

**ENGLISH
VERSION**



PROGRAMME

31 MAY (THURSDAY)

09h30/10h00 Opening session of *Madeira EUROSAI Conference*
(HOTEL SAVOY — BELLEVUE I ROOM)

- Minister of the Republic to the Autonomous Region of Madeira, *M. Monteiro Dinis*
- President of *EUROSAI*, *M. François Logerot*
- President of Portuguese Court of Auditors, *M. Alfredo José de Sousa*
- General Secretary of *EUROSAI*, *M. Ubaldo Nieto de Alba*
- President of *EURORAI*, *M. Bernard Levallois*
- General Secretary of *EURORAI*, *M. José António Nogueira de Roig*
- Member of *Tribunal de Contas in Madeira*, *M. Pestana de Gouveia*

10h00/12h30 1st Working session: *The different structures of the State (unitary, federal, regional) and their effect on public sector financial control* (HOTEL SAVOY — BELLEVUE I ROOM)

Chairman — SAI of Denmark

Speaker — Professor Marcelo Rebelo de Sousa, Lisboa University

Reporter — SAI of Germany

Moderator — SAI of Hungary

11h15/11h30 Coffee break

13h00/15h00 Lunch

15h00/17h30 2nd Working session: *Interrelation and cooperation in the matter of public sector financial control among the different external audit bodies* (HOTEL SAVOY — BELLEVUE I ROOM)

Chairman — SAI of Russian Federation

Reporter — RAI of *Midi-Pyrénées* (France)

Moderator — SAI of Italy

16h15/16h30 Coffee break

1 JUNE (FRIDAY)

09h00/10h45 3rd Working session: *The inter-dependence of budgets (communitarian, national, regional, local) and its effect on external public sector audits* (HOTEL SAVOY — BELLEVUE I ROOM)

Chairman — SAI of Greece

Reporter — European Court of Auditors

Moderator — SAI of Czech Republic

10h45/11h00 Coffee break

11h00/12h45 4th Working session: *The audit of regional and local government performed by the different external public sector audit bodies* (HOTEL SAVOY — BELLEVUE I ROOM)

Chairman — SAI of Poland

Reporter — RAI of Land of Brandenburg (Germany)

Moderator — SAI of United Kingdom

12h45 Group photo

13h00/14h30 Lunch

14h30/15h30 Concluding remarks of the *Madeira EUROSAI Conference* by the reporters (HOTEL SAVOY — BELLEVUE I ROOM)

15h30/16h00 Closing session (HOTEL SAVOY — BELLEVUE I ROOM)

- President of the Regional Parliament, M. José Miguel Mendonça
- President of EUROSAI, M. François Logerot
- President of Portuguese Court of Audit, M. Alfredo José de Sousa
- General Secretary of EUROSAI, M. Ubaldo Nieto de Alba
- President of EURORAI, M. Bernard Levallois
- General Secretary of EURORAI, M. José António Nogueira de Roig
- Member of Tribunal de Contas in Madeira, M. Pestana de Gouveia

Opening session



Left to right:

- President of EUROSAI, *M. François Logerot*
- General Secretary of EURORAI, *M. Noguera de Roig*
- General Secretary of EUROSAI, *Ms. Milagros Garcia-Crespo*
- Minister of the Republic for the Autonomous Region of Madeira, *M. Monteiro Dinis*
- President of the Portuguese Court of Auditors, *M. Alfredo José de Sousa*
- President of EURORAI, *M. Bernard Levallois*
- Member of Portuguese Court of Auditors in Madeira, *M. Pestana de Gouveia*

SPEECH BY THE PRESIDENT OF THE COURT OF AUDITORS OF PORTUGAL

Alfredo José de Sousa

Excellencies,
Ladies and Gentlemen,

In this opening session of the *Madeira EUROSAI Conference* of 2001, I am delighted to welcome the delegations of all the Audit Institutions present.

I would also like to express our great honour in having with us today the Minister of the Republic for the Autonomous Region of Madeira. The Minister is a former Judge of the Court of Auditors of Portugal, and I would like to thank him for his dedication and collaboration in the preparation of this event.



Alfredo José de Sousa

The Conference is attended by Audit Institutions (Court of Auditors and Congenerous Institutions) from 26 European Countries, including the European Court of Auditors, members of EUROSAI and members of EURORAI. The President of the Association of Brazilian Court of Auditors, who is also President of the Court of Auditors of the State of Minas Gerais in Brazil, the distinguished Counselor, Flávio Régis Xavier de Moura e Castro, is also attending the Conference as an observer.

I would like to emphasise the fact that EURORAI, the European Organisation of Regional External Public Finance Audit Institutions, has been involved from the very beginning in the preparation of this Madeira EUROSAI Conference. Representatives of 43 Audit Institutions will have the opportunity to debate their different viewpoints in the conference, including delegations from the European Court of Auditors, 26 members of EUROSAI and 16 members of EURORAI.

We will thus have the opportunity to conduct a wide and thorough debate during the four working sessions under the general theme: "The relations among the different public sector audit structures".

Indeed, the range of situations within the framework of public sector auditing is highly diverse, and reflects the full set of competencies and capacities that have been acquired by member institutions of EUROSAI and EURORAI. Given the specific institutional characteristics of each State, I am convinced that the link between these two European organisations will be highly beneficial to us all in order to clarify the subjects to be discussed.

The subjects of the four working sessions were proposed by the Conference's Preparatory Technical Commission, based on an extensive consultation, via a questionnaire sent to EUROSAI's and EURORAI's member institutions. All the subjects are highly pertinent and of contemporary relevance for the activities of our institutions. And to the work of others! The emergence of sovereign states from the former Soviet Union, in the wake of the fall of the Berlin Wall; the alterations experienced in formerly cohesive States, such as greater regional or national autonomy, sometimes tending towards full independence; and the actual enlargement process of the EU is also accompanied by movements within the EU's Member States towards autonomy and even independence of regions and even of nations.

These trends mean that the issue of relations among the different levels of public-sector audit structures is highly relevant and pertinent.

Although we are principally interested in approaching and developing the subjects under debate from the perspective of our activity of independent auditing of public sector finances, we cannot forget the inevitable link between our key concerns and other subjects with which such concerns are (increasingly) associated.

The subject of the first working session, *The different structures of the State (Unitary, Federal, Regional) and their effect on public sector financial control*, is therefore of great importance. This session follows directly after the opening session and will begin with a lecture from the distinguished professor Marcelo Rebelo de Sousa, of the University of Lisbon. I would like to express my thanks to you, professor, for having agreed to provide the opening lecture to this Conference, and you will undoubtedly grace this packed auditorium with the brilliance and authority for which you are renowned.

Given that this Conference brings together institutions that develop their activities in different European contexts (in sectorial and territorial terms), it is

also necessary to explore the theme of *Interrelation and Cooperation in the Matter of Public Sector Financial Control Among the Different External Audit Bodies*, the subject of the second working session scheduled for this afternoon.

Since the competencies of our institutions are related above all to auditing public sector finances, *budgetary matters* are a key issue for us. The organisation of budgetary issues (legislative framework, institutional interdependence etc.) has a decisive impact on the manner in which public resources are applied in the various different levels of public administration of the various States. Of course, our main concern is the need for transparency in the financial management of the resources provided by tax-paying citizens. This inevitably requires approval procedures and mechanisms for revenue and expenditure forecasts. Given that there are different frameworks and levels of public administration – as well as various sub-sectors of the public sector, and the existence of supranational policies, programmes and financing in the scope of the European Union – it will also be necessary for us to discuss, *The Interdependence of Budgets (Communitarian, National, Regional, Local) and its Effect on External Public Sector Audits*. This will be the subject of the Conference's third working session, scheduled for the first half of tomorrow morning (June 1).

The fourth working session, during the second half of tomorrow morning, will be dedicated to the topic, *The Audit of Regional and Local Government performed by the Different External Public Sector Audit Bodies*. Although this subject addresses a regional and local framework, it is of general interest for all institutions present, inasmuch that there are different legal frameworks and current practises in the various states, and therefore greater mutual understanding of these experiences will certainly enrich the knowledge of all participants.

In summary, we will attempt to find responses to some of the following concerns: how can we characterise the relations between different audit institutions within each state? Independence? Dependence? Co-operation? Competition? What relations should exist, in light of the organisational structure of each state in order to improve the auditing efficiency of public sector finances? And how should we address funds originating from supra-national organisations?

The subjects I have listed in this brief overview will be our main concern during the next two working days, that will undoubtedly offer a profitable and enriching experience for all participants. I'd even go so far as to suggest that it might

be desirable after these debates to adopt any practises revealed that may offer efficiency gains – always a major concern in this world of scarce resources.

Thank you very much for your attention.

SPEECH BY THE PRESIDENT OF THE EUROSAI

François Logerot

Mr. Minister,
Ladies and Gentlemen Presidents of SAIs and IRCs,
Dear colleagues,
Ladies and Gentlemen,

I would first like to express my warm and sincere thanks, on behalf of all member institutions of EUROSAI, to the *Tribunal de Contas* of Portugal and its president, Mr. De Sousa and his staff, who enthusiastically accepted the arduous task of organising this conference and welcoming us here to Madeira. I would also like to thank the Madeira Regional Chamber, and the Portuguese authorities, for their collaboration with the *Tribunal de Contas* in preparing this event.



François Logerot

Permit me to provide a short overview of the genesis of this conference, which perfectly illustrates the joint sense of dynamism, openness and hard work that drives our young organisation.

In February 2000 in Madrid, upon request from various members EUROSAI's Governing Board decided to organise a conference on the topic that brings us here today. The organisation of this event comes hot on the heels of the first training session in Golawitce, and clearly demonstrates that we have reached an important stage in the development of our mutual exchanges. Driven by its members' desires, EUROSAI's activities are no longer restricted to statutory meetings, but have now widened to a diversified range of instruments (conferences, training events, working groups) that pay tribute to our organisation's intellectual dynamism.

This collective spirit was in evidence throughout the preparation of the conference. An extensive prior consultation made it possible to refine the project's characteristics, in function of the opinions expressed by the different Supreme Audit Institutions. The definitive design of the conference was achieved, under the

remarkably efficient co-ordination of the *Tribunal de Contas* of Portugal, by a working group that brought together various Supreme Audit Institutions, as well as members of EURORAI. The member institutions of EUROSAI and EURORAI also provided highly informative written contributions, and I would hereby like to thank the efforts of all those that have contributed towards this conference's success.

Finally, I would like to briefly underline what I consider to be the strategic nature of the subject that brings us here today to Madeira. Madeira is living proof, in the form of the regional chamber seated here, that different levels of external auditing exist in several of our member countries, as a result of the existence of different levels of administration of public-sector funds.

In a "perfect world" – perfectly uniform, or perfectly partitioned – the subject that brings us here today might not even be relevant and there would have been no need to gather together so many of us here to discuss it.

In this "perfect world", which we may imagine for a fleeting moment, the question of the relations between the different public-sector audit structures would be meaningless. The structure of each State would either be unitary or federal, according to the distinction that is classically used to categorise the different forms of modern states.

In states with federal structures, such as Germany, Austria or Switzerland, it is possible to imagine that the distribution of competencies between the different levels of the public administration might be so intricately organised that each level could operate on a perfectly separate basis, without overlapping of attributions or of corresponding financial resources.

- the federal budget would be strictly reserved to financing purely federal competencies, such as diplomatic activities, the armed forces and custom administration;
- the budget of each state would be solely dedicated to financing their respective competencies;
- finally, within each state, local authorities would have an autonomous budget, to finance the activities that have been allocated to them.

In this purely hypothetical universe, there would be an audit institution for each corresponding level of public administration (for instance, a "supreme chamber", "regional chambers" and "local inspectorates") without the need for these distinct audit institutions, each operating within well-defined frontiers, to establish relations between each other.

In States with a unitary structure, such as England, Holland, Portugal and France, it is possible to imagine that the State budget and accounts reflects all revenues and expenditure of the public sector, including that of non-sovereign secondary public authorities, that exercise their attributions through devolution of powers defined by the State.

In this context, it would be possible for a sole external audit institution to oversee the inspection of the accounts and management of all authorities and institutions whose powers derive from the will of the sovereign state.

As a consequence, in this “perfect world”, it would be pointless in both scenarios, to discuss the relationship between different public-sector audit institutions. The question would either be resolved via a vertical and airtight separation of powers and financial resources, or would simply not apply since the set of powers and respective budgets ultimately depends on a single sovereign authority.

But – and our presence today is living proof of that fact – the world I have briefly described is a mere chimera. It doesn’t exist, or will no longer exist, in either federal or unitary states.

In States of a federal structure, despite their efforts to clarify the attributions and respective resources that correspond to each level of competencies, there has long been a need for collaboration between the different levels of public administration. This collaboration has developed over time as a result of a number of factors, including the following:

- firstly, in many States, an important part of revenues, in particular tax revenues, of federal states depends upon decisions of central government, even if collection of such revenues is managed by such states. It is therefore necessary for central government to maintain the right to inspect the collection of such revenues by each State, and as a consequence the federal supreme audit institution’s right to inspect operations conducted within each federal state;
- furthermore, central government is often responsible for maintaining a certain level of solidarity between different states, since there may be high disparities between the different respective levels of wealth. Central government therefore intervenes in various manners in order to achieve financial balancing between the States, and therefore central government and the federal supreme audit institution must be able to guarantee

- the proper utilisation of funds provided to states that are beneficiaries;
- finally, but perhaps most importantly, there are numerous domains within such States in which policies or initiatives are co-financed by various levels of public administration, ranging from social services to infrastructure investments and including higher education institutions and certain grand projects. In all instances of collaboration between federal government, states and local authorities, the conjunction of different financing sources presupposes the need to determine concrete solutions for auditing the use of such funds, allocated between the different levels that may claim respective auditing powers.

In States of a unitary structure, we have witnessed almost the reverse phenomenon, but which also poses questions regarding the proper organisation of auditing activities. We have in effect admitted, in certain cases for many years, in others far more recently, that the unitary State cannot, and should not, do everything, and that secondary authorities, even though subordinated to higher powers, should have legal, functional and financial autonomy, whose importance may be highly variable. To the extent that such authorities are not simple emanations of the State, but have their own resources and life – even if in reality they are highly dependent on State subsidies – the question of the existence of specific external audit institutions could pose a dual perspective:

- from a political perspective, the creation of specific external audit institutions for a local framework could be considered as symbolising, or legitimately extending the autonomy granted to local authorities;
- from a functional or more “technical” perspective, we can also estimate that it would be desirable in terms of efficiency to have recourse to a level of external auditing that is closer to the administrative level that is subject to such control.

Finally, beyond the specific considerations of federal or unitary states, it is also necessary to underline that member states of the European Union or those who benefit from community funds, must also consider a European level, whose intervention complements the previous forms of intervention. In the latter regard, there is a further level of control, consecrated to the European Court of Auditors for almost 25 years. Since over 80% of Community funds are spent within the

member states, the question of co-operation between the European Court of Auditors and the different levels of external auditing of the member states, inevitably must be posed.

Thus in the real world to which we belong and regarding which, like Voltaire's *Candide*, I do not know whether it is the best of all possible worlds or not, the question of the relations among the different levels of auditing is of clear and growing importance. In effect, we should adapt to a public-sector that is in a rapid state of evolution, for the reasons outlined above:

- growing interdependence of actions and financial flows between different levels of public administration;
- hitherto uninterrupted progression in the level of intervention of the European Community;
- persistent growth of recognition of the principle of autonomy of local authorities.

As a result, the issue of relations among the different public sector audit structures may become, using professional terminology, a multiple "risk zone". For example, how can we avoid overlapping and double controls? How can we avoid, by contrast, that certain actions or funds escape from any type of auditing, as a result of "loopholes" in the distribution of competencies? Finally, how exactly can we harmonise objectives, methods and positions of the various levels of control?

These are highly important issues, fully justifying the organisation of this Conference. This event also would have been impossible without the dedication and hospitality of the Tribunal de Contas of Portugal, whose contribution I would like to thank once more.

It is now the time, my dear colleagues, after these rather general considerations, to discover the complex and living reality of each of our countries, to identify common problems and to draw elements from our respective experiences, difficulties and successes in order to help each of us to enrich our own practises, while respecting our traditions and specific characteristics.

In conclusion, and returning to Voltaire and one of his metaphors, particularly apt in this island setting, each of us must cultivate our own garden, while keeping an eye on what is growing in the garden next door...

Thank you.

SPEECH BY THE PRESIDENT OF THE EURORAI

Bernard Levallois

Minister of the Republic for the Autonomous Region of Madeira,
President of Portuguese Court of Auditors,
President and General Secretary of EUROSAI,
General Secretary of EURORAI,
Member of Court of Auditors in Madeira,
Presidents of the SAIs members of EUROSAI,
Presidents of the RAIs members of EURORAI,
Ladies and Gentlemen,



Bernard Levallois

Please allow me to express my great pleasure in taking part in these two working days on these topics of common interest. The merit of this initiative is due to EUROSAI's Governing Board and its President who had the idea for the conference, and also to the *Tribunal de Contas* of Portugal, and its president Mr. de Sousa, and the counsellor of the Madeira regional chamber, Mr. Pestana de Gouveia and its Director-General, Mr. Tavares, who have ensured perfect organisation of the event and are responsible for the exceptional warm welcome which is particularly touching to us all.

EUROSAI and EURORAI have maintained contacts between the two organisations for a very long time. For example, I participated as an observer in EUROSAI's last congress in Paris in 1999 and had the chance to learn on that occasion that our members share many of the concerns of supreme audit institutions: auditing independence, publication of auditing reports, relationship with the media, etc.

But this is the first time that the two organisations meet in order to work together on a common topic. Nonetheless, of all the possible topics we could discuss, this is not exactly the easiest to address. But it is undoubtedly a genuine issue

of contemporary relevance. Whether our countries have federalist, regionalist or centralist traditions, the general movement, at least within member countries of the Council of Europe, is towards government of public affairs that is as close as possible to ordinary citizens. This evolution has an inevitable impact on audit institutions. Furthermore, for Member States of the European Union, or those soon to join, the existence of a third level of public intervention – the European level – also poses, as we are all very familiar, complex problems for the organisation of auditing activities. In effect, how can we ensure that “matching” funds do not enable beneficiaries to escape from all form of control? How can we organise the co-ordination, or even co-operation between different levels of auditing control, while preserving the competencies and independence of each?

I do not expect us to produce uniform responses for such questions, and for others that will arise during our discussions. The diversity of our countries, in terms of history, institutions and culture will lead each of us to provide our own response. But respect for diversity does not mean that we have nothing to learn from others, on the contrary. It is therefore with great interest that I and my member colleagues from EURORAI, will participate in these exchanges between Europe’s supreme and regional audit institutions.

Thank you very much.

SPEECH BY THE MINISTER OF THE REPUBLIC FOR THE AUTONOMOUS REGION OF MADEIRA

Antero Monteiro Dinis

M. President of EUROSAI,
M. President of the Portuguese Court of Auditors,
M. President of EURORAI,
M. General Secretaries of EUROSAI and EURORAI,
Member of the Portuguese Court of Auditors of Madeira,
Ladies and Gentlemen,

Following the invitation by the President of the Tribunal de Contas de Portugal (Portuguese Court of Auditors), it is a great pleasure for me to take part in this opening session of the Madeira Eurosai Conference. As representative of the Portuguese State in this Autonomous Region I would like to wish you the warmest possible welcome and I hope that your stay on the island of Madeira is both enjoyable and productive.



Antero Monteiro Dinis

During the working sessions to start today you will undoubtedly gain precise knowledge on the legal and constitutional architecture of the Portuguese system of autonomous regions, the powers of the distinct governing bodies in these regions, their intercommunicability with the sovereign bodies of the State, the global functioning of their administrative structures and the implications of this system in terms of financial control and auditing of the legality of public expenditure and verification of accounts that is the responsibility of the Tribunal de Contas and the respective Regional Chamber.

Professor Marcelo Rebelo de Sousa will shortly address these matters with his characteristic academic erudition, as university professor in the Faculty of Law of the *Universidade Clássica de Lisboa*. During his career Professor Marcelo Rebelo de Sousa has successfully married a high-powered university teaching career with his remarkable achievements as a political theorist and statesman.

From my own experience, as a former judge within the Tribunal de Contas, way back in the 1980s, I would also like to add a few succinct observations in order to provide you with an overview of our particular institutional sensibility. Although our system may be based on a framework that is close to or similar to your own, it has now changed as a result of the personal positioning in the State structure.

The dignity and effectiveness of the jurisdictional function principally depends upon independence guarantees that, in legal and constitutional terms, are guaranteed to those bodies to which such functions is granted, as well as to the judges which exercise such functions, within the context of effective concretisation of their independence.

This underlying principle applies to all types of court, irrespective of the matters integrated within their respective jurisdictions. The principle also applies, of course, to courts of auditors or other similar audit or external control institutions.

The 1976 Portuguese Constitution, with the complementary developments resulting from the 1989 and 1997 revisions, have integrated the Tribunal de Contas within the framework of sovereign bodies empowered to administer justice in the name of the people. The Portuguese Constitution defines the Tribunal de Contas as the supreme audit institution responsible for controlling the legality of public expenditure and for assessing correct financial management and levying responsibilities resulting from respective infringements through the procedural instruments specified within the law.

In addition to the Court's independence, its judges have been simultaneously guaranteed a statutory framework that enables them to perform a functional activity in an impartial and unrestricted manner, subject only to the terms of law and independent of intervention from any other body or entity.

Given the constitutional imperative of the unitary nature of the Portuguese State and the sovereignty principle, this normative framework necessarily covers the regional sections operating in the Autonomous Regions of the Azores and Madeira, seated in Ponta Delgada and Funchal.

It should be emphasised that despite the territorial insertion of the regional sections in insular areas that have been granted political and administrative autonomy and have governing bodies, the regional sections are not dependent on, or in any way conditioned by, such bodies within the exercise of their jurisdictional activity and the definition of rules that delineate and regulate such activity. This independence results from the specific structural nature of the Tribunal de Contas and the

obligation that the Assembly of the Republic must intervene, in an absolute or relative degree, in the definition of the status of its judges and the organisation and powers of the court itself.

In this manner, the system defined in the Constitution and within the law guarantees that the powers attributed to the Tribunal de Contas and to its regional sections, specifically in terms of prior and successive auditing and levying of financial responsibilities, may be exercised and carried out with the rigour, transparency and pedagogical prowess that should always be the hallmark of a democratic state such as that found in Portugal.

This situation gains even greater significance when we consider that the framework of the Court's material powers now includes assessment not only of legality but also economy, efficiency and effectiveness, from a financial management perspective, of the State, the Autonomous Regions, local authorities and respective services, public institutes, social security institutions and public companies.

This increased significance must inevitably involve special rigour and demands in respect to value judgements issued within the framework of the respective jurisdictions, together with the institutional dignity that has been attributed to the court in this manner.

Given the day-to-day complexity and scale of the State's structure and that of other public bodies, together with the vast spectrum of the State's powers, it is increasingly important to permanently audit the legality, regularity and economic efficiency of public revenues and expenditure, in order to ensure that the financial management of bodies with political power and planners in general may be assessed by the holder of sovereign power – the people – with democratic transparency founded upon impartial knowledge and exemplary standards of technical rigour. Such auditing responsibilities must be charged to bodies that are granted independence, absolute impartiality and complete dominion over the matters falling within their field of enquiry.

I am sure that all the prestigious institutions to which you all pertain and form part of, intend to ensure that this EUROSAl Conference is able to shed fresh and useful light on these matters.

I would like to close by wishing all our distinguished participants – Presidents of EUROSAl, EURORAI and of the Tribunal de Contas de Portugal, and all other participants – a very fruitful and productive time here.

I also hope that after learning of the geographic, economic, social and cultural

aspects of this island, and spent time with its welcoming, peaceful and hospitable population, you will all leave with a sense of longing to return one day.

So rather than bidding farewell, I look forward to greeting you once more in the future.

Many thanks to you all.

Working sessions



1.st session

The different structures of the State
(unitary, federal, regional) and their effect
on public sector financial control



Left to right:

- *M. Dieter Engels* (SAI of Germany)
- *Prof. Marcelo Rebelo de Sousa*
- *M. Henrik Otbo* (SAI of Denmark)
- *M. Arpad Kovacs* (SAI of Hungary)

BASIC REPORT

Reporter



Dieter Engels
SAI of German

Based on the papers¹ available the following 15 theses can be formulated:

1. Differing government systems lead to differing organisational patterns of external government audit. By way of simplification, it can be said that European states either have a federal or a unitary government system.
2. A federal government system means that a state is itself composed of constituent states². This implies the existence of government bodies belonging to the three traditional separate branches of government: Legislature, Executive Branch and Judiciary. The constituent states of such a state having a federal government system also possess their respective legislative assemblies, executive governments and courts of law. Austria, Switzerland and Germany are examples of states having a federal government system³.
3. A unitary state is one with a single central government level, again divided into Legislature, Executive Branch and Judiciary. This does not mean that all government functions are performed centrally. There is a form of delegating government powers known as deconcentration, where central government departments have subordinate agencies, regional and/or field offices, or deconcentration, i.e. certain government functions are devolved to legally separate territorial entities, e.g. regions and provinces, districts, cities, boroughs and local authorities, countries and municipalities. However, these entities do not have the status of states.
4. In a unitary state, decentralisation may take different forms. In the "classical" unitary state, the central government levels prevail, e.g. in

¹ Preliminary reports from the following audit institutions have been available to me for use in compiling this paper: The SAls of the Netherlands, Poland, Portugal, Spain, Switzerland, the United Kingdom and Germany; the German state courts of audit of Rhineland-Palatinate and Saxony-Anhalt, the audit office of the Swiss Canton of Zurich, France's Chambres régionales des comptes de Rhône-Alpes and de Midi-Pyrénées.

² This definition and the subsequent definition of the term "unitary state" are taken from a textbook by *Hartmut Maurer* entitled *Staatsrecht (State law)*, München, (Munich) 1999, S. 298. The report by *Hans Leikauf* also relies on a similar definition.

³ Cf. my paper submitted for this meeting on the impact of government systems on external auditing in the Federal Republic of Germany, and the statements made by *Paul Georg Schneider* on the working relations among the various audit institutions.

Poland and, with some special features, the United Kingdom. If there is stronger emphasis on decentralisation, this is described as a unitary state with decentralised systems. Examples of this are France, Spain, Portugal and the Netherlands.

