned in any way with matters of fraud relating to the import and export of agricultural products.

It carries out inspections on the basis of consolidated supporting documents.

Its activities have not been modified as a result of the direct financing of expenditure for the common agricultural policy.

It has ensured that the Ministry of Agriculture, which is the competent authority in this case, abides by Community provisions in the control of EAGGF expenditure.

In its written reply, the Audit Board made the following observations:

'In order to reply to the questions submitted, it would first be necessary to define what is meant by a Community control and inspection service and to which authority it would be responsible.

Normally, this should be a department subordinate to the authorizing officer, since from the point of view of the supervision of the justification of expenditure, he has the most extensive duties at the Community level.

Like the control carried out by the national adminis-

trative services, this control would be placed under the authorizing officer and would not be duplicated by national or Community external control which is applied at a different level.

However, this does not mean that a Community control service ought not to be in contact with the Audit Board. On the contrary, the Audit Board should have all the facilities necessary to ensure the effectiveness and value of such control.'

3. Cooperation between the Audit Offices and the national parliaments

(a) Questions

1. Could the representatives of the national Audit Offices provide a general outline of this problem, having regard to the fact that the regulations of the Member States vary quite widely in this matter?
2. To what extent are the national parliaments entitled to ask the Audit Office to enquire into a particular problem? What use is made of this right in practice?
3. Is there a permanent dialogue between the relevant parliamentary committees and the Audit Offices, or does the dialogue begin only when the budgetary accounts for a financial year are closed?
4. What are the obligations and duties of the Audit Offices arising from their cooperation with the national parliaments?

(b) Replies

Mr *Stockmans* (Belgium) stated that the members of the Audit Office are appointed by the Chamber of Representatives. They supervise the implementation of the national budget on behalf of Parliament. They also exercise a jurisdictional function with respect to the accounting officers and authorizing officers and check the expenditure and revenue of the provinces and of institutions in the public interest.

The Audit Office maintains direct contacts with Parliament. It informs the Chambers of any gaps in the budgetary laws and other laws pertaining to public finances in an annual report and also, throughout the year, in the form of special communications whenever this is deemed necessary or prescribed by law.

The Audit Office also examines the draft budgets and reports its views to Parliament. The report is passed to the Finance Committee (sub-committee) which examines it and discusses it in the presence of two members of the Audit Office and officials of the ministries concerned.

Parliament is entitled to ask the Audit Office to enquire into certain matters, but makes use of this privilege only on very rare occasions.

There is no permanent dialogue. In principle, the sub-committee is convened immediately after the publication of the summary report. It can also be convened during the course of the year in connection with special communications, but this does not happen frequently.

Mr *Schäfer* (Germany) said that, as is often pointed out, the German Audit Office occupies the difficult ground between the executive and the legislature. It is not an agency of the Bundestag, with which, however, it collaborates, assisting, it in giving discharge to the executive. This is an area in which the Bundestag is at the moment displaying a certain lack of urgency. It has not yet given a discharge for the 1967 financial year, nor for the year 1968/69, despite the fact that the Federal Audit Office submitted its reports on these

financial years some time ago, and is just concluding its report on the 1970 financial year. The role of the Federal Audit Office does not consist merely in examining the accounts, but also in advising the Federal Government and Parliament. Paragraph 88, sub-paragraph 2, of the new budgetary regulations of 1969 states expressly that the Audit Office may advise the government and the ministries, as well as the Bundesrat and Bundestag, on the basis of the information brought to light by its investigations. This activity is just as important as its control functions.

The Bundestag and Bundesrat, and indeed also the Federal Government, may ask the Audit Office to examine certain material facts and at its discretion, to comment on them. These bodies may not, however, give it instructions, since the members of the Audit Office are independent and subject only to the law. Nevertheless, the Federal Audit Office as a rule acts upon the wishes expressed by Parliament or the Government. The Audit Office's partner is Parliament as a whole; its principal contacts are with the Budget Committee and the Audit Committee. The former is a large body consisting of 33 members; the latter, whose particular function is to examine the reports of the Audit Office is a sub-committee of the Budget Committee. The major disadvantage of this is that the same members sit on both; furthermore, since the Budget Committee meets virtually without interruption, the Audit Committee is unable to meet as often as it should. The Audit Office is permanently represented on the Budget Committee by an official. The latter is present whenever any individual project presented by the Ministers is discussed. This procedure was formulated at the express wish of the Committee.

Mr *Maul* explained that in the Grand Duchy of Luxembourg the members of the Audit Office are appointed after nomination by Parliament and cannot be removed from office without the latter's consent. The Audit Office supervises the implementation of the budget on behalf of Parliament, to whom it submits an annual report, together with critical comments where appropriate. Moreover, the Audit Office may

call attention to any questions of importance in the course of the year. This right is seldom exercised. However, when the budget is being prepared, the Audit Office reports to Parliament on any shortcomings which it notes in drafting and presentation.

There is no permanent dialogue between the parliamentary committees and the Audit Office. However, the Finance Committee cooperates with the Audit Office in examining the annual accounts and discussing any criticisms made by the latter. The Finance Committee—or the rapporteur on the budget—also contacts the Audit Office to obtain all the information needed for the presentation and discussion of the budget.

The law makes no express provision for Parliament to request the Audit Office to conduct enquiries and it would be difficult for Parliament to do so.

