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THE EUROPEAN COURT OF AUDITORS

1. INTRODUCTION

As an introduction, I would like to remind you, first of all, that the European Court of Auditors is an institution of the European Union (Art. 13.1 TEU). In fact, the European Court of Auditors is the institution which carries out the audit, or audit of accounts, of all expenditure and revenue of the entire European Union (Art. 285.1 TFEU).

The nature of the European Court of Auditors is, secondly, that of an administrative institution for the external control of public expenditure. This statement deserves two comments. The first stresses that the European Court of Auditors is an administrative institution, not a judicial one, although it has two peculiar characteristics. On the one hand, the European Court of Auditors may intervene before the Court of Justice of the European Union both as plaintiff and defendant (Art. 263, §3 TFEU). On the other hand, the members of the European Court of Auditors have the same privileges and immunities as the judges of



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the Court of Justice of the European Union (Art. 286.8 TFEU).

The second comment is that the European Court of Auditors is an institution for the external control of public expenditure. We must remember in this respect that internal control of public expenditure must be carried out, in the first instance, by any institution, body, office or agency of the European Union. Only then does the European Court of Auditors act.

Finally, in this introduction, it is worth mentioning that the European Court of Auditors is currently a necessary institution because of the financial autonomy enjoyed by the European Union itself. It should not be forgotten that the Union has had its own resources since 1975.

2. MEMBERS OF THE EUROPEAN COURT OF AUDITORS

With regard to the members of the European Court of Auditors, it should first of all be noted that the European Court of Auditors is composed of one national of each Member State (Art. 285 para. 2 TFEU), which currently means that it has 27 members.

Secondly, with regard to the qualifications of the members of the European Court of Auditors, candidates must meet the following two requirements (Art. 286.1 TFEU). The first is that they must belong or have belonged in their

respective States to external audit institutions or be specially qualified for this function. Secondly, they must offer absolute guarantees of independence. To this end (Art. 286.3, 4 and 6 TFEU), they must take into account the following four obligations: (1) in the performance of their duties, the Members of the European Court of Auditors shall neither seek nor take instructions from any government or from any institution, body, office or agency of the Union; (2) they shall refrain from any action incompatible with the nature of their duties; (3) the Members of the European Court of Auditors may not, during their term of office, engage in any other occupation, whether gainful or not; and (4) they may be relieved of their duties by the Court of Justice if they fail to comply with these obligations.

Thirdly, with regard to the mandate and election procedure of the members of the European Court of Auditors (Art. 286.2 TFEU), two aspects must be taken into account. On the one hand, the members of the European Court of Auditors shall be appointed for a term of six years. The Council, after consulting the European Parliament, shall adopt the list of members drawn up in accordance with the proposals made by each Member State. The term of office of the members of the European Court of Auditors shall be renewable. In addition, the Members shall elect the President of the European Court of Auditors from among their number for a

term of three years. His or her term of office shall also be renewable.

3. FUNCTIONS OF THE EUROPEAN COURT OF AUDITORS

The European Court of Auditors performs two functions. The first and main function entrusted to the European Court of Audit is to carry out audits. In this first function, it is worth highlighting three ideas.

The first point to note concerns its scope of competence. The European Court of Auditors shall examine the accounts of all revenue and expenditure of the Union and of any body, office or agency set up by the Union (Art. 287.1 TFEU). The European Court of Auditors conducts its audits in order to obtain reasonable assurance regarding three aspects: (1) the reliability of the annual accounts of the Union (financial audit); (2) the legality and regularity of the underlying transactions (compliance audit); and (3) the soundness of financial management (operational audit).

The second idea to be discussed concerns audit methods (Art. 287.3 TFEU). Three different aspects should be mentioned. The first aspect is to underline that the audit by the European Court of Auditors is permanent and may be carried out before the closure of the accounts for the financial year in question. It is normally carried out on the basis of accounting documents, but may also be

carried out, if necessary, on the premises of: (1) the institutions, bodies, offices, and agencies of the Union; (2) anybody which manages revenue or expenditure on behalf of the Union; and (3) any natural or legal person in receipt of payments from the Union budget.

The second aspect is that in the Member States the audit is carried out in cooperation with the national supreme audit institutions. The audited entities are obliged to communicate to the European Court of Auditors any documents or information which the European Court of Auditors considers necessary for the performance of its task.

The third and final aspect is to recognise that the European Court of Auditors has no investigative powers. It will therefore report cases of possible fraud and corruption to both the European Anti-Fraud Office (OLAF) and the European Public Prosecutor's Office (EPPO), which deal with such cases in accordance with their respective powers.

Finally, the third idea we need to look at in greater depth is the audit reports. As a culmination of the audits it carries out, the European Court of Audit publishes:

(1) Annual reports on the implementation of the Union budget and the European Development Fund, including the Statement of Assurance, with particular emphasis on compliance and regularity (on or before 15 November);

2) An annual report on the performance of the Union's budget;

(3) Specific annual reports on the agencies, decentralised bodies, and joint undertakings of the Union;

(4) Special reports on topics of particular interest, especially on issues of sound financial management and on specific areas of expenditure or action; and

(5) Reviews that cover policy and management issues from a very broad angle, present an analysis of areas or issues that have not yet been audited or establish a factual basis on certain topics.

The second function entrusted to the European Court of Auditors concerns the exercise of its advisory powers.

This is because the founding Treaties give the other institutions of the European Union the power to request an opinion from the European Court of Auditors whenever they consider it necessary (Art. 287.4 TFEU).

The opinion is mandatory when the Council: (1) adopts financial rules laying down the procedure for establishing and implementing the budget and for presenting and auditing the accounts; (2) lays down the arrangements and procedure whereby the Union's own resources are to be made available to the Commission; (3) lays down rules on the responsibility of financial controllers, authorising

officers, and accounting officers; or (4) adopts anti-fraud measures.