5. As to the different organisational patterns of government auditing in a federalist state and a unitary system, these depend primarily on whether or not the territorial subdivisions themselves have the quality of states. In the latter case, there is not only a federal supreme audit institution, but each constituent state has its own audit body. In unitary states, the prevailing pattern – apart from differences in detail – is to have a single Supreme Audit Institution (SAI). One of the more typical examples is that of the Netherlands where external government auditing is performed exclusively by the Supreme Audit Institution⁴. This basically precludes the problems addressed below of having different external government audit bodies working side by side.
6. Under such a pattern of organisation, the SAI is, as a rule, responsible for auditing central government, whereas regional or local audit bodies are in charge of auditing regional and/or local government. This is the pattern prevailing, e.g., in Poland or France. In some countries, a sort of intermediate pattern of government audit systems is in place: in Spain, e.g., the SAI also is in charge of auditing the Autonomous Communities established on a regional basis. However, the Spanish SAI may transfer audit responsibilities to the regional audit bodies. A similar pattern prevails in Portugal, where regional audit chambers perform SAI functions in the Azores and Madeira.
7. Where several audit institutions are in place within a unitary state system, mission performance also depends on whether their reports (and recommendations, where appropriate) are addressed to legislative bodies. This aspect is relevant for the structural and procedural

⁴ The Dutch report stresses the fact that the provinces do not have their own audit departments. However, the SAI does not have the power to conduct provincial audits. As a result, they are subject to audit by private accountants. The only exception being the Provinces Fund budget which is audited by the Ministry of the Interior and Kingdom Relations which manages the fund. Currently in the Netherlands a discussion is under way dealing with the proposal to establish provincial audit offices.

organisation of the audit institution concerned, e.g., when it comes to determining who should have powers in connection with the election and appointment of Presidents and members and the further staff of audit bodies. Another relevant factor is the scope of powers of the audit body, e.g., whether these powers are limited to auditing or whether they include the right to advise Parliament. Such functions are found mainly in the federalist systems, e.g., Austria, Switzerland and Germany. In the latter country, the SAI reports to the Federal Parliament, and each state court of audit reports to the respective state legislature.

8. The way of organising the coexistence of several external government audit bodies within a country depends on the allocation of tasks between central (or federal) government on the one hand and the country's constituent states or other territorial subdivisions. If, as in a federalist state system there are constituent states which have their own powers of government, the SAI and the regional audit bodies have their separate ambits of responsibility. As a matter of principle, there are clear demarcation lines between these separate ambits of responsibility and these are in line with the ambits of responsibility of the federal government and the constituent states, which means that the SAI audits federal government, and the audit bodies of the constituent states audit the state governments.
9. Within a unitary state there are different patterns of defining the ambit of responsibilities of the SAI and of the audit institutions of territorial subdivisions. In most cases, the SAI is in charge of auditing central government while the roles and responsibilities of the other audit bodies differ considerably. They depend on the degree of decentralisation and on the scope of the territorial subdivisions' decision-making powers. In countries, e.g. Spain and Portugal, where regions have a large degree of autonomy, the role of regional audit bodies is almost the same as that of audit bodies of constituent states in federalist state systems. But even in countries with a lesser degree of regional autonomy, the organisational patterns in place are such that regional audit bodies have separate ambits of responsibility of their own. In France, e.g., the

regional and the larger local territorial entities are audited by the regional audit bodies. In Poland, the 16 regional audit bodies are in charge of auditing the financial management of districts, provinces and local authorities.

10. Depending on the federalist or unitary system of government, varying organisational patterns are in place concerning the relationship between the SAIs and the regional audit bodies: In federalist systems, the prevailing legal status is that of full mutual independence and equality of the SAI and the regional audit bodies without any superiority or subordination. As a consequence, the SAI has no powers of issuing instructions to or supervising the regional audit bodies.
11. In contrast, the unitary state tends to organise regional audit bodies as regional subdivisions of the SAI. Under such an organisational pattern, the regional audit bodies are under the supervision and under the orders of the SAI. However, the scope of the SAI's powers to supervise and give orders differs from country to country:
 - In the United Kingdom, e.g., the various local audit bodies form part of an overall audit body which in turn is audited by the Comptroller and Auditor General who reports his audit findings to Parliament.
 - In Poland, the 16 regional audit bodies are under the SAI's supervision in respect of legality, economy, suitability and reliability. However, such a pattern of organisation may cause problems, if – as in Poland – the members of regional audit bodies are independent and subject only to the law.
 - In France, the SAI hears appeals against decisions of the regional audit bodies, which gives the SAI supervisory powers over the regional audit bodies.
 - In Spain, the SAI has powers of supervision and giving instructions vis-à-vis the regional audit bodies. E.g., the SAI may require that any of the regional audit bodies carry out a particular audit exercise concerning the operations of central or regional government.
12. Audit mandate overlaps between audit institutions are more likely to be found within a federalist rather than within a unitary state where government auditing is organised along hierarchical lines. The overlaps are usually attributable to the fact that there is not always a clear de-

marcation between the responsibilities of the Federal Government and the constituent states. E.g., it is not uncommon for authorities of Germany's constituent states to implement federal legislation and/or programmes. Furthermore, regimes of mixed state and federal funding for certain types of projects lead to situations where there is no straightforward way of allocating audit responsibilities⁵.

13. Such patterns of audit responsibilities may affect the respective independent status of the German SAI and the state courts of audit and imply the risks of duplication of audit work and/or of gaps in audit coverage. Such risks may be precluded rather easily, if there is a hierarchy within government auditing with the SAI being authorised to supervise and issue instructions to the regional audit bodies.
14. Where the SAI and regional audit bodies are on a peer, the choice of means by which the risks of gaps in audit coverage and/or the duplication of audit work are to be counteracted must be in line with the independent status of the audit institutions involved. The means applied range from legislative provisions requiring cooperation in a spirit of confidence, the coordination of audit planning and the mutual reporting of audit findings via general agreements between audit institutions to bilateral or multilateral agreements. They may cover a wide scope of possible arrangements, e.g., a precise definition of audit subjects, joint audits, the delegation of audit rights, and procedural arrangements. Apart from such formal arrangements, there is a variety of options for informal cooperation; conferences of the heads of audit institutions, committees, working groups and other meetings between the SAI and regional audit bodies⁶.
15. The papers submitted for this study provide little information on the audit of local authorities. From such pertinent information provided, one may conclude that the principle of local self-government plays a

⁵ Details of this may be found in my paper and the paper by *Paul Georg Schneider* (cf. footnote 3).

⁶ On the German system, cf. my paper and those by *Paul Georg Schneider* and by *Horst Schröder*. On Swiss practice, cf. *Paul Brügger, Martin Gigon and Ernst Kleiner*.

major part in the audit arrangements. On the other hand, regional audit bodies have sometimes been given charge of the audit of local authorities within their ambit⁷. Finally, municipalities in some countries have their own audit bodies strictly separate from regional audit bodies and national SAIs. However, the available papers do not furnish any details⁸. As *Hans Leikauf*, states in his paper local government audit arrangements seem not to depend on the system of government⁹.

⁷ Cf. the paper by *Paul Georg Schneider*.

⁸ In the Netherlands a bill will be presented to parliament making it compulsory to set up municipal audit offices. So far only the city of Rotterdam has a local audit office while the other municipalities are audited by private accountants. In Switzerland also many municipalities have external specialists who are charged with local auditing. In municipalities with local assemblies financial control is exercised by an independent audit committee elected by the citizens, cf. *Ernst Kleiner*.

⁹ Cf. the latter report on this meeting.

THE STRUCTURE OF THE STATE*

Speaker



Prof. Marcelo Rebelo de Sousa

* Speech taken from audio recording without revision by the author.

First of all, let me thank you for the very kind and honourable invitation from my good friend, President Alfredo José de Sousa, and also congratulate him and the regional chamber of the Portuguese Tribunal de Contas for this unique organization. Thank you very much.

I would also like to congratulate both EUROSAI and EURORAI for this important step in their dialogue and reciprocal connections.

I was intending to speak in Portuguese as we are in an autonomous region of Portugal, but then I thought that forty minutes for translation is too long and I will address you in English.

I was invited to tell you something about the different structures of the State (unitary, federal and regional) and their different effect on public sector financial control. You will forgive me, and I apologise for that mistake, the academic style. But one has one's vocation, and mine is the university vocation. I have had different tasks, as a member of the national government, Member of Parliament and now I am the president of a local parliament. So, I do admire you very much because I know, seen from another point of view, how important your role is, your tasks, when controlling both government expenses and regional and local organizations in power.

Well, starting with the subject – the structure of the State – which I usually call the form of the State – I will start by distinguishing the structure of the State from the type of State. Today's type of State is what we can call, from about one century ago, the post-liberal State. And the post-liberal State, which started in the beginning of the twentieth century, had different natures: the so-called socialist-legality State, the so-called State with a market economy and dictatorship that was quite powerful, even in Portugal, until the seventies, and then the welfare state with the rule of law.

We are going to speak of the welfare State with the rule of law. I mean, a market economy State with democracy. So, private ownership of production means, and at the same time the respect of human dignity, fundamental rights, ideological pluralism, organizational pluralism and the free choice and control of the members of its political bodies or institutions.

This welfare State with the rule of law has different aims as you all know. The classic aims: internal security, external security, individual and collective security, and also justice – reciprocal justice and redistributive justice, but also welfare –

social, economic and cultural welfare aims. And to achieve these aims, the contemporary State for the last forty, fifty years has different functions or activities: the power to approve the Constitution, the power to amend the Constitution, the power to approve legislation, the power to make political decisions, both internal and external, and then, what all of us call, the administrative function and judicial or jurisdictional function. Let us concentrate on the administrative function. I mean, the execution of laws through the production of goods and services that want, to or are aiming to, satisfy collective needs. Those needs that, through a political or legislative choice, have been decided should be accomplished by a public body.

Well, so when we speak of the structure of State we are not speaking of the substance and activity of the State, we are speaking of the way it is structured. We are speaking of its form and not of its substance. There is a main distinction between the unitary State and the complex State. There is a unitary State when the State has just one single political power and there is a complex State when we have several political powers with different degrees of sovereignty, one power with full sovereignty endows other powers with limited sovereignty – some internal sovereignty but not external sovereignty. But, when we speak of the structure of the State, or the form of the State, we also speak of the way we split the power inside the State.

So, we have on one hand the number of political powers in the State, one or several, and on the other hand the way you split the power, whether it is one or whether we have several powers inside the State.

Let us start with the number of powers we have in a State. The traditional European state was a unitary state, where you had just a single political power. That happened for centuries. Each state had its own power, its own political power. But as you know, for centuries the complex state also appeared. The first form of complex state was the so-called royal union – the case of the British institution. In the beginning, there were two states, for instance the State of England and the State of Scotland, but they had common political bodies. That was a royal union, which is different from a personal union, which we had in Portugal with Spain, where you had different political bodies but you had the same king, by the laws of succession, which is just a single personal unity.

But, as you know, the contemporary complex state is the federal state, is the federation. A federation appeared with a non-European example, with the United

States of America. It was the first example of a complex state. It started by being a confederation, and you all know the difference between a confederation and a federation. In a confederation the states keep their full sovereignty but they work together and have common transitory aims and even, eventually, a Constitution. They act together in foreign policy or in defence but they do not lose their own full sovereignty. In the case of the federation they form a new state, the federal state, and they delegate most of their power in this new federal state.

It is very difficult to give a short definition of a federal state. However, I would say that in a federal state the federative states keep several powers, of course the power to make their own constitution, I mean, the so-called self-constitutional power. They are free to approve their Constitution, respecting the federal constitution. On the other hand, they participate in the approval and amendment of the federal Constitution through a specific procedure and they are represented usually, and in an equal principal of representation, in one of the parliamentary bodies of the federal state. That is called the senate, or has a different kind of names. They also have the power to approve legislation, to make political decisions, they have their own administration, and they have their own courts and their own security bodies. But I would say that what is perhaps most important is that free power of voting their own constitution, the participation in one, a second chamber in the parliamentary power of the federation and the fact that they participate, through a very specific procedure, in the voting and amendment of the federal constitution. They are equal in rights, in principle, equal in participation at the federal level and there is a limit of the federal competences or attributions.

As you all know, we have different kinds of federations. We have the so-called perfect federation, when the federation is divided into different federative states and we have the imperfect federation where a part of the federation does not correspond to a federative state. We have homogeneous federations, where the powers of the different states are equal, and heterogeneous federations, where there is a difference of statute between the different states inside the federation. We have real federations and artificial federations. Real federations are when they are formed through the delegation of powers of former sovereign states. Artificial federations, when they are an evolution from a unitary state, and the powers of the federative states are in a sense less important than they are in a real federation. Then we have the split between classic federalism and cooperative federalism, such

as the German or the Austrian cases and most of the European federalisms. Where you have plenty of delegation of power from the federation into the states, cooperation between the federation and the states and not a rigid division of powers competences between federation level and state level.

Well, we can speak of three waves of federalism. The first was highly influenced by the American example throughout the 19th century, both in Europe, but mostly in South and Central America. Then we have the second wave, or generation of federalism, mostly European and corresponding to the first half of the twentieth century and some important examples after the Second World War. And then we have the third generation or wave of federalism at the end of the last century, the Belgian example is an interesting one. It is an evolution from a unitary state, a regional state, into a federal state. We can say that each case is a different case, but overall there is a trend towards the reinforcement of the federal state.

Why?

Not only because it keeps some important powers – external foreign policy (most of it), national defence, currency, which was very important (until a couple of months from now), and financial power, as was said in a previous session, that in a sense the federal state is cooperating with the federative states and is financing some projects and is trying to redistribute economic differences and inequalities among the different states. That means heavy taxation and mostly financial power that was not conceived in the beginning of federalism a long, long time ago.

But I was telling you that in the middle of the twentieth century a new reality was born in Europe, the so-called regional unitary state, which was an evolution of the former classic unitary state with a single power, but now the political power was going to be decentralized, and not just an administrative decentralization, a political and a legislative decentralization. This happened after the Second World War in cases, as you know such as Italy and then a little bit later, Portugal and Spain. And in this case, there was not the idea of splitting the single state into different states, but of forming autonomous political and legislative regions inside this single state.

The so called political regional state is formed by different regions, all of them having the possibility of intervening in the voting of their Constitution or statute, of legislating, of making political decision, of having their own administrations,

usually not having their own courts but having their own security bodies. And also speaking of these regional states, we can distinguish between perfect regional states, where the whole state is divided into regions, which is mostly the case of Italy and Spain, and partial regional states, which is the case of Portugal and Denmark. Some of these partial regional states are called peripheral regional states, which is the case of Portugal. Just two peripheral regions exist in our Constitution, Madeira and the Azores; the rest of our territory is not divided into political regions.

Homogenous and heterogeneous regional states, here the rule is the heterogeneous regional state in the case of Italy, Spain and Portugal. Even in Portugal, although the constitutional statute is alike, their own private statutes are not exactly the same, they have different political rules, and then of course you have plenty of general specific statutes for each different kind of region.

In a sense the regional state was a kind of reply to the same need in a different context that explained the federal state in some European states. Not the need for a large territory, but the need to face economic differences, social differences, cultural differences, or geographical differences, in a sense to accept and to integrate those specificities under the umbrella of a single state in a more flexible way than some of the former, not the cooperative, but the former classic kind of federalism.

What's the distinction between a federation and a regional state? That's very difficult to say. But I will try to explain the difference.

The first difference: the federative states have the power of the free approval of their own constitutions, which is not the case of the autonomous regions. They intervene in that approval, but the final word belongs to the central public.

The second difference: the system of approval and amendment of the federal Constitution with the participation of the federative states is not like the system of approval and amendment of the Constitution of the regional state, where the regions do not have the same power as the federative states have in a federation.

Third, there is not a second body representing purely the autonomous regions that exist in a federation. There are second chambers in the parliament, but those chambers, a kind of a senate, when they exist are not just conceived to be representative of the autonomous regions.

And then there are others, I would call, technical differences: the laws of the federative state are founded on the federative Constitution. The regional laws are founded both on the regional statutes and on the constitution of the unitary state.

The federative law has as a limit the constitution of that state and the regional law has as a limit also the limit of the constitution of the single state and also the limit of the republican laws, I mean the laws voted by the central body, both parliament and government.

In a federation one does not speak of the supremacy of the federal law concerning the federative law, which is the case in a regional state. And in a federation there is the rule of each state having its own courts, which is not the rule in the regions, in the so-called political autonomous regions. They can have courts but they cannot have, in several cases, their own specific courts.

Also speaking of the twentieth century, in the second half of the twentieth century we saw another evolution. In the classic unitary state the appearing not of political regions but of administrative regions. I mean, in the most centralized states, the case of France for instance, the Napoleonic kind of centralized state. Even in France, we saw the appearance not of regions with political power and power to legislate but of administrative power. I mean, a new level of local power, much stronger than the municipal level and a new level of power that represented administrative decentralization.

In this case, we cannot speak of constitutions of these regions or of political statutes, but we can speak of administrative decentralization, which means decentralization of the administrative activity.

Also in the second half of the twentieth century we say another reality, which is a very complex one, as you all know. It is not territorial decentralization but institutional decentralization, administrative decentralization. The case was well known much before the second half of the twentieth century in Great Britain and in some Nordic countries. But, it just appeared a little bit later on in the southern European countries with the new agencies. They are called in those countries public institutes or public associations, in other cases public companies and more recently, public owned private companies. I mean, with a private statute just as if they were private companies but majority or fully owned by a public body, by the state, by the region or by the local entity. This new kind of institution decentralization is not a territorial one, of course it is under the control of territorial bodies, both the state, region or local body. It is a very, very strong reality, as you all know, and a complex reality to control, for external control, because the imagination of the public sector is always changing and conceiving new ways of trying to avoid external control.

In the beginning of this new century, what is really curious is that we can see a kind of convergence between the former federations and the regional state. In some cases, the case of the Spanish State, it is almost a federal state, almost. And this trend means that in some cases the problems that the federative states are facing are very alike those that some autonomous regions are facing. Even the so-called administrative regions want political power. Even in countries with such a strong tradition of centralization as they have their own elected bodies and party politics have created some politisation of those regions, and are little by little turning into political regions, not in the constitution, not in the law, but in their practice. Some of their administrative decisions are almost political decisions and some of their administrative action is almost legislation, it is quasi-legislation. So, in a sense there is a kind of a trend, and at the same time, as you all know, and in different cases we have a mixture of the different models. We have a federalism of different degrees, we have a federation with some political autonomous regions or we have political regions and administrative regions, or we have a federation with political regionalization and/or administrative regionalization.

So, in a sense, I would say that for external control, the reality is that when you look at the pure models, practice has changed those pure models. The pure model would be like this: federal state – what should be controlled? The federation and the state level and, of course, local power.

Regional political unitary state – the national level, then the regional level and then local power.

Decentralized administrative unitary state – national level, administrative regional level and the rest, the local power.

In practice we all know that control is needed at every level of administration, whether it is a federation or a regional state, with political autonomy or with administrative autonomy the problems look very much alike overall. And so, one first conclusion of this short, I tried to make it very short, historical analysis is that the form of state is of course important as regards the external control of the public sector. I mean the way the state is structured is very important because if it is a federation you have different levels – the federation level, the state level and also the local power level. If it is a unitary state with political regions you have the national level, the regional level and then local power. If you have a unitary state with administrative regions you have national and regional level, and so on.

So, in a sense, when we speak of the subject of this first debate the answer will be, of course, there is an influence of the structure of the state in the definition of the different levels in the public sector to be financially controlled. And for a single reason, because where you have administration you have financial activity. Financial activity is connected with every function of the state, but mostly with administration. Of course it depends on the constitution and the amendment of the Constitution, upon the law, but when you speak of the external control you speak of the external control of the financial activity of administration. If you have different levels of administration then you have different levels of financial control.

A second remark is that there is one exception, what I call the institutional decentralization because there, although there are plenty of new bodies, agencies, companies, there is no specific level of external control, with exceptions. The British case – the Audit Commission controls the National Health Service. It is a specific case of exemption to what would be the territorial split of competences for a special, strong and important decentralized sector of public activity. But that is not the rule in Europe. The split between the levels of control is a territorial split and that's a point to be discussed – whether, in the future, one should not have to create inside those bodies specific ways, and they are being created, of controlling specific ways of institutional decentralization. Because that new form of administration is much subtler than the classic one. It is using private law, it is using private law and means, in some of the cases competing with private companies, and in a sense the control is no longer a formal one but, much more, a financial economic audit of management and not of the respect of the procedures of law and the constitution. This requires much less legal controls than economic and financial control.

Thirdly, I would say that in general the control is changing overall from the former formal control to a substance control, as was said a few minutes ago. A formal control is, of course, always important, and that is an important discussion to be made. The formal control, mostly in very centralized states or those with the tradition, for instance, of the influence of French law or of the French system is still an important control. But anyway, all over Europe substance control is more necessary, and is more difficult to play and to explain to public opinion. And, however, that is the control they want. It is no longer the fact that one respects the procedures of the law, that is also important, but the way the financial resources are used. Efficiency, effectiveness and economicity. Those are new concepts for the classic way of defining both public administration and its control.

It is a law professor that is speaking, although I taught economics and finance for a while. And then, each case is a case and you cannot, even in unified Europe, unify national experience. I tried to study not all of them but most of them, and each case is different from the neighbouring case because you have national specificities – tradition, history, culture, and civic, public opinion and just to give you an example, ... the role that is far away from the control of the European federations. A debate on the Portuguese example. Let me give you this example. In Portugal we have a unitary state with just two peripheral political regions, Madeira and Azores. The solution that was created was a very inventive and well-made solution, a happy solution. In Portugal, there is just an audit court as you know, with two regional chambers. So there are no regional courts, there are two regional sections. You could ask, and then why not change the regional chambers into regional courts, with an appeal power to the national court. But, in Portugal the “Tribunal de Contas” is a court included in the judicial power, just as in Greece, and not as in most of the European examples and we do not have regional courts. So it would be a single example of creating two regional courts, which we do not have for criminal, civil or administrative courts; we do not have them. So, that is a national profile that has to do with the definition of the regional state, with our constitution, our tradition and our political and constitutional evolution. As it is working quite well, very well, there is no reason to change a system that is doing well for another system that would be different to this.

In cases like the French, where there are no political regions, there are regional bodies of control, which shows that each case is a different case, because they are not courts, anyway.

So we have cases in the regional states with political autonomy of the regions, and that is the rule, where we have regional sections of a national body. But at the same time, we have cases of unitary states with just administrative regions, having regional bodies with appeal to the national court of the national body, although we are speaking not of political regions but administrative regions. This shows how interesting it is to compare different laws and different experiences.

I do believe that there is a slow trend towards an exchange of systems. Not copying systems, not importing systems, but of having similar solutions for similar problems, but always looking at the reality of each state, of each tradition, of each history and of each evolution.

Another word, not on the definition of the structures of control but on their activity. speaking of their activity, of course, in the case of federations we can say that the independence between the bodies, both federation and state bodies, is larger than in the case of the regional states or in the case of the state with administrative regions, which is natural. But even that kind of difference is being corrected by the kind of federalism we have in Europe – cooperative federalism, where, there is in most of the cases, a financial cooperation between the federation and the states. And so, one must ask what is going to be controlled; and the answer is that usually one controls the body that spends the money, while not necessarily looking at the laws or constitution that allow that expenditure. I mean, because in most cases you have the delegation of powers from the federation to the state and so on. So, even in cooperative federalism we have strong cooperation between the federation and the states, which requires strong cooperation between the bodies of control, of financial external control at the federal and state level.

In the cases of regional states, or unitary states with administrative regions, it is more easily done because it's obvious, as most of the money spent by the regions is a result of subvention coming from the central state, not in all of the cases but in some of them.

So, the natural cooperation between the two administrations explains the natural cooperation between the bodies that control at both the national and regional level. When it is the case, such as the Portuguese, the Italian and also, I believe, the Spanish, of having regional sections or regional entities connected with the national one, then that is even easier.

In the case of Portugal, the regional section has some level of autonomy. Of course we can argue whether it should be a little bit greater or not, but it has the advantages of being very near the problems but being in connection with a single national institution, which is the "Tribunal de Contas".

Well, let me just add a last word on Europe, because there we are facing a new structure of administration and a new structure of external control. Well, in an attempt not to be too ideological, I would say that the European communities were formed as a kind of what is usually called super-national entities.

Why?

Because some of their political bodies do have an independent statute concerning the member state; this is the case of the parliament, of the commission,

because on most of the subjects voting in the council is through majority, so there are no longer the intergovernmental kind of organisations.

Also because community law has principles that are far away from the former classic ways of international organisations. The so-called principle of direct application and of direct effect has, as you know, consequences as to the way national state members' laws deal with community law.

One cannot deny a confederalist evolution throughout the seventies and eighties with the common policies and the so-called economic union, and even a federalist trend with the single currency, defence policy, reinforced cooperation and even the evolution of jurisprudence with the community courts. Also, the way they deal with internal law and the way internal courts are starting or have started, depending on the different states, to introduce community law, as community courts that they also are.

Well, as you know, the European body for financial external control is not a court, not yet at least, a real court. And the question is: what will the next evolutionary trend be?

Will it be to keep things the way they are, I mean, not being a court and maintaining the status quo or even re-nationalizing some policies, some common policies, or having a federalist evolution also at the taxation and financial level, as a result of monetary union. Because it is very difficult to have monetary control of the budgets, I mean different states with budget control, not having a unified or common position on finance and taxation policies, (little by little, through recommendations) and also, with an evolution to a real court controlling the financial subventions, subventions coming from the community.

Anyhow, with either one evolution or the other, we always have the need for cooperation between the national levels, I mean both federal, federative state, national, regional and so on, and the European level of control. That also depends on the structure of the states, because when you look at a federation there is both cooperation with the body that is in charge of the financial control of the federation and the bodies in charge of the control of the states. Both of them have direct connections with the European external control body.

In the case of the regional state, I mean a state with political regions, while in most cases things are easier because if there is just one single national body of control with regional sections, then that is just a single body in connection with the

European level. If there are regional bodies, they will probably have a direct connection with the European level.

Then finally, in the case of a unitary state with administrative regions, for the moment this being the case of France and perhaps in the future, Poland, and soon, let us hope, in the Netherlands, if there is an evolution to regional bodies of external control, then it is a good question to know whether, in the future, those regional bodies will have direct connections with Europe. For the time being they do not have them. There is just a single link, a single tie, between the European institution and the European level and the national body.

