

Aigner Report (9 July 1975)

Caption: On 25 May 1975, the European Parliament Committee on Budgets appointed Heinrich Aigner as rapporteur on the part of the Council's draft Treaty concerning the creation of a Court of Auditors.

Source: European Parliament, Working Documents 1975-1976. 09.07.1975, n° Document 167/75, PE 41.183/fin. [s.l.].

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Report drawn up on behalf of the Committee on Budgets on the draft Treaty amending certain financial provisions of the Treaties establishing the European Communities and of the Treaty establishing a Single Council and a Single Commission of the European Communities (section on the establishment of a European Court of Auditors) - (Doc. 501/74)

Rapporteur: Mr H. AIGNER

By letter of 12 February 1975 the President of the Council of the European Communities requested the European Parliament, pursuant to Article 236, second paragraph, of the EEC Treaty and Article 204, second paragraph, of the EAEC Treaty, to deliver an opinion on the draft Treaty amending certain financial provisions of the Treaties establishing the European Communities and of the Treaty establishing a Single Council and a Single Commission of the European Communities.

On 18 February 1975, the President of the European Parliament referred this draft treaty to the Committee on Budgets as committee responsible and to the Political Affairs Committee for its opinion.

On 21 May 1975, the Committee on Budgets appointed Mr AIGNER rapporteur on the section of the treaty dealing with the establishment of a Court of Auditors.

It considered the draft Treaty at its meeting of 9 June 1975.

At its meeting of 25 June 1975, it considered and unanimously adopted the motion for a resolution.

Present: Mr Lange, chairman; Mr Aigner, 1st vice-chairman and rapporteur; Mr Durand, 2nd vice-chairman; Mr Artzinger, Mr Brugger, Mr Fabbrini, Mr Früh, Mr Gerlach, Mr Kavanagh (deputizing for Mr Hansen), Mr Kirk, Mr Lautenschlager, Mr Petre, Mr Radoux and Mr Shaw.

[...]

B – Explanatory statement

Introduction

1. The need for a European Audit Court has been clearly demonstrated in the documentation provided in the book 'The Case for a European Audit Court'. The European Parliament, in its reports on the implementation of the Community Budget, frequently reiterated the necessity of improving the supervisory mechanisms of the institutions, and of the creation of an independent Court, with powers of investigation.

These demands were met by the proposals of the Commission (COM (73) 1000) on the strengthening of the budgetary powers of the European Parliament. In its final debate on these proposals ⁽¹⁾, Parliament adopted the motion for a resolution included in the Report on behalf of the Committee on Budgets (Rapporteur: Mr SPENALE) which contained the following points concerning the supervision of implementation:

"21. Points out that it has frequently deplored the inadequate auditing methods in the Communities and called for the establishment of an effective and independent external auditing body in the form of a European Court of Auditors;

22. Welcomes the Commission's proposals to this effect;

23. Asserts, however:

(a) that the members of the Court of Auditors, who must be completely independent, must be appointed in agreement with Parliament,

(b) that the Court must report to Parliament and be ready at all times to assist and advise it in the exercise of its auditing rights;”

2. With the presentation of the Commission’s amended proposals (COM (73) 1000 fin.) the institutions worked together on the outstanding items of divergence; the major landmarks of this process are shown in the chronological table provided in the Annex. One of the most important parts of Parliament’s work was in the meetings of members of Parliament with representatives from the national audit offices under the auspices of the sub-committee of the Committee on Budgets on the ‘control of implementation’ of the Budget of the Communities. These discussions were summarized in the Note (PE 36.576). The major points both concerning the draft-amendments to the Treaty and the context of the subsequent statute were covered: and the proposals embodied in the Motion for Resolution and the proposed amendments to the draft-Treaty are made in the light of these extensive discussions.

Your rapporteur would like to acknowledge here the complete atmosphere of cooperation that existed in this working group and the extremely useful contributions made to the discussion by the representatives of the Audit Offices of the Member States.

3. Mr SPENALE in his Report on the Strengthening of Parliament’s Budgetary Powers (Doc.175/73) indicated the close inter-relationship between budgetary powers and the supervisory role over expenditure. In the Explanatory Statement to that Report he had this to say about the two pillars of Budgetary responsibility:

“58. Budgetary power is basically a power of decision and Parliament cannot be confined to mere supervisory powers.

Without the power to say how appropriations are to be spent an institution would have much less interest in knowing how they are being spent.

59. The value of supervision is reduced if the institution which undertakes it has no real budgetary power, since the main purpose of supervision is not punitive but constructive: it must assist the budgetary authority - as well as the authority under supervision - to correct the errors which may sometimes arise from budgetary decisions.

60. One might also wonder what the use would be of an institution giving a discharge on a budget which basically reflects the decisions of other institutions: it is up to those who have made the decisions to say whether their instructions have been understood and acted upon, and their decisions correctly implemented.

The right of supervision, is, logically speaking, only a derived right

...