Mr *Di Stefano* (Italy) said that the responsibilities of the Audit Office are laid down in the constitution and that it is independent both of the legislature and of the executive. The findings of the audit are submitted in annual reports.

The reports are submitted to Parliament and form the basis for parliamentary control of the executive. Parliament cannot order the Audit Office to carry out enquiries into specific cases. However, under the rules of the two Chambers, parliamentary committees may request the Presidents of the two Chambers to invite the Audit Office to furnish explanations and information, provided that they respect the independence of the Audit Office and do not exceed the powers conferred on them by law.

Since the Dutch proposals concerning internal and external audits have not been discussed, and since they constitute an appreciable departure from the situation prevailing in other Member States, Mr *Peschar* recommended that they be put in writing for information.

A similar proposal was made concerning the memoranda drafted by the various Audit Offices for the meeting in Paris at the end of October. The Dutch Audit Office agreed with this proposal.

When a new member is to be appointed, the Audit Office has the right to submit a recommendation. Parliament is entitled to add other names to the list of candidates and has a decisive say in the appointment.

In The Netherlands, the Audit Office approves the national budget and transmits it to Parliament. The Audit Office issues an annual report which it submits to the Queen and, some weeks later, to Parliament, via the Government. Under the terms of the new legislation now in the drafting stage, the report will be submitted to the Government and Parliament simultaneously. In fact, the Dutch Audit Office plays an extremely useful role as a source of parliamentary information.

The report prepared by the Audit Office is passed to the Committee on Public Expenditure. After careful scrutiny, the committee submits written questions to the various ministries. In the Netherlands, both the questions and the replies given by the ministries are always published. As a rule, the final discussion of the report takes place at a plenary sitting of Parliament.

Under the new legislation in preparation, Parliament, i.e. the two Chambers of the States-General, will have the right to request the Audit Office to conduct certain enquiries.

The Dutch Audit Office is reasonably satisfied with the practical results of its activities. Its report is carefully considered by Parliament. It would probably be most useful if the experts in Parliament could also, as part of their duties, examine the matters dealt with in the report, instead of leaving this entirely to the members of the Finance Committee.

The Audit Offices should bear in mind that even an Audit Office should not be content with its constitutional role, even when this is based on sound rules of procedure; it must also seek to encourage interest in its activities. Its reports must be readable and the Press must be kept informed, so that the Government, Parliament and the public in general are made aware of the issues involved. Discussion of certain observations or criticisms that are generally accepted as well-founded can easily drag on for three, four, or even five years in committee without a decision being taken. The decision comes eventually after five or six years. In these circumstances it may be relevant to ask whether slightly greater efficiency might not be possible.

Mr *Jacoud* (France). Relations between the Audit Office and Parliament are governed by an article in the Constitution which provides that the French Audit Office shall assist Parliament and the Government in supervising the implementation of financial legislation.

Three reports are submitted to Parliament each year. The first of these is presented by the Audit Office and deals with the implementation of the Finance Act. In France, the draft of the final budget statement must be submitted to Parliament before the end of the year following that to which it refers. Since 1959 this statement has been accompanied by a lengthy report from the Audit Office. This is an important report but it makes very heavy reading, and I fear that it rather tends to discourage parliamentarians. Nevertheless it does contain two interesting items: first there are the Audit Office's comments on the implementation of the budget for the financial year in question, including observations on the accounts and Treasury operations. Part two of the document contains observations on the management or utilization of appropriations. Comments are made, for instance, on cases where funds have been improperly transferred or carried over, or where appropriations have been exceeded.

In short, the report offers a whole series of observations intended to clarify the situation for Parliament

and help it in its annual task of making a critical assessment of the implementation of the budget.

The second periodic communication is the Audit Office's annual report, which is published in the French Official Journal, and which is thus open to public inspection. It is of course first submitted to Parliament and the Government. It contains all the most important observations made by the Audit Office in the course of the year.

The Public Enterprise Audit Committee, which controls all the public enterprises and public establishments of a commercial or industrial nature, also presents an annual report to Parliament.

In France, there is no permanent dialogue between Parliament—i.e. the Finance Committee—and the Audit Office. Nevertheless, the rules of procedure of the Audit Office specify that Parliament may request the Office to conduct enquiries into the management of the departments or services subject to its control. This right has seldom been exercised, but when it has, major issues have been involved. Between 1946 and 1971 the Audit Office received 100 such requests.

Finally, the rules also provide that the first president may inform Parliament of the Audit Office's findings and comments.

Previous publications of selected documents include:

— *The European University*

December 1967, 109 pp., preface by Mr. Mario Scelba (d, f, i, n)

— *The case for elections to the European Parliament by direct universal suffrage*

September 1969, 350 pp., preface by Mr. Mario Scelba, introduction by Mr. Fernand Dehousse (d, e, f, i, n)

— *The European Communities' own resources and the budgetary powers of the European Parliament* — Selected documents

June 1970, 226 pp., preface by Mr. Mario Scelba, introduction by Mr. Georges Spénale (d, f, i, n)

— *The European Communities' own resources and the budgetary powers of the European Parliament* — *The debates on ratification*

October 1971, 192 pp., preface by Mr. Walter Behrendt, introduction by Mr. Georges Spénale (d, f, i, n) ⁽¹⁾

¹ English edition of the last two documents published in a single abridged volume in October 1972: "The European Communities' own resources and the budgetary powers of the European Parliament".