Well, I went on for too long, but as you know, my classes are 40 minutes, so that's almost automatic. When I start I always know that 40 minutes afterwards I will be finishing my class. This was not a real class because I am going to learn with you and not to lecture you. At the same time, it is a pity that being president of a local parliament I was not asked to speak of another subject: The problem of the relationship between the different levels of control and how difficult it is to educate local power when using money. How difficult it is to control many local bodies, all of them with their own legitimacy and being more powerful than they used to be, more influential than they used to be, spending more money and making more financially influential decisions than they used to make. Mostly, people are looking at the spending of the state and of the regions, federations or states, and a little bit of concern with what is a real problem, because imagination is also growing at the level of local power with the difference there you don't have some thousand people imagining, but, much more than those plenty of thousand people trying to solve problems for tomorrow and creating problems for the day after tomorrow.

Thank you for your attention and for your patience.

DEBATE*



* Speeches taken from audio recordings without revision by the authors.

Intervention by *Arpad Kovacs* from the SAI of Hungary

Thank you very much for this excellent opportunity. It's a great honour for me to be moderator of this excellent session, joined to this very valuable presentation of Mr. Sousa and Mr.Engels. And if you don't mind, I would like to mention that the moderator's role is advocate of the devil. A role, which I would liken to, if it is possible, being a soft "provocateur" of the debate.

I would like to make some short remarks on Professor Sousa's excellent presentation. For me, there was an extremely important question he made. I would like to ask him to give me, later on, some more information about what it means and what is the difference between the sovereignty on the legal field, and what does the following mean: sovereignty, legal sovereignty and political sovereignty without economic possibilities; for instance, the taxation and economic system centralised in a country. What is the role we are all in, in the moving theatre of the regional bodies? Who can solve this question, and so on. And the other question for Professor Sousa, it was for us because Hungary is a small country and strictly centralised on the governmental level and extremely decentralised on the local government and municipalities level. What does it mean from this viewpoint: the size of the country. The size of the country has a role or does not have a role in regional relationships and so on, and in the future joining to the European Union for us, for the former so called socialist countries.



What does it mean "*the regional relationship*", is it a question of the geographical field or is it a political or economical question for us?

Ladies and gentlemen, if you allow me I would like to make some remarks on Mr. Engels' presentation. As my impression goes, I was lucky because I could read it earlier; the report is excellently compiled material. It gives a good review about the problems that are related to the effect of public structures on the system of external financial audit. We Hungarians, we accept the phrasing of the first paragraph, for example that the different country systems' and their structures have a determining effect on the system of external audit as a basic principle. Determining the concept of the federal and unitary state is a good starting point and

we accept this as a basic terminology. I think that the determination of the basic terminology makes it possible to avoid future problems deriving from possible misunderstandings.

Raising and discussing the problem of the different forms of decentralisation taking place in unitary states, we have to consider an important issue: the fact that carrying the process of decentralisation is on the agenda of several European countries (and it is naturally affecting the system and activities of the state control) indicates the importance of this issue.

A further element confirming the importance of this topic is the theme of the 2nd International Internal Control Conference of INTOSAI, held in May 2000 in Budapest, and I was very proud of it. A lot of colleagues were in Budapest and it caused a great impression on me. It was also dealing with the following topic: how does the process of state decentralisation influence the activities of internal control.

One of the topics of INTOSAI's 17th Congress will be the role of the supreme audit institution in the process of planning and realising the governmental and administrative reforms. We consider the statement that in federal or unitary states the differences among the external financial systems are determined by the fact whether the territorial subdivisions that make up the state possess the status of state or not. I think that the concepts of the characteristics of the status of state deserve more attention and it would be necessary to establish the concepts criteria.

It is important, and, in my opinion, a task of great importance, to make it clear how the coexistence of the central, federal and regional SAIs works. What kind of methods exist to assist the cooperation among these organisations?

I think that, as a result of the process of decentralisation, there are certain border cases that I have noted which require common solutions. It is a very important issue that a supreme audit institution has to fulfil a specific role besides the parliament. The importance of this issue is highlighted by the fact that a declaration is dealing with it as well. The issue of the subordination of the SAIs to the respective parliaments is an especially important question that in many countries is a typical question.

Another question is whether the supreme audit institution is only fulfilling what is determined by parliament or, besides this, it is also playing a role as an adviser. We can come to several interesting conclusions and experiences from the differences of the tasks of the regular audit bodies. What kind of auditing compe-

tence do they have? May be it would work like general guidelines concerning this topic. It might concern a certain framework that would give some outlines regarding the scope of action of regional audit bodies by taking into consideration the national traditions too. The question of determining the limits between the central, federal and regional supreme audit institutions in a federal and unitary state alike could be also raised here. Determining its general guidelines would be useful also in this respect. Finally, I think that clarifying the problems of audits avoiding fears and avoiding double audits are also very important.

If you don't mind I would like to cease my moderating ideas for I don't want to be in reality the devilish person of the conference. And if it is possible, later I would like to join the debate if it is necessary and if you don't mind.

Intervention by Bernard Friedmann from ECA

Professor Marcelo Rebelo de Sousa's speech was highly interesting and Dr. Engel's speech effectively complemented the subject through his own experiences.

Nonetheless I would like to obtain certain clarifications in relation to Professor Marcelo Rebelo de Sousa's speech and also pose a question. The first clarification I would like is as follows: Professor Marcelo Rebelo de Sousa stated that

the European Court of Auditors has not had all of its competencies in fact laid out in the Treaty of the European Union. It is true that we do not actually operate within the legal field, and neither do we wish to. I believe that we have several auditing philosophies within the European Union, and these different



of Auditors has not had all of defined to date, but they are Treaty of the European we do not actually operate and neither do we wish to. I several auditing philosophies Union, and these different traditions are condensed within the European Court of Auditors. The European Court of Auditors is satisfied with its competencies and powers. We have the powers and fulfill our duties. The legislator has referred to this fact and has stated that the European Court of Auditors is one of five institutions at a par with the European Council. Thus, when we are asked about our proposals for the Treaty of Nice we did not request more powers or competencies. The Treaty of Nice specifies that we shall work together with, and in harmony, with the other Member States. In other words, the European Court of Auditors is satisfied with its competencies

and believes that it is executing its work in an efficient manner and does not seek influence within the legal field.

I would now like to pose my question: Professor Marcelo Rebelo de Sousa spoke about the organisational structure of each of the States and the influence that such structures have on the efficiency of control of public finances. We are all aware that there is currently a debate within the European Union on the type of organisation that the EU should have in the future, and there is increasing debate on this subject. Normally people speak on this issue in their own individual capacity – for instance Mr. Jospin, Mr. Chirac or Mr. Schroeder. Other persons are also responsible for formulating these issues but perform duties of state. Reference has been made to a federal organisational structure for the European Union. I would like to ask the following: What are the forms of organisation of the European Union that should be introduced in the future in order to achieve an ideal level of efficiency of public finances? What conclusions have been drawn in this regard and what proposals should be made on this subject?

Intervention by Kurt Gruter from the SAI of Switzerland

Firstly, I would like to thank Professor Marcelo Rebelo de Sousa for his excellent speech concerning the complex realities of Europe and many thanks also to Dr. Engels for his very concise overview of our various organisations.



I would like to add a small comment to Professor Marcelo Rebelo de Sousa's speech rather than pose a question. Switzerland is defined as a country with a typically federal organisation, and please allow me to state here that in my opinion

this is for the simple reason that over the last 150 years this system has been highly successful in terms of promoting social well-being, political stability, and a harmonious equilibrium between various regions and languages.

In regards to the foundations of this success, I would like to summarise them through four points.

Firstly, Switzerland's political system is based upon the following principle: as much State as possible and as much freedom as possible.

Secondly, in regards to the State itself: as centralised as possible and as decentralised as possible. That which occurs at the level of the cantons and at the communal level cannot take place in an autonomous manner and must be delegated to higher authorities.

Thirdly, and in my opinion this is also important (and here I would like to echo the comments of my colleague, Kovacs) our experience is not restricted solely to administrative federalism. Federalism signifies equal coverage in terms of finances, competencies at various levels and lastly, and perhaps you may also be interested in this aspect, Switzerland's financial auditing has a very important ally – the taxpayers themselves. The strength of Switzerland's federal state also enables us to secure very direct democratic elements. The citizen, taxpayer, may autonomously define the level of taxes etc. In this case, forms of influence are also direct and very effective. Therefore I would also like to summarise this aspect as follows: as much shared responsibilities as possible and the least possible centralisation.

Intervention by Janusz Wojciechowski from the SAI of Poland

I would like to express my opinion about the two presentations of Professor Rebelo de Sousa and Dr. Engels which I considered very interesting.

First of all, we have got a lot of information on the historical background of the history of federalism in Europe. Like Mr. Gruter, I have no question but I would like to add a little example concerning the presentation of Professor Rebelo de Sousa. I think that Lithuania and



Poland's experience is also important to the history of federalism in Europe. Lithuania and Poland had a common state on the 16th century and there was a kind of federal structure of the state that was a very interesting example because it was a long experience. This structure of state lasted from the 16th century to the end of the 18th century.

Intervention by *Ioannis Sarmas* from the SAI of Greece

I believe that the question that should concern us this morning should not be whether the State should be organised in a regional or federal manner, but rather to identify the rationality of the organisation of auditing of public finances, in instances of a Federal State and States organised on a regional basis.

The first question lies beyond our terms of reference. It is not appropriate for us, in my opinion, to deal with this subject this morning.



In regards to the rationality of the organisation of auditing, I believe, as we begin to reflect upon this matter, that the basis should not regard which entity exercises such control, but the name in which control is exercised. I believe that we can establish a distinction between three models in a democratic European state. The first model is where audit control is exercised in the name of Parliament – by an authority integrated within Parliament. The second model is the French model, in which the authority is located in the third estate, i.e. is an authority within the justice branch. Finally we have the third model, or mixed model, where a legal institution is integrated within the parliamentary authority.

Research into the rationality of such organisation delivers a very simple response. In the case in which we have several parliaments, and several parliamentary authorities – a parliamentary authority at the local level and others at the level of the federal entities – and where we have different tax burdens, we should have different institutions that conduct control in the name of Parliament. In other words, if we have tax burdens in the name of the nation, we should have an institution integrated within Parliament, that will control the associated public expenditure. But in the case where we have an institution based on the French jurisdictional model, I believe that we need to know whether the legal powers in this State should be so distinct, i.e. organised in the same manner, for example, as they are organised in the United States where we have Courts at the national level and tribunals at the level of the federated states.

Intervention by *Carlos Salgado* from the RAI of the *Comunidad de Madrid* (Spain)

Firstly, I would like to express my thanks for the conclusions presented by the reporter. I would also like to make a few comments on the current situation of courts of auditors in Spain's Autonomous Communities. In the fourth item of the conclusions, Spain is defined as a unitary state. However, in my opinion, this is not exactly true, given that within the courts of auditors of Spain's Autonomous Communities, the counsellors are nominated by the legislative assemblies of the respective Autonomous Communities and these counsellors have an independent status. For this reason, I don't believe that it is correct to include Spain in the group of so-called unitary states.



Intervention by *Bartolomeo Manna* from the SAI of Italy

The differences posed by Mr. Rebelo de Sousa about political and administrative regions were very interesting. In Italy we perhaps had 3 periods going from decentralisation to the political state now.

But I want to ask a question because we have in the 1st period the administrative decentralisation, and it was not political because it was just the decentralisation of the central offices in the regions. Afterwards, in 1972 we had the 1st part of regional not political, but more administrative decentralisation of the administrative regions. In 1994 we had laws about the constitution or about the statutes of the regions and now the Italian regions are really perhaps autonomous.

I would like to know if in your experience, in your study, more evolution is possible in more European states. We can see for a real regional political decentralisation.

Intervention by Professor *Marcelo Rebelo de Sousa*

I intend to speak in French – in gratitude for the influence the French people have had on Portuguese public administration. There is a long and valuable tradition that must be respected – even if sometimes a little too weighty.

Firstly, I must respond to the question of my dear friend and colleague, the Moderator – is there a connection or link between economy, finances and the degree of autonomy? Of course there is. But not only between sovereignty and the degree of sovereignty and

economy and finances. I spoken about European where I mentioned that been a process of transfer and monetary power European Union. This is an



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one portion of sovereignty that is delegated or transferred to the European Union. That is why we can always talk about the relationship between federated states and the federation itself, as a relationship between the degree of political power and economic and financial power. This is also true within a unitary State: autonomous regions have financial and economic autonomy. But what exactly does that mean? It is the power to levy taxes, to a greater or lesser extent, which varies from State to State, and the power to define regional economic policy within the national context.

Second aspect: does the scale of a country have an influence on the process of regionalisation? Of course it does. Each State is a case apart. That is why I can be excused for the many cases that I have not mentioned. It is impossible to talk about all cases. For instance, in the case of Portugal, there is political autonomy of Madeira and the Azores, because they are islands with a very specific social, economic and geographic situation, combined with the phenomena of emigration – from Madeira to South Africa and South America and from the Azores to the United States and Canada. This is a very different situation from that of mainland Portugal. In effect, if one observes mainland Portugal, no-one would suggest dividing it up or separating it into political regions. Why not? Because it is too small. There is an optimal scale for political regionalisation.

But this fact depends on the state. There is another aspect I would like to mention: within the process of European integration, a Europe of the regions is

emerging. A Committee for the regions exists, and there is regional policy. That means that Europe itself, the European Union, understands that beyond federation, with federated states, and the unitary states with regions, there are wider regional policies in which both federated states or regions are represented. This fact is curious. Within the Committee for the Regions there is a convergence at the European level which also represents one of the dimensions of European policies.

Next, I would like to reply to the difficult questions posed by Mr. Friedmann. Firstly, this is not a genuine question, I agree. I sincerely believe that the European Court of Auditors is satisfied with its powers. It is not a typical example of judicial power, and I believe that it may still extend its powers. In the future, we are aware that it is perfectly possible that the Court may be called to judge upon jurisdictional questions even greater than those presently addressed – already very important. But I agree with you that the Court's present statutes, after the recent revisions, are very satisfactory. For all concerned.

What is the future of the European Union itself? That is a completely different topic for debate, worthy of another conference and another seminar. But I can express my personal opinion – a mixture of legal and political assessment. You cannot ask me to forget that I have been involved in politics and that there have been several summits with leaders as I mentioned previously. I know many leaders well and I believe that I am very familiar with their ideas. The European Union will confront two problems in the near future. Firstly, the question of enlargement. This is inevitable and desirable. And in this sense, everyone knows that it is impossible for all the new Member States to accept strengthened co-operation in all fields. Certain countries will immediately join the monetary union, others will join at a later date. Some countries will have the possibility to adhere to an integrated social policy or integrated economic policies, while others will only do so much later. We can term these differences as different speeds, different statutes, but there are details that differ in terms of each new Member State's possibility to immediately and fully adhere to all aspects of economic and monetary integration. This is already found today. There are Member States who are not members of the monetary union.

At the same time, there is an inevitable evolution towards stronger federalist aspects. We can debate about whether the correct term is a confederate structure or simply federalist, but I believe that federalist is the correct definition. This means that it is inevitable that political union will be strengthened in the future, with a change in the relative weight of different institutions.

What is the result of the symbiosis of these two distinct aspects? One implies greater federalism, the other respect for different speeds and different degrees of adhesion of different Member States. The result will perhaps be something a bit different from classic federalism, and be instead a *sui generis* organisation with imperfect federalist aspects. This means that the debate on the formation of a new chamber, alongside the European Parliament, where states will be represented is perhaps inevitable. Today this role is performed by the European Council. But the Council will increasingly make its decisions on the basis of majority votes. In other words it will become a Directorate, because majority decisions implies a directorate. It does not represent equality between states.

A new chamber, with the member states represented on an equal basis, may also be established because it will be a body in which all states will be represented, probably with equal status. This is not the case in the European Council. The Council is increasingly unequal in its composition. And therein lies, as shown by the current debate between Mr. Jospin and Mr. Schröder: the question regarding Europe's future executive body?

We must always remember that the United Kingdom has a very specific perspective on these issues, i.e. it will always take longer to adhere to inevitable trends. But in my opinion it should adhere. In fact, it has already done so – a major change in culture. It is truly the only non-European great empire that is in the process of accepting a continental European formula, because Europe has been designed by Continental Europe. As a consequence there is an entire cultural upheaval underway amongst our British friends, which slowly moves forward.

The debate between Mr. Jospin and Mr. Schröder, concerns the question of whether the Commission should be an executive body that will be answerable to Parliament – with its current one chamber or with two chambers, where one chamber has the Member States directly represented. But this implies certain nuances in terms of statute – an illegal form of federalism. Mr. Jospin who speaks of the federalism of a Nation State, would like to maintain the European Council as an executive body, because it is the Directorate, or will be the Directorate, of stronger states, and does not have to answer to the European Parliament. Mr. Jospin even goes against logic, rather more so than it would appear, in my opinion, because he would like the Council's powers to also include the power to dissolve Parliament.

It makes no sense for a government to be able to dissolve Parliament.

Instead of a new chamber, in which the Member States would be represented, Mr. Jospin would like a chamber in which National Parliaments would be represented. This is not however the same thing, because this depends upon the powers of such a second chamber. The debate between Mr. Jospin and Mr. Schröder, is not in fact a debate between federalism and non-federalism, but rather regarding what type of federalism we desire? This is the underlying question. A little reticent, the United Kingdom says, "well, it is still too soon for federalism, after all, you are already debating the formula, but it is too soon". Where will this lead us?

I believe that a step must be taken in the next revision of the European Treaties, a mixed step. In other words a step towards stronger directorate powers of the European Council, but respecting the Commission and leaving the Commission the possibility to become a sort of government, answerable to Parliament. I think it is too soon to decide upon the question of a second chamber and its respective composition? I also think it is too soon to decide immediately what the system of relationships between the European Parliament and the executive body will be. But if we look at these issues over the long-term, i.e. over a period of fifteen years, twelve years, a certain degree of unequal federalism is inevitable. When we look at these issues from a distance, we see that what has been achieved so far, even if not of a federalising nature, represents gradualism – and gradualism in the direction towards federalism.

Next, Mr. Gruter. Thank you very much for your explanation of the Swiss case. I had forgotten the Swiss case – a serious omission – because it is a perfect example of federalism resulting from multi-nationalism, cultural and linguistic diversity and the power of convergence between different entities, with very strong specific characteristics. And as you correctly underlined, the Swiss case is also important because there of the aspect of direct or semi-direct democracy, a truly Swiss phenomenon, that only little by little has emerged throughout the rest of Europe.

I also failed to cite – but had not forgotten – all the examples of complex states over history. The example of Poland with Lithuania is not truly a federation in the American tradition. It is rather a complex state in the sense that there were common institutions but without the legal and institutional construction that we saw after the emergence of nineteenth-century federalism. Eighteen/nineteenth century. In a certain way, we may consider this to be rather similar to the British union, which is perhaps a little stronger, but is still different from contemporary federalism.

Mr. Ioannis Sarvas posed some very interesting questions that had also been underlined in the report previously presented by our German colleague. The problem is as follows: when we regard the various contours of the rationality of control, we must ask ourselves what it is to be controlled or in whose name will such control be exercised. My reply would be: both things at the same time. In other words we must simultaneously analyse that which is to be controlled and the levels of power that should be controlled? A national or federal power, a federative, statist or regional power, a local power? Which should be controlled? And in whose name is such control to be exercised? And should the control institution be a jurisdictional body, i.e. a Court, or an administrative political control body, or a mixture of the two?

Of course, the response to such questions will always involve nuances. I'll give you an example. In theory, given that there are at least three levels of administration – national/federal, regional/statist and local, and three levels of parliament – because there is also a parliament at the local level; if the control institution is to depend upon parliament or have a connection to parliament, there should also be three levels of control. In the majority of European countries, there is no local level of audit control. In other words, it is either the national institution or a regional body or a body of the federated state that controls local power. But there are nonetheless local parliaments. One must regard the actual situation that one controls, one must assess the legitimacy of the audit institution, and also draw limits. Therein lies the question: with the multiplication of local institutions, and local power, will it not be necessary in the future to create local audit institutions in those states where they do not exist? This may include local chambers within regional or national audit institutions, because there are increasingly complex problems posed by associations or federations of municipalities, at a level below that of the region, or, of course, below that of the federated state.

Next, our colleague from Spain was quite right in saying that the Spanish case is very specific, because each case is a case apart. We cannot say that Spain is a federation. It is not. In that case it must be a unitary state. But it also is not a unitary state in the classic sense of the term. It is a regional state that is almost federal. It is not federal, but almost. This is why our conclusions must always have nuances, because we can contrast the two models of federal and unitary state but there are nonetheless different kinds of unitary state: centralised states, decentralised unitary states with administrative regions, and unitary states with political regions that are almost states in their own right. And as I have said, I sense that there is a tendency

towards convergence. In other words, in several cases, a regional state has been preferred to a federation because the same advantages were available without raising the problems of a federation. The federation is a product of specific circumstances. If it is possible to achieve the same effects or some of the same effects, without the complexity of a federation, one has recourse to the system of the regional state. This is particularly relevant for states that are not very large or states where a federation may have overly strong political connotations. So, I agree with you, Spain is a very specific case – a case of a regional State that tends to resemble a quasi-federation.

Mr. Manna, from Italy, was also very right to state that the Italian state is one of the examples where one can have a bit of everything, i.e. everything other than a federation, because there is administrative devolution, administrative decentralisation, and political decentralisation. The only thing missing is federalism. And in a certain sense, one could say that Italy is an example of how it is possible, within a complex state, with profound regional differences, to have recourse to political regionalisation that may be of a greater or less extent and that may assume a certain level of expansion, but at the same time avoid federalism. For instance, I have Italian colleagues that are federalists, especially in the North of Italy, but I have others that are anti-federalists in the centre and the south. Political regionalism may, with certain financial, political and economic nuances, assume different forms that nonetheless avoid federalism.

In conclusion, I would like to say a few words on a very important aspect – that which was emphasised within the report – the relationships between national and regional entities and between federal and federated entities. There are certain relationships that are based upon informal powers, as you are aware, on informal co-operation between different bodies. There are also relationships of institutionalised co-operation. The problem in the latter regard is more complex, as you will discuss this afternoon and tomorrow, because such relationships depend upon the statute of different institutions. And we can more or less say that each state has a different statute. There are many different kinds of court. There are perfect courts. There are courts that are not included within the jurisdictional power. There are institutions with wide jurisdictional powers, others without any jurisdictional powers whatsoever, and others that only have limited jurisdictional powers. So, the institutional relationships between different institutions depend upon their respective statutes.

And it is in this regard that our moderator is being provocative, in the best sense of the term, when he says that we need guidelines. It is very important to be able

to learn about the experience of other countries, but each time I come into contact with comparative law – which I need and is very important – I must always pay a certain amount of attention to national law. In other words there is an inevitable trend towards convergence, but this convergence has different speeds and specific aspects wherein one cannot try to force national realities, especially within the field of external auditing of public finances. Because this is a subject where public and political opinion are highly sensitive. We have several countries with completely different civic cultures. For instance I have studied in France and a certain time in Germany, and regret that Portuguese civic culture is not equivalent to that found in other countries of the centre or north of Europe. But it is not for the time being. We are beginning to change Portugal's civic culture in that direction, but it is far quicker to change laws, and then institutions. That which is slowest to change is a nation's underlying civic culture.

Intervention by Henrik Otbo from the SAI of Denmark

Some years ago, between colleagues from the European audit offices, we acknowledged the different models, the different structures, the different legal bases, and all the differences between us. And I think that this morning a big part of the debate has been focusing on the differences between us, and it should do because this is the starting point of the discussions.

Sir John Bourne, the auditor of the UK, put forward a few words describing that we wanted to stick together, we want to work very close together, even if we have all these differences between us. He invented a phrase, I hadn't heard it before, and he called it "*unity in diversity*".

Finishing my job today, could I just suggest that these few words are considered also in the following process because I think that our systems are very different. Professor de Sousa has pinpointed a number of examples, has underlined that each case is a specific example, in fact. So, let me suggest that these words might be put for further consideration: "*unity in diversity*".



2.nd session

Interrelation and cooperation in the matter
of public sector financial control among the different external
audit bodies



Left to right:

- *M. Francesco Staderini* (SAI of Italy)
- *M. Sergei Stepashin* (SAI of Russian Federation)
- *M. Jean-Philippe Vachia* (RAI of Midi-Pyrénées-France)

BASIC REPORT

Reporter



Jean-Philippe Vachia
RAI of Midi-Pyrénées (FRANCE)

INTERRELATION AND COOPERATION IN THE MATTER OF PUBLIC SECTOR FINANCIAL CONTROL AMONG THE DIFFERENT EXTERNAL AUDIT BODIES

The presentation of the report for this second session presents some difficulties: first of all, the theme of this session covers largely the general theme of this conference and it is necessary not to try to say everything here; secondly this is the session which has given rise to the highest number of papers which refer to it in an explicit manner: five papers from Supreme Audit Institutions¹ and five papers from Regional Audit Institutions². However, it has been useful to refer to papers presented in other sessions, when this has been considered necessary.

To deal with the theme of this session we could start from a very simple outline, which is the following:

ENTITY	EXTERNAL AUDIT INSTITUTION
European Union	European Court of Auditors (ECA)
National State	Supreme Audit Institution (SAI)
Federate State/autonomous region/decentralised region	Regional Audit Institution (RAI)
Local authorities: municipalities and administrative levels above the municipalities (provinces, districts, departments, etc)	RAI or local external audit body

The organisation of public sector auditing in Europe can be defined by a series of variables around this outline. Normally in a perfect world (?) to each level of administration (sovereign or co-sovereign or just decentralised) should correspond an external audit body and only one. And for this authority to be efficient, it should be completely autonomous.

¹ The Netherlands, Poland, Switzerland, Spain, Ukraine.

² Rhineland-Palatinate (Germany), Jura (Switzerland), Audit Commission of England and Wales (United Kingdom), Catalonia (Spain), Midi-Pyrénées (France).