62. On the contrary, if it is granted real powers of decision it must attach even more importance to its powers and means of supervision, since its budgetary powers themselves would be less effective, if its intentions could, with impunity, be ignored in the implementation of the budget.

63. With this in mind, Parliament has often called for means of supervision in the Communities to be strengthened, and the Committee on Budgets has had consultations with the Presidents of the Member States' audit offices; these have led to the formation of a joint working party to formulate ideas on a possible European Court of Auditors.

The Parliament therefore welcomes the Commission's proposals for the establishment of such an institution".

4. Whilst two interrelated themes have been treated side-by-side during the past eighteen months, the degree of agreement on the subject of the Audit Court seems greater and therefore delays seem less likely before ratification of the Treaty. This seems to the Committee on Budgets to justify the presentation to Parliament of a separate Report on the question of the creation of a European Audit Court.

5. Although agreement in principle on the creation of a European Audit Office has been attained, without major difficulty, certain important points of divergence remain, notably

- concerning the role of Parliament in the nomination procedure for the Court, and the on-going relationship between the Court and Parliament
- and, the working methods of the Court.

These, together with certain draftings amendments are explained below.

Principal objectives of the draft parliamentary amendments to the draft Treaty

(A) Parliament's relationship with the proposed European Court of Auditors

6. The desirability of fully associating Parliament with a procedure for appointing members of the Court of Auditors should find its expression in a clear presentation of its role in the draft Treaty.

The Committee on Budgets considers that the nomination of members of the Court should be on the basis of parliamentary agreement before the appointments made by the Council.

The Commission in its amended proposal (COM(73)1000/fin) referred to the 'assent' of Parliament, but your rapporteur believes that the term 'in agreement with the Assembly', being the term used in the original report of the Committee on Budgets (175/73) and also currently employed in the Treaty ⁽²⁾ is preferable.

As regards the practicability of parliamentary nomination proceedings, Parliament should be free to decide itself the conditions under which its agreement should be given.

7. It could well be preferable to use the idea, launched by Mr Kirk, in his Opinion on behalf of the Political Affairs Committee on the strengthening of the Parliament's budgetary powers, namely that candidates should be interviewed by the Committee on Budgets, in the form of nomination hearings.

Provisions such as these would, at the time of appointment of members of the Court, demonstrate the closeness of the relations linking the two bodies responsible for the external financial control of the Communities.

Proposed text

Article 206(4), first paragraph

‘the members of the Court of Auditors shall be appointed for a term of 6 years by the Council, acting unanimously and in agreement with the Assembly’.

(B) Working Conditions of the proposed Court

Rotation of Members

8. The system proposed by the Council results in a discrepancy in the duration of the President’s term of office and that of the members. The system already in force for members of the Court of Justice could therefore be advantageously applied to the members of the Court of Auditors; this would result in the following pattern:

- election of President every three years
- partial replacement of members (4/5) every three years.

Proposed text

Article 206(4) second paragraph

‘However, when the first appointments are made, four members of the Court of Auditors, chosen by lot, shall be appointed for a term of office of three years only’.

(C) Election of the President

9. The French version of the draft Treaty provides in Article 206(4) fourth paragraph: ‘Ils désignent parmi eux, pour 3 ans, le Président de la Cour des Comptes’. The versions in the other languages use the term ‘elect’ in place of ‘appoint’. The French text would thus appear to be incorrect and should be corrected to conform to the other versions.

Proposed amendment to the French text

Article 206(4), fourth paragraph

‘Ils élisent parmi eux, pour 3 ans, le Président de la Court des Comptes. Le mandat de celui-ci est renouvelable’.

(D) The employment of members of the Court

10. The conditions of employment of members (and in particular their salaries, allowances and pensions) determine in a large measure the position they occupy in the Community hierarchy and thus bear on their

authority and prestige; Parliament should therefore play a part in fixing these conditions of employment, and as indeed it has done in the employment conditions of Community servants generally.

Proposed text

Article 206(9)

‘The Council, acting by a qualified majority and after consulting the Assembly, shall determine the conditions of employment of the President and members of the Court of Auditors and in particular their salaries, allowances and pensions. It shall also, acting under the same conditions, determine any payment to be made instead of remuneration’.

(E) The Competences of the Court

11. Extent of the Audit

The Council’s draft lays down that the Court’s responsibility shall apply to the ‘accounts’ of revenue and expenditure; this term is too restrictive because it apparently limits the Court’s responsibility to the final stage of the operations involving revenue and expenditure whereas it should be possible for control to be exercised throughout all stages of the operations under scrutiny.

Proposed text

Article 206a(1)

‘The Court of Auditors shall examine all revenue and expenditure of the Community in their entirety. It shall also examine, in their entirety, all revenue and expenditure of all bodies set up by the Community insofar as the relevant constituent instrument does not preclude this audit’.

(F) On-the-spot audit

12. The draft Treaty provides that ‘the audit shall be based on reports and, if necessary, performed on the spot in the institutions of the community and in the Member States’.