However, this is not easy due to a series of reasons which could be considered as variables:

- first of all the structure of the State is important: a priori only a federal state implies a complete independence of national and regional audit institutions, each being responsible only for the State (federal or federate) to which the institution corresponds (for instance, Germany); in all other cases cannot be ruled out the possibility for the national audit institution to interfere in financial matters relating to the lower levels of administration. This has some effects on the status and powers of regional audit bodies; in fact, even in the first case the separation is not as clear as one could believe it would be;
- the nature of the audit is also fundamental: being a matter of the only external financial audit performed by an independent public institution, the audit can have several matters as issue: regularity and reliability audit of the accounts strictly speaking, regularity audit of the financial management, performance audit of the action of: state bodies, the state public sector, regions or local authorities and the local public sector. To these different types of public sector auditing should be added the 'supervision', the 'control' or the 'administrative audit' carried out on municipal and supramunicipal authorities, districts and departments by central government bodies or federate state bodies: in this case there is a combination to be organised with the a posteriori external financial audit. Moreover, it is not obvious that local authorities do have their own external audit body;
- finally, and above all, the channels through which the funds flow are the third and most important of the variables: the overlapping of powers of SAIs and RAIs and of local audit bodies is unavoidable when the financing of public actions is shared. The sharing of the financing first of all aims at financial resources when taxes are collected by a public entity and redistributed to a third entity (in an upward sense: Germany; in a downward sense: France, United Kingdom). However, there exists also, and above all, the whole range of subsidies, financial aid granted by an upper level entity to an entity of lower level to realise general or specific objectives within the framework of a policy more or less well defined at upper level.

The main idea which we want to retain here is that there are always common areas of responsibilities (I) and that ECA, SAIs and RAIs must and may organise their cooperation so as to ensure a complete and efficient audit of these common areas (II).

I – NECESSARILY THERE ARE ALWAYS AREAS OF COMMON RESPONSIBILITIES OF THE DIFFERENT LEVELS OF PUBLIC AUTHORITIES AND THEREFORE OF THE AUDIT INSTITUTIONS CONCERNED

In fact, this idea is not difficult to accept within the context of a unitary state; however, it remains valid in a federal state (Germany, Austria, Switzerland) or in a state developing towards a federal structure (Spain).

Two opposite movements can be distinguished: unitary states feel the need of setting up regional audit institutions with true autonomy, subject to a certain right of supervision by the central audit body; the federal states have to accept that common tasks require common audits. (In part II we will deal with the problems posed within the context of the European Union).

A. The situation in the unitary states

From the moment on an autonomy of action is given to the decentralised levels of the State, it is normal to set up local audit bodies; however, this does not mean that the SAI lose powers.

Let's consider firstly the states of unitary character:

- in France, since 1982 regional audit chambers (*chambres régionales des comptes*) have responsibility for auditing the regions and also, within each region, the totality of lower decentralised levels (departments, municipalities, groupings of municipalities) and the local public sector; nevertheless, these decentralised entities are dependent to a large extent upon allocations granted by the central state budget. Through the cofinancing and the contractual policy, the State remains involved in the local administration in order to implement mixed public policies (see paper by the RAI Midi-Pyrénées);
- today in The Netherlands, with regard to local authorities, the SAI of the Netherlands, the 'General Chamber of Audit' (*Algemene Rekenkamer*), has responsibility for auditing the state funds which sup-

port the allocation granted to provinces and municipalities; these, at their turn, have their accounts audited by private accountancy firms. There is an administrative audit performed by the concerned ministries on the use of those monies coming from provincial and municipal funds. However, in the current structure the system of 'single comprehensive audit' prevails: the external auditor of the direct upper level as far as possible makes use of the audit findings made by the external auditor from the lower level. At present is foreseen the creation of provincial audit offices responsible for auditing the efficiency (and perhaps the legality) of the financial management performed by provinces. Furthermore is foreseen the setting-up of municipal audit offices (some already exist, in particular a real chamber of audit in Rotterdam). These reforms will have to establish the ways of cooperation among the different audit levels (see paper by the Dutch SAI);

- in the United Kingdom, the Audit Commission for Local Authorities and the National Health Service in England and Wales, established in 1982, is in reality the inheritor of an ancient system: it is a body which is independent of the central power and whose duties include the financial audit and performance audit of local authorities. In 1990 its audit remit was extended to include the National Health Service (NHS). There are several ways of collaboration with the National Audit Office (NAO), which will be discussed later (see paper by the Audit Commission).

As regards the reforms carried out in Central or Eastern Europe, it is interesting to mention what has been done in Poland. The consequence of the autonomy granted since 1990 to municipalities and, in a second stage, to districts (*powiats*) and provinces (*voivodies*) has been the setting-up of regional audit bodies which carry out an external financial audit as well as a management audit. However, as in France, they are state institutions. Specifically, on the one part, they are subject to an audit of regularity, reliability and efficiency performed by the SAI; on the other part, the President of the Council of Ministers may carry out a legality audit which goes quite far (see paper by the Polish SAI).

If we consider now the unitary states, which recognise completely or partially the existence of regions or autonomous communities (Spain, Portugal with

the Azores and Madeira) it can be proved that the creation of RAIs does not prevent the corresponding SAI from continuing having power to audit regional and local entities:

- in Spain, the National Court of Audit (*Tribunal de Cuentas*) is the supreme institution in charge of auditing the accounts and the economic activity of the Spanish State and the 'public sector'. The public sector includes the autonomous regions: the SAI performs a financial and budgetary audit without prejudice of the tasks carried out by the audit bodies of the autonomous regions (*Órganos Autonómicos de Control Externo – OCEX*, in its Spanish abbreviation) whose creation may be provided for by the statutes of these regions. The overlapping of auditing powers are therefore unavoidable and inherent in the system. Consequently the law and jurisprudence have defined the relations between the Court of Audit and the regional audit bodies: the principle of supremacy of the former on the latter, but also the principles of coordination, communication, and assignment, which will be talked about later (see paper by the Spanish SAI). These principles are also applied for local government audit, local authorities being an administrative level established below the regions. Also should be stressed the diversity of the external audit bodies at regional level. These do not have the same status, the same sphere of activity and they do not exist in every autonomous region. Consequently, we find here an evolutionary field, in particular as regards the relations between the SAI and the RAIs (see paper by the RAI Catalonia);
- in Portugal, the regional sections of the National Court of Audit, the *Tribunal de Contas*, exercise the auditing powers of the SAI in the two autonomous regions of Madeira and Azores; these sections have a certain degree of autonomy; however, their working programmes are decided on by the plenary assembly of the SAI. Obviously this ensures a perfect coordination. Nevertheless, the two sections in the islands of Madeira and Azores cannot be considered true RAIs (see paper by the Portuguese SAI).

B. The situation in the federal states

Normally there should be no overlapping. Audit institutions of federal entities may claim to be placed on an equal footing with the corresponding SAI and, especially, to be completely independent from each other, each of them performing its duties in its own sphere of activity.

However, this is not completely true.

- In Germany, both the federal State and the federate states (the *Länder*) have created their own court of audit and there is no hierarchy in its strict sense. There are some fields where the auditing powers of the different audit institutions overlap because there exists an interpenetration of responsibilities passed on to the federal State and the *Länder* within the framework of the federal system. According to the paper presented by the RAI of Rhineland-Palatinate, there exist four types of overlapping:
 - when auditing the application of federal laws: these laws are basically implemented by the *Länder* themselves. When the *Länder* implement these laws on their own account (social welfare, environment), certainly the Land courts of audit (LCA, *Landesrechnungshöfe*) have the same responsibilities, but the Federal Court of Audit (FCA, *Bundesrechnungshof*) can verify if the regional or local authorities have acted in compliance with the legislation in force: this supervision is, however, restricted to the supreme authorities of the *Länder* (which means that the FCA has no complete auditing power). If the federal laws are executed on behalf of the Federation, the FCA and the LCA are entitled to audit the regularity and economy of the decisions taken by the administration, but the LCA is the only one with power to supervise the processes of organisation and management: the main example here is the collection of the most important taxes entrusted to the *Länder* (income tax, corporation tax, VAT);
 - in the carrying out of common tasks (for instance, construction of universities) justifying a cofinancing granted by the Federation and the *Länder*. Here the projects are entirely submitted to the audit effected by the LCA; however, the FCA may verify certain aspects

mainly about the application of the principle of sound financial management at the planning stage;

- in the case of financial aid given to the *Länder* and the municipalities for those investments which affect the general balance of the economy of the territory. Here the FCA can only intervene in order to verify the compliance with the given framework for the use of federal funds;
- finally, there exists some 'points of contact' every time the Federation and the *Länder* participate in joint undertakings.

In all these cases it is necessary to organise the cooperation or at least to harmonise the action performed by the audit institutions (see Part II):

- in Switzerland, there exists, on the one part, a Federal Audit Office, and on the other, cantonal audit bodies. These latter are made provision for in the respective constitution of each canton. It is interesting to note that in case of federal subsidies, the federal audit institution is empowered to carry out audits in the cantons, either if the law provides for a supervision by the Confederation, or with the approval of the canton. Furthermore, there exists a large variety of local government audit and, in some cases, the cantonal audit office can act in this respect. The ways of collaboration are varied (see papers by the Swiss SAI and the RAI Jura);
- in Austria, the Federal Court of Audit (*Rechnungshof*) and the audit bodies of the *Länder* communicate among themselves. However, there exists no hierarchical dependence (see paper by the RAI Styria from the first session).

In all it can be observed that in the federal systems, even if external audit institutions are independent from each other, they are obliged to create some cooperation mechanisms for those areas where overlaps exist in the different levels of public administration and financing.

II – THE OBLIGATION FOR COOPERATION/COORDINATION CAN BE ENSURED IN DIFFERENT WAYS, RATHER COMPLEMENTARY THAN CONCURRENT

For the clarity of the report we can distinguish between the cooperation/coordination within the framework of the national state and the new mechanisms induced by the audit of EU funds. In fact, the external audit obligations which arise from the fact of belonging to the EU cast a new light on the subject.

A. The cooperation/coordination within the context of the national state

It can adopt several forms which are of institutional or contractual nature.

1 – The audit by the auditor

It is the most radical form: the SAI or a government body carries out an external audit on the regional audit institution. The problem is to know what kind of audit it is about:

- audit of accounts: example of the NAO towards the Audit Commission; example of the French Court of Audit (*Cour des comptes*) towards the regional audit chambers;
- supervision and inspection: there are different forms; for instance the supervision by the British Department of the Environment, with the aid of information passed on by the NAO, of the measures adopted by the Audit Commission with regard to those funds whose financial management has been entrusted to it by the different ministries; also could be mentioned the review made by the French Court of Audit on the management performed by regional audit chambers;
- external audit, by the Polish SAI, of the accounts and the management performed by the regional audit bodies;
- appeal against the jurisdictional decisions taken by regional audit institutions: the cases of France and Portugal.

This list is not complete. It aims simply at showing that in some cases the coordination comes through the establishment of control mechanisms effected by the SAI.

2 - Transparency

The idea which prevails is that when two external public sector financial control institutions concurrently have the responsibility for auditing the totality or part of the same body, the upper level institution may have access to the audit results produced by the lower level provided that these are useful to the former.

This can be put into practice in different ways:

- a. within the framework of the audit responsibilities shared between the national state and the federated state or the region. This is particularly characteristic in the Spanish system where the external audit bodies of the autonomous regions have the obligation to remit to the Court of Audit the individual results of their audits and the reports and other documents connected with the audit of the accounts and the economic and financial management of the entities belonging to the regional public sector. Afterwards the Court of Audit may integrate these elements in its own reports together with the results of some in-depth investigations performed by it in case these are considered necessary. In France, transparency is also put into practice by the systematic remit of observations on management to the Court of Audit by the regional audit chambers when these latter consider that the former is concerned. In Germany, the common and individual agreements mentioned hereinafter provide for the mutual information about the planned audits and the results obtained;
- b. within the framework of the powers and financing shared between the state (federal or federated) and the local authorities (municipalities, associations of communes/municipalities, possibly provinces), there usually are three entities involved: the upper level external audit body which performs supervisory tasks on the authority of the lower level and the external audit body established at this level or the entity which takes the place of the latter. The papers by the SAI of The Netherlands and those by the SAI and RAIs from Switzerland show in detail these mechanisms. Nevertheless, one can have the impression that it is the body which carries out the administrative supervision at the upper level, the one which plays an important role here and maintains

a dialogue with the external audit body of the lower level (which can be a private accountancy firm);

- c. within the framework of powers which are exercised for different purposes over the same administration: exchanges between the NAO and the Audit Commission on value for money in the use of NHS funds.

Transparency also plays a significant role in the context of the European financing (see B).

3 - The assignment or the delegation

The national audit institution can consider more convenient to delegate the audits which come within its remit to the RAIs in the same case as that aimed at in the previous section 2: concurrent audit powers on the whole or just part of the audited body.

Thus, in Germany, the Constitution (or the federal budget code) authorises a court of audit to entrust audit tasks to another court. On the other hand, a LCA can accept to carry out audit activities on behalf of another LCA. The object is to avoid double audits and, at the same time, avoid leaving areas unaudited.

In Switzerland, the cofinanced operations can give rise to a single, comprehensive audit entrusted to a sole external audit body: the paper presented by the RAI of the Republic and Canton of Jura gives an interesting example of the RAI auditing the constructing of the motorway A16 and the bypass of the village named Glovelier (see also the paper by the SAI from Switzerland and the paper by the RAI from Zurich for the third session).

In Spain, the State Court of Audit can request the external audit bodies of the autonomous regions to fulfil specific audit functions. However, it would be interesting to know if this assignment can be negotiated. Likewise, there exist delegations of functions so as to enable those *OCEX* which do not have complete responsibilities for auditing the entirety of local authorities to perform these audits (see paper by the Spanish SAI). The paper by the RAI of Catalonia seems to indicate that these possibilities are not really used; the search for mutual agreements in order to avoid double audits is the option preferred.

In France, the law (the Code of Financial Jurisdictions) establishes that the State Court of Audit can delegate the judgement on the accounts of certain catego-

ries of national public bodies (state agencies) established in the regions to the regional audit chambers: at present this is the case of the vast majority of French universities. In practice, regional audit chambers also audit their management. However, the Court of Audit in a way maintains a right of supervision.

The assignment can also be in an 'upward' direction: for instance, in Switzerland, in the canton of Zurich: the audit committee of the municipality can entrust an audit assignment to external experts or to the competent cantonal body.

It is important to point out at this stage that if the assignment or the delegation are generally made provision for in the laws ruling the audit institutions, they are, however, only conceivable if there is a previous agreement between the audit institutions concerned.

4 - The performance of joint audits

In the same cases as those mentioned above in sections 2 and 3, there can be arrangements for joint auditing. This means that the institutions concerned have agreed to carry out in a coordinated way their duties whether these are identical, overlap partially or complement each another.

Several examples can illustrate this:

- Germany would illustrate for the most part the cases where there exists overlapping: the agreement between the FCA and the LCAs as regards tax audit is very large: this agreement includes elements of information about the programming, the audits implemented in parallel, the audits on the spot, the exchange of results, the way external audit institutions can hand over some conclusions to the government administrations concerned. Another general agreement concerns the audit of common tasks: if we have understood it well, it is the establishment of a disagreement on the work on the spot which can be accomplished by the FCA, but also a commitment of mutual support when directing the audits and exchanging results (see paper by the German SAI). There exists a certain number of bilateral agreements devoted to avoid useless duplications or to take remedial action with regard to detected deficiencies;
- France would illustrate for the most part the necessary complementarity: there exists a system of 'horizontal' investigations

shared between the Court of Audit and the regional audit chambers. These investigations are coordinated under the aegis of the liaison committee SAI / RAIs with seat at the Court of Audit. These investigations are carried out in the fields or for the public policies where the responsibilities of the State and the local authorities are closely linked (for example: education, hospitals). Inquiries on economy, efficiency and effectiveness are conducted according to a common methodology in view of results which will be made the most of together. It must be clarified that in France usually there is no concurrent responsibility of two audit institutions for auditing the same bodies, with the exception of subsidised associations; however, there are subjects of common interest which require a coordinated audit if we do not want to leave badly followed or misunderstood entire parts of the public action. Moreover, useful information is often kept by the decentralised services of the central state which the regional audit chambers are led to interrogate, but which are normally subject to the audit performed by Court of Audit;

- in Switzerland, there exist nowadays common audits carried out by the external audit bodies in those fields jointly subsidised by the Confederation and the cantons.

5 - Institutional, contractual or informal mechanisms of coordination or cooperation

When there is more than one public sector audit institution in a country, in practice it cannot be avoided that coordination mechanisms are set up under the form of formal committees or more or less formal or unformal exchange meetings relating to subjects of common interest.

The example of Ukraine is interesting in this respect: the SAI does not indicate precisely the existence of regional or local external audit levels, it rather shows in its paper the need for establishing principles at legislative level concerning the relations between the SAI and the state and local organisations in the matter of finances, audits and inspections as well as supervisions of taxation, customs, police, etc. in order to determine the possible areas of joint work and also its limits.

Several examples of coordination or cooperation structures can be provided:

- in Germany, the ‘Conference of Presidents of the Courts of Audit of the Federation and Federate States’ aims at coordinating projects, preparing audit agreements, and promoting the exchange of ideas and information. It deduces recommendations which do not have a compulsory nature for the courts of audit (see paper presented by the RAI Rhineland-Palatinate);
- in France, there exists the liaison committee SAI/RAIs: this committee is chaired by a magistrate who is appointed by the First President of the Court of Audit. It assembles at parity chief senior counsellors from the Court of Audit and presidents of regional audit chambers. Its main task is to define the framework of those investigations which are carried out jointly by the Court of Audit and the regional audit chambers, or only by these latter, about subjects which run across all levels of administration and which lead to a national publication. However, this liaison committee also has power to determine joint audit themes in accordance with a methodology defined jointly. Afterwards the ‘investigations’ and the ‘themes’ are taken into account in the programme of each regional audit chamber on a voluntary basis (see examples in the paper presented by the RAI Midi-Pyrénées);
- in Spain, after signing in 1984 an agreement between the President of the Court of Audit and the Presidents of the RAIs of Catalonia, Valencia and the Basque Country, there exists a ‘Coordination Committee of the External Public Sector Audit Bodies of the Spanish State’. Its purpose is to establish common audit criteria as well as common criteria to improve the performance of the committee. Specialised meetings have also taken place in the field of auditing the regional public sector with the aim and purpose of defining the structure of audit reports (see paper by the RAI Catalonia).

The French model, of an institutional essence (the liaison committee is provided for by a decree relating to the Court of Audit), could be contrasted with the German and Spanish models, both of contractual nature.

Very often the cooperation and coordination in the audit tasks are accompanied with exchanges in the field of training and improvement of audit meth-

odology and techniques, as well as in the field of information on the development of public management. Almost everywhere there are committees, forums, or informal meetings to discuss these topics: in Spain, there exists a second specialised committee in the field of professional training; in the United Kingdom, the Audit Commission and the National Audit Office have created together with the Audit Office of Northern Ireland and the Accounts Commission for Scotland the 'Public Audit Forum': this is a consultative and advisory body whose purpose is to develop reflections on public sector auditing. There exists also the informal meetings NAO/ Audit Commission with the Directors of District Audit on the changes arisen in auditing in general and more specifically on the modernisation of public sector auditing. In France, the liaison committee is reinforced by a methods commission whose name itself indicates clearly its object.

In this subpart A it has been tried to show the diversity of methods adopted to make possible the coordination and cooperation among national and regional audit institutions on the subjects of common interest.

If our wish is to simplify things, we could consider that there are two different approaches (see paper by the RAI Catalonia):

- the coordination would concern the totality of institutional mechanisms of joint work performed under the aegis of the SAI, which would have in this way a right of access to the works performed by RAIs (due to the existence of responsibilities or financing at national/state level which are delegated to the regions or local authorities);
- the cooperation would concern the entirety of forms of joint work performed on a contractual or pragmatic basis among institutions set up at different levels. Its aim and purpose would be to attain an auditing as effective and complete as possible over the totality of public administrations.

In fact, none of these two approaches exists in a pure state within each country.

B. The cooperation/coordination in the audit of EU funds

Article 248 of the EC Treaty contemplates that the ECA shall examine whether all revenue has been received and all expenditure incurred in a lawful and

regular manner and whether the financial management has been sound. In the Member States, this audit shall be carried out in liaison with the 'national audit bodies'.

We only tackle the subject from a precise point of view: How do SAIs and RAIs organise to cooperate harmoniously among themselves and with the ECA in order to audit the funds coming from the EU budget? The question is posed particularly in the sphere of Structural Funds spent within the framework of regional objectives.

To this respect, two aspects must be distinguished: on the one hand, the advancements experienced in the organisation at national level of external public sector financial audit due to the necessity to audit the European financial channels; on the other, the cooperation SAIs/RAIs with the ECA.

1 - Advancements in the matter of public sector financial audit experienced within each country

The audit of European public finances has brought about advancements in the organisation of external public sector financial control, with consequences on the harmonisation of audits performed at different levels.

Thus, in The Netherlands some reforms are in progress. The General Chamber of Audit is about to be given responsibilities in what concerns the policies adopted by the ministries in order to implement obligations relating to the management, control and supervision of those subsidies coming from the EU budget. In this respect, the Dutch SAI will have responsibilities for auditing provinces and municipalities as far as these subsidies are concerned; the audit body will have just about the same powers as the ECA. According to the SAI of The Netherlands the 'single, comprehensive audit' system (see Part I) will have to be applied in this field.

In France, the audit of European Structural Funds is shared between the Court of Audit and the regional audit chambers following a quite complex distribution in accordance with the organisation at national level of the management of these funds. The Court of Audit can adopt a system-based audit approach from top to bottom. However, only the regional audit chambers, the only ones responsible for auditing local authorities, can verify the operations cofinanced with European funds which come under the local authorities' responsibility. Here it is necessary to arrange coordinated investigations or audits in terms which the liaison committee SAI/ RAIs tries to improve (see paper presented by the RAI Midi-Pyrénées).

2 - The cooperation with the European Community

This matter can be raised in new terms: that of national forms of cooperation/coordination mentioned in subpart A.

There exist here two forms of cooperation:

In France, this presents no real difficulty: the Court of Audit is the 'national audit body' in the sense expressed in the Treaty. It is the only one who ensures the function of liaison agent. Moreover, it can request any regional audit chamber to take over its accompanying tasks within certain audits performed by the ECA.

On the other hand, the use made of the results arising from the audits performed by the regional audit chambers on operations cofinanced with European funds can give rise to sensitive problems. These audit results are 'transparent'; however, it is the responsibility of the different institutions concerned to see if and to which extent these results must be remitted either to the European Commission (through the Prefect of the Region and afterwards through the Government) or to the European Court of Auditors (through the National Court of Audit, which has a specialised body which works on a pragmatic basis and which deals with these matters: the Committee for European Affairs).

In Germany, the situation is more complex (see papers by the RAI Rhineland-Palatinate and the RAI Saxony-Anhalt from the third session). The basic principle is the following: the FCA and the LCAs, within the sphere of their respective audit responsibilities, are the partners of the ECA; they are the 'national audit bodies' which ensure the liaison with the ECA in the sense of the EC Treaty and have authority to intervene on account of their respective powers. In case of overlapping powers the cooperation seems to be difficult in practice and this raises problems for the overall liaison with the ECA. It seems that the FCA remains basically responsible for the 'coordination of information flows between the German courts of audit and the ECA' (see paper by the RAI Rhineland-Palatinate). A series of cooperation measures with the ECA was proposed in 1998 by the Conference of Presidents of the Courts of Audit of the Federation and the Federate States. However, to date these cooperation measures have not been the subject of an agreement.

Finally, the paper by the RAI of Saxony-Anhalt presented for the third working session shows in a practical way the difficulties of cooperation which may

exist between the ECA and the LCAs in case of a joint audit: different audit objectives; problem of reporting on audit results).

As a draft conclusion, the following proposals can be advanced:

Regardless of the structure of the national state (federal state, unitary state with autonomous regions, unitary state more or less decentralised) there are always responsibilities which are shared between central state and federate state and/or regional or local authorities, implying that there exists shared financing. Therefore, it is not very realistic to think that the external public sector audit institutions which exist at each level, even those with complete independence, can operate effectively without harmonising their tasks with those of the institutions from other levels.

The responsibilities of the external public sector audit institutions from different levels are sometimes concurrent, sometimes complementary. Therefore, there is good reason for setting up or developing coordination or cooperation mechanisms.

Coordination mechanisms may be provided for in the constitutive laws of audit institutions, particularly ensuring that the national audit body has a certain right of access to the works produced by other institutions (nevertheless this is not the case in federal states).

This is perhaps not enough to ensure a sound harmonisation of works, whichever the structure of the national state is. There exists a series of cooperation mechanisms on a contractual or pragmatic basis.

To develop these cooperation mechanisms can be considered useful in order to improve efficiency and ensure that the external audit of public finances is carried out thoroughly. Cooperation mechanisms must include the exchanges on the audit techniques and methods as well as the exchanges on the development of public management.

These cooperation mechanisms can also be set up with regard to the audits effected by the European Court of Auditors at national level.

DEBATE*



* Speeches taken from audio recordings without revision by the authors

Intervention by *Sergei Stepashin* from SAI of Russian Federation

Our system of state and financial control is characterized by its progress of advance both on the federal and the regional levels. It happens despite different problems and difficulties. Thus, we have got some problems here which are caused by a lack of perfect legislation in effect. For example, a very important law in public financial control hasn't been passed yet. This law must specify connections and order cooperation between audit structures. Among the state structures auditing the federal budget implementation, the budget court deals with only the following state structures: the Ministry of Finance and the Instructor of the Federal Exchequer and the audit chamber. The budget court defines only more general laws and authority of the structures, measures and technologies occurring from the state's financial control as an activity of a number of federal structures. The external audit is armed with the jurisdiction of the acts and instructions of the department.



Only the activity of the audit chamber of the Russian Federation is covered under a special federal law, and the constitution of the Russian Federation, which states the audit chamber as the only structure for financial control in the public sector.

Thus, the audit chamber of the Russian Federation is the only independent organ of the state financial control. It was found in 1995 on the analogies of the audit structures of the public sector in other countries. But the chamber in Russia has a long history. In 1654 the Russian Tsar, Alexy Romanov, founded a special department, a kind of ministry in the state. It was an audit structure of ancient Russia.

Being organisationally and financially independent, the audit chamber carries out the independent external state audit of all the parties of the budget process and as a basis for the financial control in the country. Today we are defining the role of the audit chamber. Some elements are to be made in the law. Under these elements the chamber will be able to bring action against those who err in the budget code and bring them to trial.

Besides the audit performed by the audit chamber, we do not have a direct effect. For example, the audit chamber cannot itself withdraw money from the account of those who violate the budget process, because only the Ministry of

Finance has the statutory authority to do it. At present, we try to balance the absence of such an anomaly in the law by agreements of cooperation with the prosecutor general's office, ministry for internal affairs, federal tax service, federal security service and ministry for tax collection.

Cooperation with the law enforcement structures is aimed at fighting crime of economic and budget affairs. Since, jointly we have returned to the budget more than thirteen billion roubles. More than one hundred criminal cases are being investigated by our courts. Besides the audit chamber of the Russian Federation, there is no other structure of the subject of the federation are else considered to be structures of the public external audit. There is no federal law yet which defines the form of order of work of all the structures. After the budget court was passed, we began to check the budget implementation of the subject of the federation with a budget arm formed by more than fifty percent of federal money. The federal audit chamber regularly supplies information and logistical support to the regional structures of the external audit. It arranges the training of the personnel that carry out the inspections. The dynamic cooperation of the audit chamber of the Russian Federation with the regional audit structure is aided by the foundation, in December 2000, of the Association of the Audit Structure of the Russian Federation, which incorporated, as it were, the independent members of the federal audit chamber and the regional structure of the external audit.

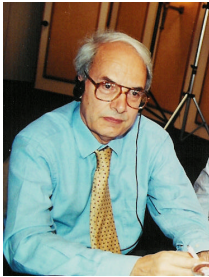
It should be mentioned that a regional census initiated the foundation of this association.

Among the priorities of the joint activities of the federal and regional audit structures, we can name them: its use of the environmental protection and ecological security, control of the plenitude of tax revenue, control of the effectiveness of management of the larger scale enterprises largely owned by the state, financial support of the pre-school and school education.

Thus, the process of establishing a uniform system of the public financial control structure in Russia is on this way. This control must be comprehensive and it must embrace all the stages of the budget process. I am convinced that the effective system of financial control will make Russia an economically independent and flourishing country.

Intervention by *Francesco Staderini* from SAI of Italy

Mr. Vachia has provided us with a fairly complete and thorough overview of the implications connected to the constitutional form of the State as well as the relations of co-ordination and co-operation that may be established between the different levels of external auditing control in both unitary and federal states. I would hereby like to address certain elements regarding the implementation of co-ordination in the Italian system.



I would also like to beg your forgiveness for my bad French pronunciation.

«The structure of the Italian legal system as enshrined in the 1948 Constitution is that of a unitary State, although substantial powers have been devolved onto the Regions, which stand alongside the traditional territorial administrative units (the Provinces and Municipalities) of which the law-making was one of the most important.

The Italian constitutional order therefore differs both from unitary States with decentralised powers, like France, and federal States like Germany. The developments currently being implemented in Italy are therefore gradually bringing the country closer towards the federal model, with the particular feature that a special status is being given to the autonomy of the “infra-regional” tiers of government, an autonomy which is also exercised in relation to the Regions themselves.

For during the past few years the devolution process has been considerably hastened, with the result that at the present time most of the administrative functions that are not specifically inherent to the essential powers of a unitary state, have been devolved onto the Regions, and local authorities. Furthermore, the law-making power of the Regional Councils has been broadened to such an extent that, today, the only constraint on it is that it must be “compliant with the Constitution”.

The Court of Auditors, which has always been responsible for the external audit of government departments as an ancillary organ both of government and parliament, was planned from the beginning (as long ago as 1862) as a unitary and centralised body. Only recently has it been reorganized structures to keep pace with the simultaneous evolution of the functions devolved on local government.

At the same time the Court of Auditors has also been involved in a radical process of reform relating to the exercise of both its judicial and its auditing powers. The most interesting about this reform, which dates back to 1994, is the auditing function, which is the sole subject-matter of this Congress, and so I shall deal with this function in this paper.

For the auditing function, then, parliament identified a narrow range of "Government acts" having major statutory or financial relevance, over which the Court continues to carry out an a priori legality audit (prior to the reform practically every Central government act was subject to this legality audit) on the one hand, while on other it vested the Court with general powers to conduct an a posteriori audit of the accounts of all government departments and agencies, including the Regional, Provincial and Municipal government, not only to ascertain their legality, but also the economy, efficiency, and effectiveness of their administrative performance.

The reform that Parliament intended to legislate on focused above all on regulating this new auditing function, based on investigating the accounts and on the "output" of the departments and agencies being audited. To achieve this, Parliament gave the Court of Auditors the task of independently organizing the way it exercises its powers, vesting it with such wide-ranging regulatory authority that it is empowered to go so far as to derogate from current provisions of Statute law (the Legislative Decree of 1999).

Consequently, on 16 June 2000, the Joint Chambers of the Court of Auditors adopted the Regulation of the auditing functions of the Court of Auditors. While only introducing a few changes to the organization of the central auditing bodies, the main focus of attention was on setting up autonomous and decentralized regional Chambers of the Court of Auditors in the "ordinary statute" Regions, along the lines of the Chambers already existing in the "autonomous statute" Regions. These new regional Chambers of the Court set up in each Region (comprising a Chamber President and at least three judges) have absorbed the previously existing decentralized auditing bodies – the Regional Delegations (instituted by Law 1345/1961) and the Regional Auditing Colleges (Regulation 1/1997).

The Regional Chambers audit the legality of the acts of central government agencies and departments with offices in the Region through to the final phase of the proceedings (registering or denying clearance, which was formerly done by the Central Audit Chamber).

However, there are now very few acts of the devolved government authorities

which are subject to a priori audit (the most important ones are acts relating to public works exceeding the Community threshold). It is the case that the most important function of the newly instituted regional auditing authorities relates not to single acts, but the overall performance of the regional and local government authorities (including entities and agencies under their administrative jurisdiction).

As far as the Regional governments in particular are concerned, each Chamber is required to evaluate the "attainment of the objectives enacted in the laws of principle and the programme laws", for the purposes of submitting its annual report to the Regional Councils (pursuant to section 3 (5) of law No. 20 of 1994). This means, as the Constitutional Court has ruled already, that far from being "a branch of central government versus the autonomy of the Regions" the Court of Auditors has the duty to place itself "at the service of constitutionally guaranteed public needs, above all to ensure that every area of government administration is effectively compliant with the model of sound governance required by the Constitution". Consequently, the Court works primarily for the benefit of the audited agencies and departments themselves, to which the findings of its audits are first submitted with practical instructions on how to redress any dysfunctions that its audit has brought to light, even before being for the benefit of the Regional Councils.

The same applies to its audits of the local authorities which can also be described as "audits-collaboration", because they are intended to enhance the efficiency of the system as a whole.

In order to achieve this, in addition to investigations into the "macro-equilibria" of regional and local finances, and auditing the results of sectoral policies, the Regional Chambers can also conduct (what may be considered "micro-") investigations into individual departments in order to verify the levels of efficiency and cost-effectiveness in terms of indicators established on a case-by-case basis, taking account of the criteria based on practice and on economics and business sciences. The results of these investigations are designed to stimulate the administrations to redress their shortcomings themselves, because they also receive copies of the final reports. Specific comments can also be addressed to these authorities and agencies when an irregularity is discovered in the course of the audits referring to a more general issue.

The decentralization and regional organization of the auditing functions of the Court of Auditors make it necessary to put into place appropriate coordination procedures.

It is primarily the responsibility of the Joint Chambers (at which all the auditing authorities of the Court are represented, including the regional authorities) to lay down the

priorities for scheduling and planning the audits, even over several years, and for laying down the guidelines for coordination, and general methodological criteria. These priorities and criteria must be taken into account by all the Chambers when drawing up their own annual audit schedules and agendas.

Furthermore, in order to guarantee that all these investigations are conducted homogeneously, the President of the Court of Auditors is responsible for coordinating the auditing work of all the Chambers.

This coordination function is mainly performed by covering regular conferences of the Chamber Presidents to debate the issues of joint concern to several Chambers, to see their operational and organizational implications, and identify concerted working methods. This coordination is designed to ensure that the Institution operates soundly in the performance of its auditing activities, so that while leaving each Chamber autonomous and fully empowered, it is possible to link investigations into entities which, by their very nature, surpass the scope of the Audit Chambers considered individually.

It is in this framework that two investigations have been conducted into two comprehensive issues: one on healthcare and one on local public transport (broadly regionalized in terms of both legislation, administration and funding) by the Joint Chambers of the Court when drawing up the general schedule and agenda for the auditing activities during 2001. These enquiries are additional to the investigations that each Chamber freely decides to undertake when scheduling their own auditing programmes.

The scheduling of "horizontal" investigations is not to be able to issue judgments approving or attributing blame, or to draw up "league tables" of "passes" or "failures" because it would be simplistic to attempt to draw any such conclusions in view of the variety of different factors, (including socio-economic considerations) that can influence administrative activities. The purpose of these investigations is rather to ensure that in the subject areas concerned comparisons can be made covering the whole of Italy, so that by comparing different regional situations local shortcomings can be identified, it possible to debate the issues and enable the defaulting entities to redress theses shortcomings. The comparative approach (regarding costs, modes and the time taken for administrative action) is expressly provided by the 1994 Reform Act.

From the organizational point of view, this first initiative, which is currently in progress, is underpinned by two working groups of judges and civil servants appointed by the Regional Chamber Presidents.

In the field of healthcare, it has been agreed that the investigation should relate

primarily to an examination of the structure of the supply of services and of the various different regional financing models in order, subsequently, to identify certain very specific operational aspects in individual hospitals (the waiting lists, the exercise of the medical profession intra moenia, etc.). The working group is also responsible for selecting the operational aspects to be investigated. From the point of view of the methodology, the Regional Chambers work in the same direction, laid down in a jointly drafted questionnaire and follow an agreed work schedule. In this field, the President's coordination powers are mainly to guarantee technical assistance and data input (processing the data by computer, updating the documentation and the benchmark documents, getting in touch with experts from leading university research centres). It is also planned to create a common structure for the final reports to be submitted to the Regional Councils. A summary report, identifying the conclusions based upon the comparative approach, is finally submitted to Parliament.

The same working method is also used with regard to the transport investigation: a questionnaire is drawn up to identify the general framework of reference and the funding mechanisms (with comparative evaluations of the resources employed), identifying a range of narrow, specific issues for further discussion (the degree of competition, evaluation of service quality standards, procurement of rolling stock), the application of "shared" methods and indicators within the working group; final reports to be submitted to the Regional Councils by each Chamber and Parliament by the working group as a whole.

So far we have examined cooperation between the decentralized auditing bodies themselves. But there is also the problem of coordinating them with the central auditing authorities in areas over which there is a division or breakdown of powers and responsibilities. The two main examples here are the use of European funds, and the audit of regional and local finances. The same coordination methods can therefore be used.

As far as the first issue is concerned, in 1997 the Court of Auditors set up a Special International and Community Affairs Auditing Chamber, responsible for submitting an annual general report to Parliament providing a comprehensive evaluation of the use of European funds and progress with the implementation of Community support frameworks.

In addition to the functions of cooperating with the European Court of Audit in the course of the many "field visits" which it has organized in the member States, the Community Affairs Chamber is also empowered to carry out specific spot investigations of the management of Community funds. The power to carry out audits in this field is therefore shared between this Chamber, the Central Audit Chamber (responsible for auditing central government departments) and the Regional Chambers, all of which can investigate

the management of European funds which are channelled into the public financial circuit, and co-financing from central government or regional government budgets.

Apart from the general programming of "unitary" investigations by the Joint Chambers, it is also possible for the Community Affairs Auditing Chamber to schedule investigations itself, simultaneously involving several Regional Chambers and asking them to incorporate these investigations into their own auditing agenda for the report to be submitted to Parliament. It will then be the responsibility of the Special Chamber to centralize the input from Regional Chambers, and their President's responsibility to coordinating their activities.

With regard to the a posteriori audits on the financial year 2000, the criteria for choosing the areas to be investigated have also been set: the amount of the loans, the size of the territory, late implementation, irregularities revealed in advance during audits conducted by the European Commission or in court cases, and new funding.

Lastly, as far as territorial finances are concerned, the Local Government Chamber will be responsible for auditing the accounts and making comparative analyses of the performance of the local authorities as a whole, for the purposes of drafting an annual report for submission to Parliament on both regional and local finances (taking account of the reports already drafted by the Regional Chambers) as well as on compliance with the financial ceilings set by the Italian and European authorities. In this respect, a "domestic stability pact" has been concluded to guarantee the participation of the Regions and the local authorities in laying down the policy for balancing public accounts, dealing with the twin aspect of deficit reducing the stock of the debt.

The Court of Auditors (through the intermediary of the aforementioned Local Authorities Chamber), in its role as an "observatory" of local finances considered as a whole, also intends to act as a technical and impartial guarantor of the sound implementation of "fiscal federalism", by carefully monitoring the management of the "readjustment funds" into which part of the tax revenues recovered at the regional level will be paid in order to be redistributed to Regions with a small tax base, which therefore handicaps them from the financial point of view.

Within the framework of the priorities established by the Joint Chambers, there is nothing to prevent this Chamber from carrying out spot investigations (for the year 2001, into domestic auditing services, municipal theatres, waste collection) in its audit programme to be examined in a group of municipalities identified by sampling. It is particularly in this regard that cooperation between the Regional Chambers is required. Here again, it is contemplated that the President of the Court shall convene coordinating conferences.

At the end of this short report I would like to say a few words which will enable us to compare the different legal system.

There are two features of the Italian model which I would like to emphasize: Italy is a unitary state, although it is moving towards very advanced devolution, and the auditing of the regional and local authorities is carried out by a central government body; all the auditing bodies, whether central or local, belong to the same Supreme Auditing Institution and are merely autonomous branches of it, and are not separate from it.

In this framework, coordination is both vertical and horizontal: firstly it hinges around the two pivots of the Joint Chambers as far as general planning is concerned; on the other hand, it must necessarily be "negotiated" because it is essential for autonomous agencies to work together. Furthermore, it is exercised in the same way, whether the central Chambers are involved or only the regional Chambers.

The unitary character of the Court, both in terms of organization and operation, would seem in principle to facilitate the implementation of coordinated audits, and particularly the conduct of horizontal investigations with a common object and approach; it also makes it easier to settle any conflicts that may arise and vests the resolutions adopted following the audit with greater authority. However, the implementation of coordination mechanisms is part of a very recent and developing system, which therefore still needs to be consolidated and improved in practise».

After having listened to the exhaustive base report and laid out the essential lines of the Italian model, it is my responsibility as Moderator, to stimulate debate. The first aspect to be highlighted is that co-ordination requirements arise in a different manner in different countries, and the means in which they may be achieved also vary considerably. It is nonetheless possible to delineate very general groupings of systems with common characteristics. In this regard, the basis for such delineation may be drawn, as explained by Mr. Vachia, depending whether pertaining to federal or unitary states, and the respective typologies.

In federal states, there are distinct audit institutions in each federated state, and also in the Federal State itself, as in Germany or Austria. The co-ordination established as a result of the emphasis established by the Presidents of the audit institutions of federal states is based essentially on principles of voluntary initiative in terms of adhesion and implementation of agreed measures. This cannot be achieved without causing certain problems.

The Spanish system – even though Spain is a unitary State – also offers certain very similar characteristics, although to a certain extent corrected by principles of supremacy of the central audit institutions over the decentralised audit institutions. In unitary states, co-ordination appears to be the easiest principle, because it can be achieved in both a vertical and horizontal manner. But the case in point is quite distinct.

In the United Kingdom, with a sole audit institution – the Audit Commission – for local authorities and the bodies of the National Health Service, co-ordination is only achieved on a vertical basis and does not seem to pose problems, except for the relationship with the audit institution with powers over central administration – the National Audit Office – in terms of areas of shared competencies, which are nonetheless fairly restricted.

In the French legal system, characterised by the autonomy of regional audit institutions, independent from the central court of auditors, there are nonetheless either connections in terms of respective staff or functional forms of co-ordination. Nonetheless, adherence to topics and methods that are jointly defined is achieved on a voluntary basis, as emphasised by the Reporter.

In Italy, regional audit institutions are no more than autonomous articulations of the central court of auditors, that is the sole audit institution. There is also a single staff structure. This makes it possible to exercise a vertical-style co-ordination, achieved via a general programme that is compulsory for all regional chambers, where the power of initiative lies with the president. Given that these are the characteristics of a certain system, the debate may now contribute towards showing the effective results and impact on the contours of different models, specifically in terms of the principle of voluntary action that appears to limit the possibility of co-ordination in federal states. In certain unitary states, attention should also be drawn to the possibilities of control over respect for criteria and methods established in a concerted manner.

It would also be very interesting to learn more about the essential characteristics and the problems that arise in practise in the other systems.

Speaker not identified

I would like to pose a question following the summary made by the Reporter, concerning the question of sole auditing control. In effect, in this summary and in regards to the experience of the Dutch Court of Auditors, an overview was made of the principle of sole auditing and of the use of audit results by external audit institutions. I would like to receive more details, if possible, from the Dutch Court of Auditors, concerning this principle of sole auditing control and on the use that may be made of the results that have been obtained during an audit made by another external audit institution.

Intervention by J.E. Havermans from the SAI of Netherlands

In our contribution to this conference we have already put down that in the Netherlands the national court of audit has no authority on the lower level. At this moment, there are twelve provinces, you may call them regions, but with their own parliament and their own autonomous way of financing and giving the responsibility to their parliament. They do not have their own chambers of audit now, but there is a law in parliament, at this moment, to discuss to create, at the provincial and local level, the future audit institutions.



At this moment, the situation is that at the provincial and local level the audits are done by external auditors, mostly private. There is only now a procedure going on, that some cities have now their own first court of audits. The only big city which has a chamber of audit, which you can compare to the court of audit on the national level is the city of Rotterdam. The director of that court of audit is with us in the delegation here.

But, there are only a few municipalities in the Netherlands that have organised something like this. There is a law in parliament now, that in the future every municipality in the Netherlands, (we have about five hundred) will have on the local level their own institution to audit the financial regularity and to perform it.

At this moment, we have always said, as the national court of audit, that we should have the authority to look after those funds, which are given to the lower level, to provinces and municipalities, to carry out national tasks where the minister at national level still has responsibility for this, like education, social security. These tasks are carried out by local government and the funds are given to the municipality, but they are still on the national budget. We, as the national court of audit, have always asked to have the opportunity to look after these funds at the local level, but the law has not given us that authority, until now. That means that we can go to the municipalities and provinces and ask them to cooperate with us voluntarily, and they do, in practice.

Then, that was given the problem about the control on the local and provincial level, controlling the regularity by external auditors. This was the question that we have now in our country. Also, that same law I described before, they will put down that regularity on the local and provincial level will be the same as on the national level, so that we can use the reporting of the external auditors on the national level if we want to use them to look after the responsibility of the minister, who is responsible for this task in the national field.

That is what we mean with this single audit principle – that it is necessary to do this audit again, but there will be a common way of looking after what we mean by regularity on the local, provincial and national level. And that will be one issue, one system from now on. That is what I can tell you.

Intervention by John Sherring from the Audit Commission

I wanted to make a few comments about the system of auditing in England and Wales because delegates may find that interesting in that it is a little different from most of the systems that we have heard described so far. In particular, I wanted to comment on the relationship between the National Audit Office and the Audit Commission, and how that works.

I wanted to say three main things, really. The first is a very brief description of the audit system in England and Wales because there are more details in the book, which you have in your delegate packs, and I am more than happy in the informal session to answer questions about that. The second is to describe the

relationship between the two main external auditing institutions and the third is to comment on the effectiveness of the relationship between the National Audit Office and the Audit Commission.

By way of background, I wanted to make two points. The first is that in the absence of a written constitution in Britain, our systems of public order have evolved and continue to evolve from a very rich cocktail of history, politics and, above all else, British pragmatism. The second point concerns the purpose of audit itself. In the UK we do not see audit as an end in itself, we see it as a means to an end. For us, the emphasis of public audit is to ensure better value for money in public expenditure as well as the traditional regularity aspects of the audit.



The consequence of the way we do that is that we do not allow formal rules, protocols and procedures to act as a barrier to achieving that end. So, if I turn now to the actual systems of audit, as you probably know, we have two major audit institutions – the National Audit Office and the Audit Commission. Neither is a supreme auditing body. We prefer to see them as a constructive partnership for the benefit of the public.

Both institutions are concerned with the economy, effectiveness and efficiency of the bodies that they audit, as well as the regularity work that they carry out. So what is the difference between the two? In very simple terms, the National Audit Office audits central government and its many related bodies, the Audit Commission audits local authorities who are independent tax raising organisations with their own elected councillors. But it isn't as simple as that, and this has been alluded to already.

The National Audit Commission audits the audit of local health bodies, particularly hospitals and local doctors who form part of the national government's expenditure. But a second and more complicated aspect that confuses the auditing is that the distinction in the UK between public and private organisations has become very blurred. So, we now have many local authorities who have local authority companies. Both central and local government provide large amounts of money to fund partnerships between voluntary, private and public sector. We need to be able, between us, to audit this money that goes into these quasi-public private sector organisations.

The consequence is that we have had to work very hard to develop an effective working relationship between the National Audit Office and the Audit Commission that doesn't feel hide bound by rules, protocols and regulations. That relationship is primarily informal. The only formal relationship between the two bodies is that the National Audit Office audits the Audit Commission's accounts. The rest of the relationship is informal. We cooperate through discussion of our audit plans, audit techniques and we seek to raise audit standards by holding joint seminars and training sessions.

Above all else, we are members of an organisation that is called the Public Audit Forum, which is made up of the four major external auditing bodies in the UK. The Public Auditing Forum is there to look at the standards and principles of public auditing, the rights of the citizen, for example in relation to data protection, audit and so on.

Moving on from this very informal relationship, I wanted to comment on whether that very informal system works, and whether it works to the benefit of the public because, after all, that is why we exist. We do not exist for our own right. I don't pretend that the relationship is perfect. This is constantly evolving and improving. But we, in the UK, strongly believe that the combined effect of the two audit regimes is very effective.

We have three sources of objective evidence for that. The first is that we both measure the impact of our value for money audit. We measure that in terms of the amount of money we have saved in public expenditure and compare that with the cost of auditing that expenditure. We find that the savings far outweigh the cost of value for money audit. The second is that we both, the National Audit Office and the Audit Commission, are regularly scrutinised by independent bodies and those bodies actually look at the relationship between the two organisations. The most recent of those was a report carried out by Lord Sharman, who recognised the benefit of both systems, but also recognised that it was important that we continued to work together in an informal way.

The third piece of objective evidence for the way the two regimes work together, and are successful, is that we measure the impact on the public of our work. After all, returning to the point I made a few moments ago, we only exist to audit the public expenditure on behalf of the public. Barely a month will go by without the National Audit Office or the Audit Commission appearing on national

television or national radio explaining the results of its work. In doing that, the public will be very soon critical of us if we appear to be comment on the same areas, and in fact, the work we do through the cooperation, through sharing our audit planning and programming tends to support each other, and between us we achieve a very wide coverage of public expenditure.

The underlying reasons for that success story, we believe is that firstly we respect each others statutory independence, but we do not allow that to get in the way of our cooperation and getting the right things done through public audit. The second is that we are constantly driving up the standards of public audit through a combination of regular and informal cooperation. Also, through a little friendly rivalry, though not a damaging rivalry. The third and final reason is that we both invest very heavily in the kind of people we have, we spend a lot of money on training, on recruiting and explaining how the public audit system works to them.

So, taken together, we think that we are making a major contribution to achieving effective public auditing. But it is not really dependant on all the formal rules, structures and hierarchy, about which there has been so much discussion today. Although we are different organisations, I think that going back to Sir John Bourn's comment, I think that we are diverse organisations in unity to secure effective public spending.

Intervention by *Joseph Carreras* from the RAI of Catalunya (Spain)

Firstly, I would like to congratulate Mr. Vachia for his excellent summary of our reports. This was a difficult task, given that they were numerous and highly varied, with a wide range of different solutions presented for the different countries.

I would only like to make two comments in relation to this matter. Reference was made to various levels of contacts, principally in vertical terms between SAIs and RAIs. The relationship between these two levels was defined as a vertical relationship, whereas relationships at the same level – in both the national and international context – were defined as horizontal relationships.



In my opinion, it is only possible to think in terms of hierarchical systems of co-ordination in one of these four scenarios. In the other three cases, i.e. horizontal co-ordination at the national and international level, and vertical co-ordination at the international level, it is only possible to consider a system of co-operation based essentially in the intentions of each audit institution, because it is difficult to imagine the existence of legislation that covers these situations.

As a consequence, in the three points emphasised by the reporter, control by the controlling entity is normally resolved not so much through hierarchical co-ordination, but rather through that which is normally classified as a peer review, *or an audit between institutions of the same level*.

In the case of transparency, which is necessary, I believe that alongside ascending aspects there must also be descending aspects.

And in the third case – that of mandated delegation of powers – I believe this must always be accepted voluntarily by the entity receiving such a delegation of powers. In the case of Spain, I would like to ask the reporter whether this is the case, i.e., whether the higher Court of Authors may delegate powers to the regional court of auditors, but the latter may refuse to accept such a delegation of powers.

In addition, there is a form of co-operation, as I explained in my communication, that is different from co-ordination, because in a process of co-ordination there is always someone who co-ordinates and someone who is subject to such co-ordination, whereas in co-operation this does not occur. With co-operation it is possible to achieve other objectives, in addition to that which is basic and fundamental, i.e. public auditing or inspection. Other specific objectives include the immediate context, i.e. to inform the general public or the nature and characteristics of our activities (in a combined rather than individual manner), and to include initiatives intended to improve the internal functioning of our organisations in terms of staff training, organisation of the operation of auditing activities, budgetary management or peer reviews.

This type of co-operation, as typified by today's event, may be widened to other more concrete topics and more specific levels, that may take place, for example, between regional audit institutions or between supreme audit institutions, as already occurs at the level of EUROSAI, or also by topics, e.g. European structural funds, as mentioned this morning.

Intervention by *Yvan Pedersen* from the SAI of Denmark

I would like to pose a question to the participants in this marvellous Madeira Conference.

The matter is that in Denmark the municipalities most often are audited by private auditors. But as I see it in most European countries the public office gives no or little room for private auditors.

So my question is: why do you hesitate to use private auditors in the audit of the public sector?



Intervention by *Jean-Philippe Vachia* from the RAI of *Midi-Pyrénées* (France)

Well, I'm not in the best position to give you a reply.