This wording appears to imply that an on-the-spot audit is altogether exceptional, whereas on the contrary it should be considered as normal procedure in such an examination.

Proposed text

Article 206a(3)

‘The audit shall be based both on records and, as required, performed on the spot in the institutions of the Community and in the Member States (...).’

(G) Audits in the Member States

13. The help of national audit bodies (institutions and services) will be extremely valuable to the Court of Auditors both in carrying out its examinations of records and on the spot. But such help should not be allowed to constitute a limitation on the Community audit body.

It would therefore be preferable to delete the idea of 'liaison' between the national audit bodies and the Court of Auditors, lest this concept should seem, through a restrictive interpretation, to force the Audit Court to carry out its work via the national authorities, acting as intermediaries.

Proposed text

Article 206a(3), first paragraph

'The audit shall be based both on records and, as required, performed on the spot in the institutions of the Community and Member States. In the Member States the audit shall be carried out, at the request of the Court of Auditors, with the help of the national audit bodies etc.

14. In the event of an on-the-spot audit it is moreover essential for direct contact to be established (particularly in the forwarding of documents) between the Court of Auditors and the body being audited (national or Community).

Proposed text

Article 206a(3), second paragraph

'The institutions of the Community and the national audit bodies or (passage deleted) the competent national departments and, in the event of an on the spot audit, the body being examined, shall forward to the Court of Auditors, at its request, any document or information necessary to carry out its task'.

(H) The Independence of the Court

15. The draft Treaty does not confer upon the Court of Auditors the status of an institution on the same level as the Parliament, the Council, the Commission and the Court of Justice.

It does, however, seem indispensable to guarantee the Court of Auditors full independence vis-à-vis the institutions whose accounts it is to audit.

Proposed text

Article 4, (3)

'3. The audit shall be carried out by the Court of Auditors acting in complete independence and within the limits of the powers conferred upon it by this Treaty'.

(I) Other problems

16. The draft Treaty only lays down the main rules on membership, organisation and the functioning of the Court. The implementing rules must be laid down in a regulation which can only have the force of internal rules of procedure. Any other provision of a general nature requires a joint decision by the Council and Parliament.

17. Conclusion

(i) In the view of the Committee on Budgets the creation of a European Court of Auditors is now an urgent priority. All speed should be made in the convening of the conference of representatives of the Member States' governments necessary to adopt amendments to the Treaty.

(ii) It is vital that the European Parliament, as one of the bodies responsible for the external financial control of the Community, should have the right to participate in the appointment of the members of the European Court of Auditors.

(iii) This Court should be facilitated in its task of carrying out this control by the clarification of its relationship with the national auditing authorities and by the unimpeded right to carry out on the spot verifications.

Annex 1

Principal stages in the process of revision of those parts of the Treaty concerning the creation of a European Court of Auditors

6 June 1973 Commission proposal on the strengthening of the budgetary powers of the European Parliament (COM (73) 1000)

18 June 1973 Meeting of the Budget Committee with the Chairman and representatives of the National Audit Offices

8 July 1973 Interim resolution of the European Parliament on the Commission proposals (O.J. C 62 of 31.7.1973)

5 October 1973 Resolution of European Parliament (O.J. C 87 of 17.10.1973)

10 October 1973 Modified proposals of the Commission (COM (73) 1000 final)

4 December 1973 Meeting between the Budget Committee and the Chairman of the National Audit Offices under the auspices of the Sub-Committee on the Budget of the Communities (Control of implementation)

8 January 1974 Meeting between the Budget Committee and the Chairman of the National Audit Offices under the auspices of the Sub-Committee on the Budget of the Communities (Control of Implementation)

7 June 1974 Joint "guidelines" of the Council on the strengthening of the budgetary powers of the European Parliament

25 June 1974 Meeting between the Council and the Delegation from Parliament (Minute of the declaration of the President of the Delegation (PE 37.559))

23 July 1974 “Considerations” which influenced the Council in the drawing up of its joint guidelines of 7th June (Doc. 213/74)

17 September 1974 Meeting of the Delegation of the European Parliament to study the joint guidelines and the considerations of Council (PE 37.991)

20 September 1974 Letter from the President of Parliament to Council, accompanied by a note covering the reactions of the delegation to the position expressed by Council in its considerations (PE 38.151/ann. and PE 38.000/def.)

14 October 1974 Second meeting between the Council and the Delegation of the European Parliament (Note covering this meeting PE 38.465)

22 October 1974 Letter from the President of Parliament to the Council following letter of 14 October (PE 38.554)

12 February 1975 Letter from the President-in-Office of the Council to Parliament indicating the background to the elaboration of the draft Treaty (PE 39.854/Bur.) Draft Treaty amending certain financial provisions of the Community Treaties (Doc.501/74)

(¹) OJ No C 87, 17.10.1973

(²) EEC Treaty, Article 203(8) final paragraph.