In effect, while producing this report, I noted that in certain cases cited – in Switzerland and the Netherlands I believe – municipalities may be controlled by private audit offices. This is also the case in England and Wales. In systems such as the French system, one encounters another form of organisation – regional audit institutions with powers to audit both the region, communes and trade unions and local associations.

Having said that, given that it is now my turn to speak, I can also indicate that the private auditing offices, attempt to intervene and actually intervene in order to acquire expertise, but within the framework of a contractual relationship and therefore not with a legal mission, on behalf of local authorities. But the intervention of these private auditing offices is not in terms of certification. Instead it concerns private audit missions or private expertise on specific issues.

That's about all I can say. In truth, nature is terrified of the void, i.e. if there is not public audit system of municipalities and thereby of municipalities' budgets, it is at least advisable to have a common system of standards based on accounting expertise, i.e. that of the legal mission of the chartered accountant. The problem is to know which are the accounting standards applied by the chartered accounts office. I imagine that in England and Wales, the Audit Commission considers the intervention of private accounting offices for a certain range of standards and objectives. Thus we return to the core question, who does what, and above all, in order to achieve what?

Intervention by Vitor Caldeira from ECA

I would like to pose a question to Mr. Vachia in regards to the form in which he addressed the European issue. He stated that the European issue makes articulation and co-operation between different external audit institutions more



complex within the field of financial control. He also stated that this requires or demands a greater effort of co-operation or co-ordination between the different levels of audit control and drew particular emphasis to the fact that in this context it is desirable to establish co-operation between regional audit institutions and the European Court of Auditors. My question is the following: in what form do you view such co-operation, what perspectives do you identify in a context in which – as you yourself

admitted and described in detail – that national audit institutions are the privileged interlocutors of the European Court of Auditors.

Intervention by Jean-Philippe Vachia from the RAI of Midi-Pyrénées (France)

Yes. That is indeed a difficult and very specific question.

For example, in the Midi-Pyrénées region, where I am the president of the regional Chamber, for the purposes of audit control of structural funds – I indicate the example of the Midi-Pyrénées region because it's the case I'm most familiar with, but other examples may be found elsewhere – you may have, if you'll forgive the expression, a parade of auditors controlling the same issue, i.e. the use of structural funds. You may have representatives of the Commission, yes I'm referring to the Commission and not the European Court of Auditors, that are auditing structures. You may have representatives of the European Court of Auditors within the framework of the annual declaration of guarantee that have chosen a sample that may be the same as the sample in the preceding year. You may have France's national Court of Auditors that within the framework of an audit of the system that I mentioned earlier, have chosen an example in the Midi-Pyrénées, that may even, in an extreme case, concern the same transaction or same organisation.

And then, the regional audit institution over which I preside, also controls the accounts and management of local authorities, regions and departments, where we also encounter European funds. For example, we are currently auditing a department, i.e. the administrative level below a region, within the Midi-Pyrénées region, in the context of an audit on a social initiative by this department where we encounter credits from the European Social Fund i.e. structural funds. In this case, we are also obliged to audit the use of such European structural funds.

Of course, our approach is not necessarily the same and our questions are not necessarily identical to those posed by the Commission or the European Court of Auditors. It therefore seems to me, when I referred to complexity a while back, that there are two aspects. Firstly, to avoid excessive repetition of auditing of the same transactions and same operations at the same time. Secondly, to establish better use and draw greater benefit from the results of local audits for the benefit of higher levels of auditing.

When we have completed our audit of the department, in relation to this social initiative – the distribution of credits in order to reintegrate the young unemployed – we will consecrate perhaps one, two or three pages of notes on the cost effectiveness and efficiency of these mechanisms within the department. And we will have a paragraph that states: this is how the European Social Fund was used in this context.

Thus, the problem is to ensure that this effort does not lie forgotten and is used, is appropriately forwarded, if you like, to a level where it may be of use. Quite simply, given that our main objective is not to determine whether the European Social funds have been correctly used, the question is to know how to reap the greatest benefit, in some form, from these audit results.

At the national level, we have a very French system, with committees, examinations, under the control of the first president that will present results via the channels established for this purpose in our institutions. I have to admit that this system is rather too formal and cumbersome.

When I mentioned that the intervention of the European Court of Auditors is an element of complexity, it was not at all in order to make a criticism, but because our underlying theme is that of co-operation or co-ordination between national audit institutions and regional audit institutions. After the experience of many years, it is now necessary to add co-operation between the European Court of Auditors, national audit institutions and regional audit institutions to this framework.

As a result, the existing problem of bilateral relations becomes a trilateral problem. If I may be so bold, the question of complexity is to be understood therein. Having said that, I fully agree with the words of the representative of the Audit Commission. I believe that it is not at all necessary to add new articles to the treaty, or make supplementary laws. Instead we must find more concrete means whereby it is possible to establish better exchanges of our audit results. As simple as that.

Intervention by Bernard Levallois - President of EURORAI

Yes, I would also like to congratulate Jean-Philippe Vachia for his excellent summary and following in the footsteps of my Catalonian colleague I would like to add a few precise details. It is true that it is difficult to categorise relations that exist between different audit institutions, in particular between national and regional audit institutions.

This statement will come as no surprise to you, since I have been President of EURORAI for three years, and I would like to remind you that our organisation represents independent institutions. For that reason I fully understand that, for simplicity's sake, we categorise relations between national and regional institutions using the term – “vertical”. But, as has just been stated, this term may give a misleading impression of the real relationships between institutions that are different in nature and audit different entities but are both independent. For that reason, I personally categorise the relationships that each EURORAI member has with other audit institutions in its own country, in terms of co-operation. Even in the French case, where there are very close links between regional audit Chambers and the national Court of Auditors, even in this case we should speak of co-operation between the Court of Auditors and regional audit Chambers, instead of a vertical relationship, as if it was a hierarchical relationship. This is particular true when audits are carried out, as the reporter clarified just now, in fields where the intervention of the national state and that of local authorities are closely interlaced. It is quite pertinent that our colleague Vachia cited the example of the



health service, but there is other of equal relevance such as education, where state financing and local authority financing overlap.

It is completely true that within the liaison committee discussed just now, there is completely free and voluntary co-operation between the Court of Auditors and the regional audit chambers. Why? In order to guarantee that a proper audit is conducted! In all aspects, in particular in terms of effectiveness, as our Anglo-Saxon friends would term it. It is on this basis of co-operation that the national Court of Auditors and regional audit chambers establish an agreement on audit programmes and methods in a great many fields.

Intervention by Bernard Friedmann from ECA

This morning Mr Vachia launched a discussion as a result of his report that I believe can be highly specific in nature, as we have just seen.

Structural funds and subsidies correspond to one third of the expenses of the European Union – a fairly large share. One third of expenditure is destined to structural funds and these support mechanisms are normally co-financed by Member States. We give due prior notice whenever we intend to carry out an audit in any area, but obviously our intervention is never as thorough as that of national audits. If one checks and audits the national portion in relation to structural funds, one will encounter irregularities that are also related to the European funding. When a road or a bridge is not solely subsidised by the European Union, but is also partly financed by the national part, what happens if we audit the national part and discover errors? In that case there will also be errors in the European relation, and for this reason it is necessary to establish interchanges, and to mutually inform each other. The question arising is when and how such interchanges should take place? It is no use if the information is only processed through the publication of your report, because in that case the press will also have access to the case. I am fully aware that certain courts of auditors and audit institutions have reservations in informing us before presenting their report to the European Union. But a great deal of time is lost in this manner, and I believe that we should work together in real time in order to be more effective.

I must emphasise that we are talking about very large sums of money –

many millions of euros – and in this manner I believe we may be able to establish a substantially more effective form of co-operation. We should review existing methodologies, that need to be fine-tuned, and we at the European Court of Auditors should issue certificates. We conduct audits from time to time. But we also wish to be able to rely upon the reports and audits provided by member states. In this perspective, there may be many concrete and more intensive forms of co-operation.

Thank you very much, Mr. Chairman. You yourself may be able to confirm my comments since you have worked at the European Court of Auditors and are familiar with all audit levels from the highest to the lowest level.

**Intervention by *Jean-Philippe Vachia* from
the RAI of *Midi-Pyrénées* (France)**

It's very difficult to sum up. We are left with the following idea from all these contributions. The moment on which competencies are shared between audit institutions of different levels, due to crossed financing and because one administrative level uses financing derived from another administrative level, there is need for co-ordination and co-operation. This is the key conclusion from the last two and a half hours of discussion. What else can be added? That one country may

have an extremely well organised and sophisticated system, at least on paper, in order to organise institutional mechanisms of co-ordination.



But this by no means guarantees two overriding questions. Firstly, to guarantee that all public funds in any one state are audited and controlled from the perspective of regularity and economy, efficiency, effectiveness. Secondly to guarantee that there is no overlapping of work or excessive auditing of certain

sectors, while there is no control whatsoever in other areas.

Matters may be made considerably easier if there are comparable working methods and objectives between audit institutions of different levels. The English example of Value for Money and regularity demonstrates this possibility. I also believe,

although I did not specifically say as such, that the same is true in France with regional audit chambers.

From the moment at which we have objectives, if we manage to develop broadly similar working methods, it is possible to develop far more concrete and contractually firm mechanisms of co-operation. But that can only be achieved, as stated by the representative of the court of auditors in Catalonia, on the basis of broadly comparable methods and objectives between court of auditors and is based, I would say, on voluntary initiative, on acceptance. An audit institution, by definition, must be independent. It cannot operate subject to constraints. By contrast, I believe that an audit institution that is confident of its methods and delivers results, should be willing to divulge its methods and results to other audit institutions of other levels, whenever they share common objectives. Common objectives exist when the operations or organisations are subject to financing from different levels.

Those are the sort of ideas that have arisen and that we will attempt to summarise in our report tomorrow.

3.rd session

The interdependence of budgets (communitarian, national, regional, local) and its effect on external public sector audits



Left to right:

- *M. Lubomir Volenik* (SAI of Czech Republic)
- *M. Michael Michovsky* (SAI of Czech Republic)
- *M. Ioannis Sarmas* (SAI of Greece)
- *M. Giorgio Clemente* (European Court of Auditors)

BASIC REPORT

Reporter



Giorgio Clemente
ECA

I should like to open my presentation with a quotation from an observation contained in the report by Mr. Puigdemoglas, a Member of the *Sindicatura de Comptes de Catalunya*, which seems to me to be very pertinent. He rightly noted that today national systems are being ever more closely integrated with one another or within supra-national structures.

In another respect, however, along with the advance of the «globalisation» of legal and administrative systems, regionalisation is an increasingly common phenomenon.

The consequences of this situation are felt both in the relationship between the budgets of the various (national and regional) bodies and in the external control of such budgets themselves.

The fact is that overlapping of the various levels is inevitable and gives rise to very complex administrative “landscapes”, which are characterised by multiple links between the supranational, national, regional and local levels. However, it is clear that the funds that are managed by local authorities usually originate, at least in part, from national budgets.

The upshot is that the management of these funds cannot generally ignore the rules to which the national budget is subject or, where appropriate, the discipline of the internal control of the budget, without prejudice to the independence of these authorities. As regards the specific case of States with a federal structure, or States where regional bodies enjoy considerable autonomy, the links between the national budget and other budgets nevertheless remain, with the result that the relationship between the respective systems is even more complicated (see the reports submitted by Spain, Portugal, Germany and Switzerland) because at each level there are bodies that enjoy legislative, executive and judicial powers. Similarly, external controls carried out at the national level will, in principle, not exclude scrutiny of the management of public funds by the decentralised authorities.

This phenomenon is also discernible in the systems of countries that are geographically small and, as it were, built on local autonomy, such as Switzerland, as is confirmed by the reports submitted to our seminar. It is absolutely clear that the complexity of the systems increases even more if one adds a (further) supranational level, stemming from a country's membership of the European Union. In this event, the national budgets add, by extension, those of the regions and of local communities, will also includes funds deriving from the Community budget, the management

of which is subject to Community legislation. In the case of Regulations and, to a certain extent, Directives, these rules are directly applicable in national legal systems. Furthermore, more than 80% of Community funds are now disbursed within the Member States and are therefore managed by the national authorities. This means that national officials manage a very significant volume of funds from the Community budget in obedience to Community legislation. The national external audit institutions will, in turn, be directly involved in the scrutiny of the management of these funds since they are managed in the Member States by national officials. However, this overlap between the Community and national systems is not discernible only in terms of expenditure. One need only consider the example of VAT, the collection of which by the Member States is influenced by Community legislation, which aims to prevent fraud in extra-national transactions after customs checks were abolished on 1 January 1993, by means of an integrated system for checking and gathering data that is to be implemented by the Member States.

Furthermore, a State's membership of the Union does not mean merely that Community funds pass through national budgets, or that funds collected by the Member States themselves are intended for the Community budget. The characteristics of a large part of Community policies and measures, in particular in the area of the Structural and Cohesion Funds, are such that, through the joint-financing mechanism, national and Community legislations intersect in more and more complicated combinations: take, for example, the example of national-Community joint financing, the national portion of which is covered by national law and whose compliance with Community competition policy has to be verified. In the resulting scenario, the legal and financial systems of the Community's Member States, and of the Community itself, are fully integrated with one another.

As was stated above, the external audit institutions are therefore faced (irrespective of the level at which they operate) with the major challenge of auditing «composite» budgets, taking as their yardsticks rules emanating from various legal systems. It is also clear that the European Court of Auditors is also concerned by the audit of the management of Community funds carried out in the Member States.

In these circumstances, action must clearly be coordinated. The reports submitted here show that the need for coordination between the various external audit authorities is felt in all systems, whether the national legal systems is based on the Roman/Germanic tradition or on the common law, whether in federal or cen-

tralised States, within or outside the European Union, whose history could not be more different (such as Switzerland and Ukraine). Admittedly, the basic characteristics of a constitutional system are reflected in the actual means employed to implement it. Thus, in federal States there may be genuine institutionalised authorities which fulfil the role of coordinating the activities of national auditors (as is true of Germany and the Conference of NAI Heads), whereas elsewhere the same result is achieved by means of “informal” but regular contacts between the corresponding bodies (which is true of the vast majority of countries which submitted reports, such as the United Kingdom, France and Spain). The basic problem, which the coordination in question is supposed to overcome, is the overlapping of powers (and therefore of audits), which is an unavoidable risk in the circumstances described above. On the one hand, there are “integrated” national budgets, where all or part of the financial resources pass from one (higher) administrative level to another and are managed by independent authorities; on the other, there are several external audit bodies, which correspond to the various levels of management. It may be concluded from a reading of all of the reports presented here that coordination at the national level is generally satisfactory and does not lead to major problems or disputes.

Cooperation between the SAI and the regional and local audit institutions yields positive, fruitful results wherever it occurs. However, in the case of EU Member States, in the light of what has been observed, a further level of coordination is required, concerning the general relationship between national auditors and the European Court of Auditors. The fact is that the extraneous nature of the Community legal system, when compared with the national systems, prevents any genuine “conflicts of responsibility” between the Court and the NAIs. The fact remains, though, that the national “Court of Auditors” (in the broad sense) and the European Court must work in such a way as to avoid any contradiction between the implementation and the results of the audits. In fact, the “inputs” from the Court’s audits go back to the Member States through the Parliament’s activities as the budgetary authority and the opinions it adopts vis-à-vis the Commission concerning the management of Community funds. It would therefore be inadmissible for contrary instructions to be sent to the same States by their external audit institutions in areas where, as has been pointed out above, the national and Community levels are necessarily going to overlap, for example in the case of jointly financed projects and

measures. Indeed, the Member States are well aware of this problem: the reports submitted have shown, for example, that the basic law of the Portuguese NAI requires it to “cooperate with similar institutions, in particular those of the European Union”. The aforementioned Conference of German Heads of NAIs held a meeting in 1998 with representatives of the European Court of Auditors so as to adopt rules providing for cooperation and constant exchanges of information. The aim was basically to develop the decisions taken over the years by the Member States’ NAIs and the European Court of Auditors within the framework of the Contact Committee meetings of the respective NAI Heads, which gave rise to joint audits. Indeed, the former Art. 188 C of the EEC Treaty (the current Art. 248) which provided for “liaison” between the European Court of Auditors and its national counterparts when carrying out on-the-spot audits in the Member States was strengthened by the Treaty of Amsterdam, which now stipulates that “the European Court of Auditors and the national audit bodies of the Member States shall cooperate in a spirit of trust while maintaining their independence”. Indeed, even before the Treaty was amended, an awareness that this provision could not be interpreted in the strict sense of a purely “logistical” relationship led to the introduction of the aforementioned audits by the European Court of Auditors and the NAIs. The basic idea was to provide the Community authorities with greater knowledge of the management systems implemented in the Member States, and reciprocal clarification of the relevant systems (at national and Community level). In the medium to long term, the expectation was this experience would standardise audit approaches and lead to the introduction of common rules for carrying out the audits themselves. The framework of rules governing joint audits was also formalised by the European Court of Auditors and certain NAIs by means of protocols or exchanges of correspondence. Indeed, it must be acknowledged that these joint audits have provided a unique opportunity for ECA and NAI staff to become acquainted with each other and to work together. On the other hand, the additional resources necessarily required (in terms of working time and the evaluation of findings) cannot be underestimated either, which is why this type of audit has not, in practise, been taken further. Moreover, the joint working method still needs to be perfected, as is shown by the report submitted by the audit authority of Saxony-Anhalt. However, the challenge with which the audit institutions operating within the Union are now faced is, in my view, even greater. The considerable overlap between Community

and national rules for managing European funds is now giving rise to the progressive emergence of a Community legislative framework which is imposing increasingly binding constraints on the Member States, particularly in respect of the financial control of the management of funds from the EU budget. Revenue is also affected by this process, as there are Community rules which directly or indirectly influence collection from the Member States of amounts of which a percentage is paid to the Community (either in the area of own resources or of VAT), e.g. the Directives governing VAT fraud, insofar as they lay down that the Member States shall introduce systems for exchanging information on this subject. The NAIs will therefore be required to check that the respective authorities have fulfilled these obligations.

However, it is clear that this phenomenon concerns above all expenditure charged to the Community budget, which, I repeat, is largely disbursed in the member States by the national authorities. This is true of the EAGGF-Guarantee, where the current system provides for "paying agencies" approved by the authorities of each Member State and for independent bodies which certify the accounts of these agencies. Rules of procedure for all of these bodies are contained in Community legislation, are applicable in national legal systems, are to be implemented by the national authorities and must ultimately be audited by the NAIs.

A similar system is now envisaged for the Structural Funds, as regards the certification of final declarations concerning the use of contributions received within the framework of these instruments. It goes without saying that this comes in addition to the interconnection of national and Community funds (and legislation) due to the use in this context of the system of joint-financing, which necessarily requires NAIs directly to check the implementation of Community rules.

We may therefore conclude that the present situation goes far beyond the problems which were responsible for the introduction of joint audits. The point of these audits was to achieve a useful degree of standardisation between audits in the Member States and between the Member States and the Community. Today, the basic consideration is that standardisation is, in practice, increasingly required by the nature of the situation: the NAIs and the European Court of Auditors must therefore endeavour to find new approaches and working methods for pooling audit findings and know-how.

Our seminar, as the value and quality of the reports and discussions has shown, is without doubt an important stage in this process.

DEBATE*



* Speeches taken from audio recordings without revision by the authors

Intervention by Ioannis Sarmas from the SAI of Greece

I would like to thank you, Mr. Counsellor, for your brilliant overview of the interdependence of community, national, regional and local budgets and its implications on external audit control.

Before passing over to Mr. Volenik, President of the Supreme Audit Institution in the Czech Republic, I would like to make a few brief remarks on the overview we have just been listening to.

Firstly, I believe that – with the exception of four countries – the others are either Member States or candidate members of the European Union, and in regards to Albania, Moldavia, Russia and Georgia (I hope I haven't forgotten anyone), I hope that they too will one day become members of the European Union. There is therefore a natural interest in this overview.

Now we are familiar with funds that have a dual nature, i.e. that are Community funds, but once they enter within the national budget they become national funds. As a consequence, they have a dual nature and are subject to two levels of auditing: community and national. The problem arising is the following: are we going to establish two distinct and independent forms of control or shall we establish co-operation and collaboration within a framework of joint auditing. Or shall the European Court of Auditors benefit from the audits carried out by national courts of auditors?

The response to this question is by no means straightforward, given that on the one hand we have different audit powers (for example, the Greek court of auditors by no means shares the same auditing philosophy as that of the European Court of Auditors), and on the other hand, in terms of co-operation, there is a sacrosanct principle in our national legislative frameworks – the principle of legality – that requires us to proceed only where there is a legal basis for so doing. As a result, even in terms of co-operation with the European Court of Auditors, there must be a legal basis for so doing. If we do not have such a legal basis, we can only divulge audit results in our documents are we have carried out audits and the results have already been made public.

We can exchange opinions and experiences, but in terms of co-operation in order to carry out joint audits with bodies of two institutions, that is quite another question, with other dimensions.

Intervention by *Lubomir Volenik* from the SAI of Czech Republic



I consider this event very important and useful for all participants. But it is especially important for the candidate countries. We have come here to share our experiences with you and we would like that my country could learn with you as well. To be more specific, the country is undergoing a complete reform of the public administration. I believe that the knowledge I am gaining here will help solve problems we are facing in the area of external audit of public finance.

Let me also express my thanks to Mr. Clemente for his excellent report dealing with the complex relationship between the European Court of Auditors and different structures of external audit in the EU Member States. Just now, ladies and gentlemen, dear colleagues, having said these few words in English, please allow me to switch to Czech where I feel more comfortable and I will let my colleague interpret for me, because the English of Mr. Michovsky is much better than mine. Thank you for your understanding.

First of all I think it is very important that the relationship in all Europe is conceived among the different structures of budget – from supranational to local levels.

It is also very important to realise what kind of institutions of external audit function in this context.

It is extremely important especially for the candidate countries because we are in a way, we have a relationship with the European Union already. We are receiving pre-adhesion funds from the EU.

As for our office, I personally have quite a long experience with auditing these pre-adhesion funds, and I would like to thank especially the European Court of Auditors, who really helped to clarify the situation, and also the SAIs of Member countries, who helped us in this area.

This process actually led to a change in the European Commission's position on the external audit of these funds in the candidate countries.

That is why we are extremely grateful that we are able to co-operate within the framework of EUROSAI and the whole European Union.

I think this past experience really enriched the contributions given here. It really contributed to the success of this conference, and I am also grateful to the

representatives of EURORAI, whose contributions are extremely interesting.

Most of the candidate countries are facing serious problems which take years to solve.

The biggest problem we are facing is the following: the control itself in the Communist countries was conceived as a tool of repression of the totalitarian state, and as a result it was almost completely abolished in the euphoria of the revolution.

I believe the situation is very similar in all the countries of central and eastern Europe, and we all face a big challenge – how to replace all those control structures, which were basically eliminated in the post-revolutionary years.

At present, in most of those countries the Supreme Audit Institutions function quite well under the circumstances.

But from my own experience I can say that the situation is quite bad when it comes to external executive control, and the control at the level of self government.

These are the biggest challenges which lie ahead of all the candidate countries, including my own country. Therefore, we are very grateful to be able to come here, and I believe sincerely that indeed the contributions that we have heard so far will really help us.

Personally, I can say that the exchange of experience with the SAIs of Member States of the European Union helped in the past year to work on a new budget and contribute greatly to the adoption of new budgetary rules in my country.

What really helped also was my past experience of the constitutional law. When I was a member of the Federal Parliament, I was very active in drafting a new law on the division of the country and, subsequently, on the division of property and finances.

That is why I enjoyed very much yesterday's contribution by Professor de Sousa, who has spoken about different structures of our legal and constitutional aspects, and different structures of institutions of external audit.

That is why, especially the contributions from the regional institutions, which I heard yesterday, were for me like a breath of fresh air.

So, I can honestly say – and I believe that I can speak for my colleagues from the other candidate countries – that we have listened very carefully to what you have said, and are convinced that this will really help us in improving our own institutions of external audit in our countries.

And I am sure that we will hear today even more interesting contributions, which we in turn will definitely use in our future work.

Intervention by *Ioannis Sarmas* from the SAI of Greece

You have raised an important question that I think was also raised yesterday by one of the delegates from the Kingdom of Denmark. We need to know the answer to the following: what is the true nature of our functions? Are we technocrats assuming the functions of a chartered auditor or do we have a political function, I would even say a consubstantial role, within a democracy?

It seems to me that the functions that the courts of auditors and the supreme audit institutions assume has nothing to do with an audit carried out by a private firm of auditors on public funds, given that the results of such an audit would be nothing more than a mere consultation. As supreme audit institutions, we belong to one of the three intrinsic branches of democracy, either of the parliamentary power or the jurisdictional power. This fact guarantees our independence. Our essential task is to audit expenditure incurred by the executive power. I believe that our responsibilities are consubstantial to the democratic regime for the following reason: we guarantee that public funds raised from individuals are duly employed by the public authorities. Otherwise I believe that there would be an infringement of the right to property, i.e. infringement of the right protected by article 1 of the first protocol of the European Convention for the Protection of Human Rights.

Intervention by *Horst Shroeder* from the RAI of Saxony-Anhalt

I would like to forego from presenting my report that is structured in rather a different manner, and instead would like to take this opportunity to make a few comments on what we have heard so far.

Firstly, as representative of a court of auditors of a German federal state (which as with many of the countries applying to adhere to the community, was subject to a Communist regime during many years), permit me to say that we have had a construction, during the last ten years, comparable to that of the countries that have adhered to the European Union. As with countries in Southern Europe, we are also dependent upon a typical organisational structure in geographic terms. This means, for example, that within the budget of my federated state, Saxony-Anhalt, a percentage of around 4% of the federated state's total budget (a total of

twenty billion Deutschmarks), i.e. around 1 billion Deutschmarks, is derived from community funds to support agriculture, provided by the European Union. As you can see, European resources, support and subsidies also play an important role for Germany's new federated states. As a complement to the European funds, we obviously also have the federal state's own financial resources.

Thus there are three types of funding: national funds, funds deriving from the state budget, and funds provided by the European Union. In other words, independently of the meaning in relation to the attribution financing in Germany and community funds for the construction of the new federated states, there are two problems that arise and are always of contemporary relevance.



Firstly, the objectives delineated in the European Union, in the Federal Republic of Germany and in our federated state are not always exactly the same. But given that the funds are ultimately found within the budget it is necessary to draw up a guideline for the application of such resources as the basis for distribution of funds. This guideline must contemplate both the objectives laid down by the European Union as well as those delineated by the Federal Republic of Germany, and the federated state's own objectives. This type of guideline also always makes a contribution to the work of the supreme audit institution, as a result of which in principle we can exercise some influence over deciding the following: when and where these funds must be applied. This is one side of the question, i.e. to find a series of criteria in order to jointly associate the three levels.

The other problem arising is that of cost control. Mention was already made yesterday, by one of the guest speakers, of the problem of dual control. This is a problem mainly at a theoretical level. In practise, the problems are somewhat different.

In relation to co-operation between RAIs and SAIs there has fortunately been an agreement between the supreme audit institution and regional audit institutions that dates back a good many years, to before the integration of the new federated states –1987 I believe. I'd also like to state here that from the perspective of the German Court of Auditors, Dr. Engels marvellously clarified the status of equality between the supreme audit institution and regional audit institutions. I would also like to state in this context that given that such equality of status is important above all when there are funds at the national and community level applied

in only one level and regarding which each of the institutions – both the supreme and regional audit institution – have the right to audit these funds.

In relation to funds intended for the development of new federated states these are destined above all to stimulate the economy, universities and agricultural support measures. Since 1987 there has been an agreement between the German Court of Auditors and regional audit institutions, on the basis of which these joint funds are controlled solely by the RAIs. In this manner, at least at this level, the problem of dual control has been resolved and subsequently the regional audit institutions inform the German Court of Auditors of their results.

In parallel, there are also other specific agreements between the German Court of Auditors and regional audit institutions on audit powers in which there are also national funds and each of these institutions must decide, on an autonomous basis, on the manner in which they will carry out their auditing – if it will be a joint audit, achieved via the SAI or be an autonomous audit.

Thus, in general terms, the sharing of areas in which common funds from the state budget on the one hand, and the budget of each of the federated states on the other, is resolved by this type of agreements between the German Court of Auditors and regional audit institutions.

In relation to European funds, the situation is rather different. Yesterday afternoon, my old friend, Bernard Friedmann, addressed this topic from the viewpoint of the European Court of Auditors. The desire to co-operate with national courts of audits and with the RAIs was expressed.

I would like to state here that, on an a priori basis, co-operation has always been maintained by these institutions. It is not just a question of good intentions. Co-operation genuinely exists. But this type of co-operation is not only a question restricted to meetings between presidents or international conferences. Such encounters are, we might say, attempts to improve the overall functioning of the system and to establish better conditions. But the problem resides in concrete auditing, “in loco”. In this regard, there is a genuine problem for auditing European funds, in as much that the relations between the European Court of Auditors and a regional audit institution in Germany (pertaining to a federated state) are not, in practise, straightforward. This is not only because the contact and relationships of the European Court of Auditors with these regional audit institutions is established via the German Court of Auditors, which often results in us being given late notice, for

example, when the European Court of Auditors intends to initiate an audit. We sometimes only learn of such a fact with only three days prior notice before the audit is to commence. In such circumstances it is impossible to carry out a joint audit, because there is no time in which to organise affairs. As a consequence of this chronological procedure, direct conversations are held between the European Court of Auditors and regional audit institutions in order to save time, given that auditors sometimes have to travel a considerable distance – from Luxembourg – and are subject to tight deadlines. There are normally instructions to conclude an audit within a deadline of 3-4 days. A further problem is that the auditing procedures of the European Court of Auditors are completely different from our own. Don't interpret my words as being a criticism, but simply a statement of the facts. The auditing methods and procedures of the European Court of Auditors diverge very considerably from those that are valid in the regional audit institutions, at least as far as Germany is concerned.

I'm trying to be as concise as possible, and perhaps I am being too specific in my comments. Please allow me to sum up then, Mr. Chairman.

There are four problems that make it difficult to conduct a joint audit: tight deadlines; conversations; the impossibility of organising a prior meeting; and the distinct audit methods used.

We should do more than just criticise, but this whole question only makes sense with a vision for the future, because community funds will continue to play an important role for us in the federated states in the near future, as they will in Portugal, Italy or Greece. For this reason I personally believe that it would be desirable, if possible, to establish an agreement, as has already existed for decades, between the SAI and the RAIs, and achieve a similar agreement with the European Court of Auditors, in order to regulate audit methods and systems and clarify such procedures. I believe that if we succeed in this regard, we will also succeed in organising a joint auditing procedure. I completely agree with Bernard Friedmann with the comments he made here yesterday: the errors seen by one are errors that will also be verified by others, if they carry out the same audit, and vice-versa.

I will therefore conclude my speech that perhaps was too specific in its scope. But in practise, what is really at stake is to work together in a genuine manner and in my opinion this means arriving at a joint auditing procedure.

Intervention by *Bernard Friedmann* from the ECA

I think I can add a few useful remarks to my colleague's report.

In our discussion yesterday we verified that the Germany audit institutions of the federal states have more powers than those found in other countries. The Treaty of Amsterdam foresees that the European Court of Auditors will work together with the supreme audit institutions. I would like to underline this aspect: the supreme audit institutions are normally the national courts of auditors.

But in the German case they also include the regional audit institutions and these institutions exercise activities in regions that at times are larger than whole countries. For example, the federated state of North Rhine Westphalia has around 17 million inhabitants. Therefore, sometimes regions are larger than whole countries and



collaboration in practical terms functions very smoothly. But the problem is that in the federal structure there exists the requirement that the supreme audit institution be responsible for attributing other tasks in relation to the RAIs. We also inform the SAIs of our results within the framework of the RAIs. But I would like to emphasise again, that it is above all for reasons of shortage of time that prevents us from establishing a better form of collaboration and I think Mr. Schroeder's comments just now illustrate this point. There will also be a collaboration in the future with the Eastern European countries. These countries from Central and Eastern Europe will increasingly audit funds from the European Union and for this reason the countries presently in the process of adhesion will also make use of all these auditing methods in the future. For this reason Mr. Schroeder's contribution was really very specific and in my opinion underlines several very important aspects in relation to when audit institutions work together at several different levels.

This is an important topic not only for EURORAI but also for EUROSAI and I am very content that the subject has been addressed. Please do not forget – if I may add a further comment – when the Hungarian Court of Auditors was created I was in Budapest at the time, and the papers said: this is the proof that we now have a democracy that works in Hungary. The national courts of auditors in these countries serve as proof of their democratic status.

Intervention by *Rafael Iturriaga Nieva* from the RAI of Basque Country (Spain)

I would like to say that I understand that our work also performs a political function. I only see two problems in this regard, that I do not believe have yet been given due attention within the conclusion documents so brilliantly drawn up by Mr. Clemente. In other areas I agree with almost everything that has been said.

The first problem is the symmetry introduced by the phenomenon of the European Union. The system of separation between the people and the sovereign power and authority and the holders of authority and audit institutions is established at state and sub-state levels, i.e. at local and regional levels. Nonetheless, in terms of the European Union, I believe that an authority, or holder of sovereign power, is not the citizen but the state. This influences the function of the European Parliament which in fact does not actually audit or legislate. This undermines the function of the European Court of Auditors.



The second problem is related to this lack of logic. States, when adhering to the European Union, transfer, in a global manner, competencies to the European Union: agriculture, indirect taxation, a series of topics. But often these national competencies or competencies within each state are not managed by the state administration itself, but by regional administrations. At least this occurs in certain situations and sometimes on an exclusive basis. As a consequence, the auditing control of such activities between the European Union and the region only makes sense if it was undertaken by the European Court of Auditors and the regional audit institution. In other words, the subsidiarity principle – a constitutional principle of the European Union – in my opinion, should also apply to audit issues. However, matters do not currently proceed in this manner. In my opinion, this is due to this democratic deficit, i.e. sovereign states restrict such competency to their national state audit institutions. This question was presented by Mr. Schroeder in page 75 and is explained in full. I personally would like this matter to be included within the seminar's conclusions, because no-one has spoken against this aspect and all opinions seem to converge towards the idea that there should be direct collaboration between the European Court of Auditors and regional audit institutions.

Intervention by Ioannis Sarmas from the SAI of Greece

I think you have cited a mythical word – subsidiarity – a notion included in the Treaty on the European Community – that can provide us with a solution for the problems now facing us. But subsidiarity implies that the competencies of the European Community (and thus of the European Court of Auditors) are only exercised in instances where national competencies are insufficient. This leads us to the following conclusion: it is necessary that the national supreme audit institutions prove and demonstrate to the European Court of Auditors that they are capable of assuming the functions of the European Court of Auditors. And if the national courts of auditors, the national supreme audit institutions, move in this direction, they must thus implicitly accept criticisms. In other words, the national courts of auditors, the national supreme audit institutions, must admit the possibility that their work, or at least the pertinent aspects of their work, be examined by the European Court of Auditors.

Given that we consider that the institutions are independent and of an equal level, we do not currently consider that we are subaltern courts to the European Court of Auditors, to whom our work must be submitted for approval.

Well there's my response to your question on the subsidiarity principle. Perhaps Mr. Clemente wishes to reply?

Intervention of an unidentified Speaker from the SAI of Denmark

I think we all understand that when European funds are distributed by an international organisation, the European Court of Auditors and the national courts of auditors are responsible for auditing such funds. I greatly appreciated Mr. Schneider's speech that explained to us that at the national level when we have funds deriving from state or government budgets, we also have local or national courts of auditors responsible for auditing such budgets. Thus we have a great need for co-operation in this regard. This seems obvious. Yesterday, Mr. Schneider informed us of the manner in which such co-operation may be implemented in the real world. He said: don't ask us for more laws and instead start to co-operate.

I would like to congratulate Mr. Clemente of the European Court of Auditors for having achieved a great deal of collaboration during the past years. I

think that for many of us there is a difference between co-operation and co-ordination. This was mentioned by our Spanish colleague yesterday. If we speak about co-ordination then someone has to be co-ordinated and another person responsible for such co-ordination. This means that there is a great difference between the words co-ordination and co-operation.

Allow me to refer to the Treaty of Amsterdam. You mentioned, quite rightly, that this Treaty establishes the basis for this, but also clearly referred to the fact that co-operation will take place taking into account the independence of the regional and national audit institutions and also the European Court of Auditors.

My experience shows me that, with all these excellent resources that we have been able to obtain and share in common (examples have already been mentioned here in the United Kingdom and Germany) I can also refer to experiences in my own country – Denmark – which depend upon and are based upon co-operation. When referring to a single country, for example Greece, as Mr. Sarmas mentioned, how can we collaborate in this field with this country? We must respect different methods, different legal bases, different systems etc. I believe that we must advance in this path towards collaboration. We don't have to introduce the same level of collaboration with all European Union countries. But we must bear in mind the words of the Treaty of the European Union and establish co-operation. The European Court of Auditors has been very successful in terms of co-operation. I think we should remember this point: collaboration instead of co-ordination.

Intervention of *Robert Mul* from the SAI of Netherlands

I have a very simple question for Mr. Clemente, in regards to co-operation.



If I understood correctly, the European Court of Auditors regularly informs the national supreme audit institutions in regards to the visits and audits in the different countries conducted at the regional level. If the auditors of the Court of Auditors, for example, visited Rotterdam, in order to verify the accounts of European funds that will be spent in the city, would I be directly informed via Mr. Clemente, or via my national Court of Auditors?

Intervention of *Giorgio Clemente* from the ECA

I would like to say one word in order to prevent our discussion from straying off tack: co-operation. That is the word in the text of my speech. As a good example of this type of joint work, I cited the text of article 248 of the Treaty where reference is made to co-operation in a spirit of joint confidence, in other words, respect for each other's independence. It is perfectly clear that the word co-operation does not include the concept of co-ordination. Everything that I tried to say was in terms of co-operation and not co-ordination. Perhaps it would be better that I provide several responses to the highly interesting speeches that we have just been listening to.

Perhaps we should remember that the underlying problem of co-operation between the European Court of Auditors and the national courts of auditors of the Member States of the European Union should be located exactly within the spirit, once again, of article 248 of the Treaty, that we have all approved and ratified, where reference is made to co-operation between the European Court of Auditors and national audit institutions. That is what was decided by our governments and we should clearly respect it. It is in this spirit that we have worked within the European Court of Auditors – to establish as efficient a system of collaboration as possible with national courts of auditors.

Thus, as an indirect response to our Dutch colleague: obviously we should establish contact via the national court of auditors and it is for this reason that our President, Mr. Schroeder said here: "there are not in fact problems in terms of rules to be established, the rules already exist". He was referring to the fact there are agreements between the national court of auditors, regional courts of auditors of the different Lander, and the European Court of Auditors. The problem is sometimes of a practical nature. There are very short deadlines, and audits are sometimes prepared on a surface basis or would work very well with unitary states but are more difficult to implement in federal states, or simply do not apply to federal states. The same may be true for unitary states with regions that have extensive competencies in terms of Community funds.

The problem, as I tried to explain, is that it is necessary to work towards a more thoroughgoing form of collaboration. This is in fact what we have tried to achieve during the twenty three years of work of the European Court of Auditors in liaison with the national courts of auditors. Except in certain cases of difficulty,

we must recognise that this does work, and works very well. I would suggest that we are moving towards the direction of a certain amount of homogenisation, but I consider that we can live perfectly well with rules that are formally different but where the final objective of the auditing is always the same, even if procedures sometimes differ.

Two problems have been raised by President, Iturriaga Nieva. Firstly, popular sovereignty. I am not a representative of the European Parliament, but if one raises this issue with the European Parliament, they always state that they are representatives of European taxpayers, are elected by individual citizens and represent citizens, rather than Member States. I personally do not agree with the fact that in the European Union sovereignty does not pertain to citizens but rather to Member States. I believe that a change took place when it was decided that the European Parliament is elected directly by European citizens.



The other question raised by President, Iturriaga Nieva is the problem of direct collaboration between the European Court of Auditors and the regional audit institutions of the Autonomous Communities in Spain. This is a significant problem. The actual tenor of the Treaty does not obviously prevent, in the event of cash funds, to find (and this is obviously the problem of collaboration), to find rules or agreements, if you like, through which we involve the audit institutions that actually audit the cash funds.

I should also mention that there is a phrase within the Treaty that already authorises this possibility, when it states that if the national courts of auditors do not have the necessary powers, the European Court of Auditors may create liaison with authorities that have such necessary powers. In fact, this small rule was created for cases in which no court of auditors or any form of audit institution in a member state has powers in one specific area, then contact must be made with a different administrative authority. For example, this was the case for the problem of internal resources that, in certain countries, are not directly controlled by the supreme audit institution.

But in my opinion although that this is the reason for using this phrase from the beginning, one may also use this formula to widen the links of the European Court of Auditors with national institutions (I am obviously speaking in a purely

personal capacity). Perhaps one might widen the possibilities of contact between the European Court of Auditors and regional audit institutions. But in my opinion it is a three-sided equation: the European Court of Auditors with the national court of auditors and the regional audit institutions must all agree. This is not only because the European Court of Auditors has no intention to usurp the powers of the national courts of auditors but also because it is obviously more complicated for us to be aware of all specific aspects and particularities of each Member State and to have precise knowledge of the location in which auditing powers lie. This is already difficult in a context of 15 member states; I imagine that it would become extremely complicated in a widened context that could result in twice as many Member States.

I agree with the need to bear these problems in mind, in our practical activities: they can be resolved very well, I repeat, via tripartite meetings.

Please allow me to make a final comment. The problem of the subsidiarity principle has been raised. I always like to refer to the occasion on which I attended a conference presided by Mr. Heath, the former English Prime Minister, which played an important role in the United Kingdom's attempts to join the European Community (which occurred afterwards). He said in the conference: "Yes, in my time, we didn't use all these words. The problems I've just learnt of didn't even exist. For example (he pulled out a sheet of paper), I've written here the word subsidiarity, I still haven't understood exactly what that means". Obviously, as the English would say, that was just a little joke. But it would be better if we, at the level of the European Court of Auditors, attempt to resolve our problems in our own context, rather than to hide behind this miracle world.

Intervention of *Paul Schneider* from the RAI of Rhineland-Palatinate (Germany)

Around two and half years ago, in October 1999, there was a meeting of the European Court of Auditors, presided by Professor Friedmann with the German audit institutions: the German Conference of Presidents of the Regional Audit Institutions, that made proposals on the manner in practical terms it would be possible to improve collaboration with the European Court of Auditors. In this conference, it was agreed that, in terms of work procedures, more contacts of this nature should be established, but this has not actually happened to date. I don't know why. But I would like to state

here that we also have concrete problems in terms of time that are extremely important. But equally important is the fact that the auditing criteria and methods of the European Court of Auditors clearly diverge from our criteria and methods. In this regard it is perhaps necessary to arrive at a mutual convergence. In my opinion, that is the key work awaiting us in the future.

I would like to refer here to certain key objectives that were agreed at the time between the European Court of Auditors and the German courts. In general terms, the European Court of Auditors and the German audit institutions should foster interchanges and short-term planning. In terms of interchanges and to the existent in which overlapping powers are recognised there is also a need for co-ordination between the European Court of Auditors and the German audit institutions.



When auditing methods and procedures are jointly defined between the German audit institutions and the European Court of Auditors following an auditing notice by the latter, and to the extent that the German audit institutions wish to take part in this process, the German audit institutions may also agree upon joint audits. In these cases, prior agreements are drawn up on the methods and manner in which the audit results will be transmitted. This simply involves certain criteria that, in practise, should be concretised in order to enable an improvement in auditing resources at the European level.

Intervention of Ioannis Sarmas from the SAI of Greece

I believe that we have received a considerable range of contributions upon which we may now reflect. I consider that the core subject of this morning's debate may be summarised as follows: we have funds of a dual nature – both Community and national – that are subject to different audits and upon which we should reflect. How is it possible to avoid dual auditing and arrive at a point of co-operation, or why shouldn't there be co-ordination of national and Community tasks in order to improve the manner in which audits are carried out? As far as I am concerned, I

always believe that we require a legal basis in order to establish co-operation and it will perhaps be necessary to evolve in the future towards co-operation. You are well aware that the German legal culture is very distinct from our own. For example Greek public institutions cannot conclude agreements. The law is the same for everyone; it cannot be altered through agreements between national institutions. In consequence, the German case cannot be transferred to all countries.

Summing up. I assumed this presidency, not on a personal basis, but as representative of the President of the Greek Court of Auditors. On his behalf I would like to express our warmest regards.

4.th session

The audit of regional and local government performed by the
different external public sector audit bodies



Left to right:

- *M. Martin Sinclair* (SAI of United Kingdom)
- *M. Janusz Wojciechowski* (SAI of Poland)
- *Ms. Gisela von der Aue* (RAI of Land of Brandenburg-Germany)

BASIC REPORT

Reporter



Gisela von der Aue
RAI of Land of Brandenburg

The audit of regional and local government performed by the different external public sector audit bodies

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A - Terminology

For reason of simplification and to enable a comparison the following terminology will be applied to the text "Conclusions and theories". Inaccuracies seem to be unavoidable.

1. "Municipality"

The definition includes in general and in a generalizing way all kinds of administrative bodies which

- in federal states (such as Germany, Austria, Switzerland) have proper administrative powers under the level of a "region" (definition below), eventually with a right to self-government guaranteed by the State Constitution,

or

- in unitarian states represent the local administration under the level of a "region" (in France for example: "ville", "village", "commune").

2. "Supreme audit institution"

This institution is the (federal) state audit institution, it is member of EUROSAl.

3. "Audit institution"

Any public institution responsible for audit functions (national, regional, local).

4. “Region”

The definition includes in general and in a generalizing way all kinds of administrative bodies which

- in federal states are established besides the federal authority having proper legislative and administrative powers, or
- in unitarian states represent the authority under the level of the central power, but above the level of the “municipality” (definition above).

5. “Regional audit institution”

This institution is the audit institution of the “region” (definition above) and may be member of EURORAI.

B – Conclusions and theories

1. The reason for auditing public budgets is the disclosure of how the funds provided by the citizens for public interests are spent by the authorities. Therefore audits should be all-embracing. Still, their scope and frequency vary widely from state to state, from region to region, from municipality to municipality.
2. Since the state contributes to municipal finances an external audit takes place even in those states where a direct audit of municipal budgets cannot be accomplished by the supreme or regional audit institutions because of the auditing of the state fundings.
3. There is a possibility of double audit for municipalities having established their own audit bodies beside the supreme or regional audit institutions. This double control doesn't seem to be problematical:
 - the audit is carried out under different perspectives and with different objectives.
 - the audit by supreme or regional audit institutions may show indirectly whether the local audit follows certain quality standards.

Nonetheless it seems to be desirable to delimit the responsibilities and to establish a modus of cooperation between the different audit institutions, so unnecessary double auditing can be prevented.

4. Audit institutions provide the audit of the revenues and the expenditures of administrative bodies so that the representative body of the people (Parliament, municipal council, etc.) can approve of the financial management of the respective government (such as in Germany) or that it may take note of the administration's performance by audit reports (such as in France). All audit institutions are required to audit the financial statements and the legality and regularity of the operations. In some cases a performance audit on municipal level may not or cannot be procured.
5. The change of tasks in a modern state and the evaluation of financial control will require an evaluation of the audit scope on municipal level, too:
 - from a traditional audit ("a posteriori") to a concurrent audit,
 - from a regularity audit to an intensified performance audit and an analysis of the work rou-routines (performance audit: economy, efficiency and effectiveness).
 - this will make great demands on the auditors' qualifications and their ability to understand complex correlations.
6. Even after this Madeira Conference a further exchange of experiences about problems concerning the audit of local authorities appears to be desirable, in spite of the diverse national systems. The participants of this conference would like to ask the secretaries of both EUROSAl and EURORAl to support a working group of interested EUROSAl and EURORAl members to exchange ideas.

C - Appendix

The report is based on the available information in the following articles (in alphabetical order):

Germany

Court of Audit of the Land Saxony-Anhalt, "The Interdependency of Budgets (Communitarian, National, Regional, Local) and its Effects on External Public Sector Audits".

France

Regional Audit Chamber of Midi-Pyrénées, "Interrelation and Cooperation in the Matter of Public Sector Financial Control among the different External Audit Bodies: the Viewpoint of a President of a French Regional Audit Chamber".

Regional Audit Institution of Rhône-Alpes, "The Audit of Regional and Local Government performed by the different External Public Sector Audit Bodies: the Situation in France".

Netherlands

Netherlands Court of Audit, "Paper of the Netherlands Court of Audit for the EUROSAI Congress in Madeira on the Relationship between National and Local Audit Offices".

Austria

Court of Audit of Styria, "The different Structures of the State (unitary, federal, regional) and their Effect on Public Sector Financial Control".

Poland

Poland Supreme Chamber of Control, "Activity of Regional Accounting Chambers, their Co-operation with the Supreme Chamber of Control and Conclusions from Audit of Regional Accounting Chambers carried out by the Supreme Chamber of Control".

Portugal

Portuguese Court of Auditors, "The Interdependence of Budgets and its Effects on External Control (The Case of Portugal)".

Switzerland

Swiss Federal Audit Office, "Relationship between the Supreme Financial Supervisory Body of the Confederation and the Cantons".

Regional Audit Institution of the Republic and the Canton Jura, "The Relations among the different Public Sector Audit Structures".

Audit Office of the Zurich, "The Interdependency of Budgets (Communitarian, National, Regional, Local) and its Effects on External Public Sector Audits".

Spain

Spanish Supreme Court of Audit, "The Relationship between the Different Areas of Audit of Public Funds".

Public Audit Office for Catalonia, "The Relationship between the Different External Auditing Levels in Para-Federal States: the Case of Spain".

Audit Office of the autonomous region Navarra, "The audit of regional and local government per-formed by the different external public sector audit bodies".

Ukraine

Accounting Chamber of Ukraine, "Interactions and Cooperation between External Auditing Structures within Fiscal Control of Public Sector".

United Kingdom

Audit Commission/National Audit Office, "Public Audit in England and Wales. The Audit Commission and the National Audit Office".

D - Synopsis (of the reports mentioned under C)

Summary

The subject of this synopsis will be confined to the audit of municipalities because the other levels of financial control will already be discussed during the earlier working sessions.

A comparison of the European systems is difficult, though possible. Our supreme audit institutions are all members of EUROSAl, our systems of financial control meet the requirements of the Lima Declaration of Guidelines on Auditing Precepts. Nevertheless, the organization of regional financial control is very different, sometimes it even differs greatly from region to region in the same state. It becomes even more diverse when you look at the local, i.e. municipal level. It is also very difficult to find a common definition of the expressions "region" and "municipality" applicable to all states (look at the attempt of a "terminology" under A).

There seem to be four main groups of audit of municipal budgets:

- 1 – external audit by regional audit institutions,

- 2 – external audit by other independent institutions under public law,
- 3 – external audit by institutions under private law,
- 4 – audit by the state (being the supervisory authority) .

Germany

Germany is a federal state with 16 constituent states and about 14,600 municipalities. The audit of the municipalities differs from state to state, models 1, 2 and 4 are to be found.

In some of the states, the audit is carried out by the regional audit institutions, such as in Bremen, Brandenburg, and Schleswig-Holstein. In Hesse it is the President of the Court of Auditors who alone is in charge of the audit functions for the municipalities.

In Baden-Württemberg, the audit for municipalities having more than 4,000 inhabitants is carried out by the “Gemeindeprüfungsanstalt” (a public institution for this specific reason),

In Bavaria, it is the “Bayerische Kommunale Prüfungsverband” (a public institution charged with local responsibilities) for its members only, all the other municipalities are audited by the administrative districts.

In Lower Saxony, the towns which are administrative districts of their own rights are audited by a specific institution of the state, all the other communes are audited by an audit chamber.

These audit systems leave no room for private auditors (model 3).

France

France is a unitary state, nevertheless its regional and local audit system is a complex one.

Since 1982, the audit bodies have been the regional audit chambers (“chambres régionales des comptes”, CRC). Part of the central state, with jurisdictional status which makes them autonomous, the 26 CRCs (22 if we exclude the overseas departments) are each of them responsible for the territorial authorities in their area: the regional authority, several departments, a large number of municipalities, and very many local public bodies including the various municipal corporations.

France is characterized by a marked geographical dispersion: the local authorities number around 100,000, some large, and others tiny.

Since 1988, the smallest municipalities (fewer than 600 inhabitants) are removed from the audit remit of the CRCs and put under the control of the external departments of the Ministry of Finance: around 30,000 municipalities and local public bodies out of a total of 100,000 are, thus, not audited by the CRCs.

However, the CRCs do retain some powers over these small municipalities. In particular, they alone have the power to make the “comptable public” (a specialty of the French system: a public account who is personally responsible for his actions) assume responsibility, in other words to make them liable. If the audit carried out by the Ministry of Finance department gives rise to such a decision, the file is sent to the CRC which makes the final decision. Moreover, a CRC may decide to carry out an audit on a small municipality itself.

This audit system leaves no room for private auditors (model 3).

Netherlands

The Netherlands are a central State with 12 regions (called: “provinces”) and over 500 municipalities. In general, the supreme audit institution (“Algemene Rekenkamer”) does not have the power to conduct regional or municipal audits. But it is competent to conduct audits concerning the state fundings given to regions and municipalities.

The regions do not have their own audit departments, and are audited by private accountants and also by state departments like the Ministry of the Interior.

Several municipalities have their own audit departments, while the rest (the large majority) are audited by private accountants.

Important developments are currently under way in the sphere of municipal audits. The setting up of municipal audit offices may become compulsory, which will largely have the same tasks and powers as the “Algemene Rekenkamer”. Key issues are independence in the choice of audit, audit approach and reporting method. Those in charge of audits should also be independent. Some municipalities have so far set up structures of this kind of additional auditing, usually composed of members of the municipal council. These “audit committees” generally have only a limited budget at their disposal, and their audits nearly always focus on efficiency.

This audit system includes private auditors (model 3).

Austria

Austria is a federal state very similar to Germany. The effects on the system of municipal audit are not recognizable from the report by Regional Audit Institution of Styria.

Poland

Poland is a unitary state. The supreme audit institution (“Najwyższa Izba Kontroli” – NIK) is also charged with the audit of regional and local administrative bodies (the municipalities, the districts-“powiats”, the regions-“voivodships”), mandatory once in four years. The NIK is assisted its regional offices. But the President of Council of Ministers may also carry out a far-reaching compliance audit.

In addition to NIK and its regional offices there are Regional Accounting Chambers, totally independent from the government and NIK, also charged with the audit of local authorities. So there are overlapping responsibilities, but they try not to audit the same authorities.

Portugal

Portugal is a unitary state with two island regions, Madeira and the Azores which are disposing of a certain autonomy. For that reason two regional chambers of the Court of Auditors of Lisbon are installed there, responsible for the audit of the regions, including the municipalities. Municipalities on the continent are audited by the Court of Auditors.

This audit system leaves no room for private auditors (model 3).

Switzerland

Switzerland is a federal state with 23 cantons and 2,903 municipalities.

In the cantons there are legal regulations governing the financial control of the municipalities. The rules vary from canton to canton. In cities, the audit offices are organised similar to the cantonal audit offices. Many municipalities have external specialists charged with the task of auditing. In Municipalities with local assemblies, financial control is exercised by an independent audit committee elected by the citizen. In municipalities with a municipal parliament this task is delegated to a parliamentary commission. Municipal autonomy is guaranteed in accordance with law.

Spain

Spain is a centralized state, having 17 autonomous regions and about 8 000 municipalities. It is undergoing an evolution from a unitary state to a sort of federal system.

In general, the regional audit institutions are charged with the audit of the municipalities (model 1). But in Castilla-La Mancha and Valencia it is inadmissible by law.

Ukraine

The Ukraine was attained independence in 1991 with the dissolution of the USSR. Many of the former soviet elite seem to remain entrenched, stalling efforts at economic reform, privatization, and civic liberties.

Administrative divisions are 24 regions ("oblasti"), one autonomous republic and two municipalities, created with the 1996 Constitution.

The Accounting Chamber of Ukraine has managed to become member of EUROSAl and is still looking for its proper way of functioning. In its own words, it is still searching for "holes" in the legislation and aims to perform as a principal agency of the country in the area of developing practices of fiscal control. In this framework it seems to be responsible for the audit the regions and municipalities.

Unitet Kingdom - England and Wales

In 1982, the Audit Commission was established under statute, to bring local authority auditing in England and Wales under the control of a single body, independent from Government. As well as reviewing financial propriety, the Audit Commission and its auditors were given the additional task of examining the overall management of local government. In 1990, the Commission's role was extended to include the audit of National Health Service bodies.

The Audit Commission chooses the auditors from either the District Audit Service or private companies. The Audit Commission oversees the work of the District Audit Service.

DEBATE*



* Speeches taken from audio recordings without revision by the authors

Intervention by Christien Descheemaeker from the RAI of Ile de France

I have been associated to the French Court of Auditors for more than twenty-five years; I entered when I left the *Ecole Nationale d'Administration*. As with the majority of my colleagues, I have pursued several activities beyond the Court of Auditors, a tradition with us, but always within the public service. Before returning, I spent several years in the public prosecution service of the Court of Auditors (given that this involved a jurisdiction). As a result, I carried out a series of controls before assuming the presidency of a regional audit institution, firstly in Lyon – the reason why in my documents you will see Lyon cited – and then two months in the Ile-de-France.



The subject that our group should address may be somewhat ambiguous: control of regional and local administration by different external audit institutions. I must briefly present the case of a unitary state: France. Now, what can be described in France as regional administration? In my opinion, the key difference is that I will consider regional administration in terms of the territorial authority. There are also central government administrative services in the regions. Take the example of the prefects. Regional audit institutions – that have often been cited here – are responsible for auditing the territorial authorities, which in France includes the regions. In that case they may audit the administration of the region, but they do not audit the central government administration in the region.

This is an obvious distinction for us. But I know that it is sometimes less clear in a major town in the countryside. In France, one can easily walk through the town and distinguish the buildings that belong to the State and those that belong to the territorial authority – whether of the region, department or local authority. This explanation on the attachment of a building to one administration or another is an exercise in civic instruction, but for us it also serves as the basis for the distribution of powers.

The first idea therein resulting: in France audit control of regional administrations is the same as audit control of local administrations and is carried out by bodies of the central state and not, as in a federal state, by bodies of the federated state (of the German Lander or of an Autonomous Community in Spain). Thus, for us, the region is a territorial authority and its audit control is achieved in

the same manner as that of other territorial authorities. As you probably know, there are many territorial authorities in France: at the level of the region, department and local community. There are many local authorities, many departments and I think we could even say that there are many regions.

Since 1982 and the great decentralisation laws, auditing control of territorial authorities is conferred to the regional audit institutions. As I have said, they lie within the jurisdiction of the central state. The presentation of our system is made even more complex by our intricate territorial breakdown. There are around 100,000 local public organisations in France – far too many. Originally, when regional audit institutions were created, they had integral powers. In each region the regional audit institution should audit all local public organisations, even the very smallest. Several years after the creation of the regional audit institutions, a new law altered the previous system, and regional audit institutions lost their powers over the smallest local authorities. Returning to the statistics, of the 100,000 local organisations, the regional chambers currently have powers over around 70,000, and the Ministry of Finance has powers over the other 30,000.

This does not represent a major level of funds, since the amounts at stake are relatively small, but it obviously complicates the scheme that I shall present to you. It would be easier to say that the regional audit institutions had integral powers over all territorial authorities.

The French system is not therefore perfectly coherent. I will give you an example. In the Rhône-Alpes region, where I performed my duties until very recently, there are 5,600,000 inhabitants. The largest city is Lyon. For this population of 5,600,000 inhabitants there are 2,900 communes. The regional audit institution has powers over 1,700 communes and a total of 6,000 local organisations: communes, secondary schools, colleges, hospitals, etc.

An important point should be emphasised, for the purposes of making comparisons. Private auditors play no role in the auditing procedures. As already stated, a commune may request the assistance of a chartered auditor for a one-off mission of reorganisation, but not in order to audit accounts. Auditing of accounts is exclusively the responsibility of either the regional audit institution or the Ministry of Finances, and is never assigned to private auditors. I must repeat that this is a very important point, because in a certain number of countries of the European Union, and perhaps in others (we don't always have complete information on this

subject), private auditors take part in auditing the accounts of a lower level of territorial authorities, i.e. that of the local authorities or communes.

Private auditors do however take part in certain activities. They intervene in that which we call the “satellites” of the communes, i.e. the mixed public-private companies that have the status of private law companies. Private auditors also intervene in associations that receive subsidies from the communes. In these cases, the regional audit institution may carry out an audit (it is not obliged to do so, but may choose to do so) and obviously in such circumstances, the auditor of the regional audit institution – the person who carries out the audit – will collaborate with private auditors. But this form of collaboration occurs in only one sense. The auditor of the regional audit institution may contact private auditors. He has the right to request their working documents and the private auditor may not refuse to divulge such information. By contrast, the private auditor that will intervene several years later will not have access to the work of the auditor of the regional audit institution. I’m not saying that this system is correct; I’m simply presenting its current format.

I will not resume my attempt to compare this situation with other countries that I have already done on page 193 of the written text that you have received, with a small diagram that attempts to present matters in a clear fashion, with the obvious risk of oversimplifying the actual situation.

The second point of my speech concerns another characteristic of the French system of auditing local accounts. This is the fact that such auditing control is systematic, it will always take place, but is neither annual nor often in great depth. There is always an audit, but not every year, and such audits may be either very rapid or sometimes highly detailed.

The fact that audits are not carried out every year distinguishes us from those countries in which we might speak of a “certification”. Several nuances should be made to this question. There are countries in which such audits resemble an accounts certification without the need for auditing to be carried out necessarily on an annual basis. There are similar situations to the French system in several Swiss cantons for instance, i.e. an audit that takes place once every 4 years and concerning the 4 financial years. The normal pattern in France is an audit every 4 or 5 years. Obviously if we suffer from lack of resources, instead of every 4 years it will be every 6 or 7 years, which we are fully aware is too great an interval. I emphasise this point because it is not always clear in the documents that explain the manner

in which we work and often causes surprise, especially amongst our English colleagues who are used to thinking in terms of certification of accounts, and in comparison with the practises of private auditors, find it difficult to understand that an annual certification does not take place.

We are not the ones moreover that refuse to carry out an annual audit. It is simply impossible for us to carry out a thorough annual audit, given our limited resources. As a result we conduct audits on a pluri-annual basis for several consecutive financial years. This enables us to say that all accounts are audited and such audit control is more or less thorough. We have spoken a great deal during this session about audits and controls but have spent very little time in defining such terms. When I explained that we audit the accounts of territorial authorities every four years, I must clarify that this auditing control necessarily signifies verification of accounts from a strictly accounting perspective. Certain people would describe this activity as a financial audit. I am prudent in the use of this term because the meaning of the term is not always the same, and once translated is subject to an even wider range of different interpretations.

In addition to this verification of accounts, there is also control of the regularity of operations described in the accounts. I describe this as the second level of audit control. There is then a third level of control, that which we often refer to, the famous control of the quality of management – control of the three “E’s”, as the English would say, although I have never succeeded in understanding the difference between economy, efficiency and effectiveness, despite Mr. Sherring’s efforts.

In my opinion, these three elements are different aspects of a single auditing control, based on the comparison of resources and results, but perhaps I will one day understand the difference. There are therefore three levels of control: verification of accounts, regularity of the operations described in the accounts and the quality of management.

In my opinion it would be highly misleading to believe that in France we control all three aspects every four years. Given the multiplicity of local organisations, many of whom have very small budget levels, the scope of the audit is very reduced. Our resources are very limited.

In conclusion: we focus upon verification of accounts. There is neither audit of performance nor control of the quality of management, except in circumstances that are signalled to us.

In instances where the authority is slightly larger – a commune with 20,000 or 30,000 inhabitants, a hospital with 500 beds – in that case we make efforts to not only verify the accounts but also to check the regularity of operations and, if we have time, to control the quality of management. But we do not always have the time.

As a result, control of quality is an ambition for us, and a reality in a certain number of cases. It is achieved in particular through surveys made of several authorities by a regional audit institution or by several regional audit institutions, often in liaison with the national court of auditors, in particular in cases of evaluation of public policies.

But if you will allow me to insist on this question: for us, it is rather difficult to control the quality of management. It is something that gives rise to debates and reflections amongst us, not so much on our own initiative, but rather on the initiative on those who are audited. This is because in order to control the quality of management it is also necessary that the control procedures adopt quality indicators. In the absence of such indicators, it is extremely difficult for us to create indicators in all fields: the price of a canteen meal, the degree of readers' satisfaction in a public library etc. In my opinion it is not our job to establish such indicators, but rather that of the entity that is audited.

As I conclude these specific considerations – which convey the difficulties we experience in our auditing tasks – I hope that I have opened up several avenues for future work.

Intervention by *Ernst Kleiner* from the RAI of Zurich

I would like to begin my speech by posing a question: who controls what, where and how? This is a question that was already raised yesterday and also today in a different form.

In relation to Switzerland, we are a country that might be described as an island in the heart of Europe, with 7.5 million inhabitants. We are a federal state and have a system of two courts of auditors, we have cantons as a second level (with 20 cantons), six sub-sections of different dimensions and 2,903 local authorities some with a parliament and others with a system of direct democracy.

In Switzerland the autonomy of the local



authorities is very significant. The federal constitution establishes that the autonomy of the local authorities is guaranteed via the legal system of each canton. The federal state observes the eventual effects of audit controls on the local authorities. The autonomy of the local authorities varies from canton to canton. The tendency in Switzerland in terms of autonomy is to strengthen it even further. But who is responsible for auditing controls? There are financial controls at different levels. In the federal state there is a sharing of finances with the Kurt Gruter. In the cantons there are the institutions of the cantons and in the local authorities there are various forms of organisation. There are municipal audit organizations, then the different sizes of local authority have sub-sections and also delegate auditing control in many cases to private entities.

A very important point to bear in mind is that all levels in Switzerland are controlled at all levels. In Switzerland we differentiate between financial, political and economic control.

The federal state is responsible for controlling public finances and administrative and professional issues are controlled by the local authorities. The same organisation structure is found in the cantons. Competencies in the political sphere are held by the financial commissions of parliament and the professional tasks of financial controls are held by the financial audit divisions. In the municipalities there is municipal control and also a political level.

In Switzerland, joint auditing control takes place in collaboration with the cantons and the local authorities by means of general consensus and agreements. There are agreements between sections of cantons in certain areas, and joint verifications and audit with the financial audit commissions. Auditing control at the level of the local authorities in Switzerland is regulated in order that each canton may regulate such auditing control in an autonomous manner. The common law of each canton regulates the manner in which such auditing control should be carried out.

In most cantons the auditing powers have a kind of financial commission. This is the situation in the canton of Zurich. In terms of inspection of local authorities in Switzerland, we have 71 local authorities and two financial control departments in Zurich. The other local authorities, even if they have between 20,000 and 40,000 inhabitants, only have one accounts auditing division, that may partially belong to parliament or may be directly elected by citizens.

I have referred to the accounting carried out by the commissions of the cantons or by a trustworthy company. However, politically elected entities are

responsible for correcting accounts. The financial auditing control of the canton represents the canton's supreme audit institution and is responsible for verifying the canton's finances in conformity with criteria and standards of economic viability and efficiency and many other criteria. At present all such criteria have the same status and are verified to the same extent.

Financial auditing controls exist at the level of the canton and the federal state support parliament, in terms of supreme inspection and also in terms of inspection of the quality of management. One should note the difference in this regard, because the concept of support strengthens that of independence and autonomy.

In administrative terms, financial auditing controls are dependent on either the parliament – and thus are directed by the presidency of the parliament – or the prime-minister (as is the case in the canton of Zurich where there is an autonomous department that has no binding ties to any other institution).

In terms of auditing activities, it seems to me that the most important aspect is that financial auditing control is based upon laws.

I would like to sum up with a comment and note regarding the documentation. In Switzerland, financial auditing controls have few direct links at all levels. At the level of the canton and local authorities, audits are carried out on the basis of their own regulations and laws. For purposes of mutual interest it genuinely seems to make sense that co-ordination and co-operation is fostered between these entities and it also seems useful to me that there be interchange of experience and information together with measures of training or additional training for those working with such institutions. Such training events will make it possible to achieve progressive improvements in the whole structure.

Intervention by *Luis Munoz Garde* from the RAI of Navarra

I would like to begin by thanking all the organisers of this conference for having invited me to take part as President of the regional audit institution of Navarra, the court of auditors of the Chartered Community of Navarra.

The regional audit institution was created in 1365 by King Carlos II of Navarra and is thus one of the oldest Courts of Auditors in Europe. In the nineteenth century, Navarra ceased to be a kingdom and became a province with a certain degree of autonomy, which resulted in the dissolution of this institution.

With the introduction of democracy in Spain and the constitution of an autonomous state, in 1980 Navarra chose to recover its former Court of Auditors, maintaining its medieval name. Navarra was the first community to have an external audit institution, no doubt as a result of the long tradition of the former Court of Auditors. As you know, Spain currently has nine autonomous audit institutions, together with the national Court of Auditors.

The regional audit institution of Navarra inspects the economic and financial activities of the Chartered Community's public sector, including both the regional government and local authorities and other local bodies: public companies,



universities etc. Alongside this auditing function, the regional audit institution provides advisory services to the

Navarra Parliament in economic and financial matters and receives requests for advisory reports every year in order to guide this legislative body in terms of the economic consequences of any aspect of its activity.

We are different from the majority of other neighbouring regional audit institutions, due to the uni-personal nature of our audit institution. The other regional audit institutions are collegial structures managed by a group of counsellors that constitute the plenary session. In our case, the legislative assembly elects the President. The general secretary and chief auditors (all of whom are civil servants) are also administrative staff of the audit institution. This structure accentuates the institution's technical character that is also safeguarded by the "discrepancy clause" specified in the law. This clause enables the auditor to express in writing his divergence of opinion in the event that he does not agree with the final report.

After this brief introduction, I will summarise the key points of the communication presented in this conference. I chose as a topic the recommendations that the external audit bodies made to the managers and staff of

the inspected bodies. I sincerely believe that this involves an essential aspect of our work that is not perhaps given its due merit.

You are all aware that in recent years, those in charge of audit institutions have insisted on the need for greater efficiency in the public sector.

As external audit institutions, we form part of the public sector and are also obliged to be increasingly efficient in our auditing duties.

We imagine the situation in which the tables were turned and we became the audited entity. And that such auditing was not restricted to classic aspects of financial auditing and legality, but also intended to analyse our effectiveness. What could be one of the key indicators in order to gauge our effectiveness. I am convinced that it would be recommendations presented in the reports and implemented by the respective administrations.

All international declarations on public auditing insist in the idea that audit control is not an end in itself, but rather a means of improving the management of public funds. Our principal mission is to ensure that taxpayers funds are managed in the best possible manner and our recommendations should be a key instrument whereby this may be achieved. As a consequence, if somebody was responsible for auditing our activities, they should check how many of our recommendations are actually implemented and attempt to quantify the benefits reaped from fulfilling such recommendations. In order to trust in the recommendations as a useful instrument to improve the management of public funds two premises must be satisfied. On the one hand, that our recommendations are correct and on the other hand that the manager welcomes them and attempts to implement them.

The second premise is beyond our control and therefore there is little point in devoting too much time to this question. But the first premise – that recommendations are correct – falls within our control, and I therefore spent considerable time in my communication on defining the characteristics that, in my opinion, the recommendations of the External Audit Institutions should have in order to be effective.

I believe that it is important that the recommendations be clear and specific and related to the conclusions of the report. It also seems to me to be essential that they are relevant and whereby their application will deliver benefits that are higher than the associated costs that also contribute to their practicality because otherwise we would not be being effective.

It is also advisable that they be addressed to those who may apply them, and not be recommended in a general manner to the audited body, because it is probable that no-one will consider that they have been informed. I believe that it is vital that they be formulated in a positive manner, avoiding a recriminatory tone that will never contribute towards their application. It is also not convenient to use expressions that impose orders and it is advisable that explanations be provided to the manager as to the benefits that may result from application of the recommendations.

I also believe that the relationship between the recommendations and the fieldwork is important – the period in which those who are being inspected may assume that the recommendations are already starting to be defined. Lastly, I believe that it is important to conduct a suitable follow-up to the recommendations, especially in subsequent reports. It is convenient to publish special reports on the various recommendations carried out at different levels, for example, in terms of economic and local administration. These results may be particularly useful in the beginning of each legislature, because they provide the new persons in charge with an overview of the management situation. The recommendations that still await application are presented in detail in these reports, classified by their degree of difficulty and priority. Specific reference is also made to the department or unit responsible for their application.

In conclusion and in summary, I believe that the recommendations that we offer in our reports are of fundamental importance, because they symbolise the positive character of our work: to not limit our activity to detecting weak points in the management, but to offer solutions. For this reason, I believe that it is worthwhile making an effort to ensure that our recommendations are as appropriate, opportune, useful, specific, clear, coherent, constructive and convincing as possible. In this manner it will be easier for them to be applied and this can only deliver benefits to our customers, i.e. to all citizens.

Intervention by *Martin Sinclair* from the SAI of United Kingdom

Let me start by offering the apologies of John Bourn, the second Vice-President of EUROSAI, for his inability to be with us over the last two or three days. As you probably know, we are in the middle of a General Election campaign and official business has forced him to stay in London. So I must offer his apologies.

Let me also offer my own congratulations to the organisers of this confer-

ence for the excellent hospitality we have received. I would also like to congratulate Mrs von der Aue for the excellent summary of the papers and Mr. Kleiner, Mr. Munoz and Mr. Descheemaeker for the excellent descriptions of the arrangements within their jurisdictions and countries. I think that they very well illustrate the diversities of the arrangements that are in place in the public audit of local and regional government. They represent a very clear illustration of the diversity of systems which we face and I suppose, in that sense, the need for effective co-operation.



To be asked to act as the moderator in the final working session after such a full discussion earlier in the conference is a very daunting task but fortified by the rendition of 'Scotland the Brave' that we heard at the start of the session let me offer some thoughts.

I would like to pull out some common themes which I think deal with some of the practical reasons why it is necessary to co-operate. Let us go over again some of the details of the structures and mechanisms which I think we heard so fully explained.

With your forbearance I will draw on the UK experience to illustrate some of the points that I want to make.

The first, as President De Sousa outlined so eloquently yesterday. We all live in a period of rapid change within the state. With power and functions going both to supranational bodies such as the EU, or in many countries being devolved to new regional legislative and administrative bodies.

As many of the other speakers have said, we have to ensure that the audit arrangements keep pace and we offer practical solutions to ensure effective co-operation sometimes ahead of any specific legislative framework.

In the UK for example, we have devolution and setting up of new legislative bodies in Wales, Scotland and Northern Ireland, each with their own audit institutions reporting to them. But the legislation says nothing about any mechanism to link these bodies, either to the National Audit Office or to each other. And so, on a voluntary basis, as John Sherring adequately outlined yesterday, we have set up a body called the Public Audit Forum to bring these bodies together. If for no other reason, than to ensure there are no gaps in the control of public expenditure, and we minimise any serious chance of significant overlap.

The second point that I want to make is that there are also changes going on in the expectation of the citizen. Certainly, in the UK there is a very fast rising expectation that the quality of public services should be improved, and, at the same time, Governments are faced with a paradox – people don't want to pay for those services, they don't want to be taxed more to improve those public services.

In the UK, The Government has responded to these two pressures by launching what it calls its 'Modernising Government Agenda', which is aimed at raising the standard of public services, reforming the civil servants and reducing costs, apparently a very complicated business to achieve. So, for example, the agenda would allow the rewarding of innovation for principalities with the rewarding of extra funds. It seeks to cut back on excessive restrictions, rules and regulations. It encourages Public sector bodies to draw on the best experience of managing and delivering services. The whole program can actually be summed up in two words: 'thought works', and it's absolutely devoid of ideology. This philosophy applies equally to public audit. We need to demonstrate that we can add value, not just for parliament and the citizen, but also for the client bodies that we audit if we are to survive and to flourish.

To add value we must show publicly that we can co-operate between the national, regional and local levels in the way we interact with clients, and in our programs at work.

In the UK we are in absolutely no doubt that if the public audit service is not seen to deliver that added value, then Parliament will have no hesitation in changing the arrangements. Indeed we have already seen in some other parts of the public sector, where parts of it are deemed to fail, the Government will bring in private sector contractors to deliver those services, and we have clear examples of that in both the prison and educational services in the UK.

Our Government, in a sense, is impatient for success and increasingly intolerant of failure. Perhaps I can illustrate the sorts of issues that might face the public sector audit institutions faced with that sort of in political environment. The Public Audit Forum body found that many public bodies are subject to multiple audits. I think that in the most extreme case there were ten auditor inspection bodies which have the right to conduct an audit, ranging from the European Court of Auditors at the top of the tree, down to auditors from the local municipality at the bottom. We, as auditors, have a duty to find ways of discharging our mandates by ensuring that the overall burden of audits on the client is kept to the minimum

necessary. In short, and to pick up on some of the themes that Mr. Muñoz Garde was just referring to, the audit process itself must be efficient.

The third point that I wanted to make (and this again illustrates a particular British perspective, but I think that it is applicable to many other nations), is that where you have Parliaments or legislative bodies at national and regional level and where you have auditing bodies at several levels, what they want to see is a common understanding of what public order is and of what minimum standards they can expect to see applied.

We tend to think that public audit is a well illustrated concept, but as soon as you have auditors at different levels, the variations and the differences can very soon appear. In the UK, if those differences get too great, then we are simply played one off against the other. This is not to say that the institutions at each level must work in a common way, but there is considerable strength if we can reach an agreement on those points. A common framework of what public audit is and a common understanding of the approaches and standards then, will be applied.

So, in the UK the five members of the Public Audit Forum, that is, the NAO, the Auditors General of Scotland, Wales and Northern Ireland and the Audit Commission have published a statement of principals of public audit and a document entitled 'what public bodies can expect of their auditors'. In this second document for example, it states we will all use common standards for our financial audit and these are published, and in a sense we expect to be held accountable by Parliament, by the citizenry and by our client bodies, to those principals and those standards to which we have commonly agreed.

A final point, and again this picks up on perhaps a number of points that Mr. Muñoz Garde was making. Public audit, at each level, needs to be seen as a force for beneficial change (in short) to raise the economy, efficiency and effectiveness with which those public services are delivered. Perhaps I will spare you the British explanation of what those three things mean. Further, as we all recognise, public audit is often represented particularly, (I have to say, by senior public bodies and by the Chief executives of bodies), as a barrier to change and modernisation, through the Public Audit Forum. In the UK, the public audit institutions have agreed a common position statement, essentially in response to the modernising Government agenda, but it is to be absolutely clear we are all committed to supporting that beneficial change and to supporting well managed administration, high risk-taking and innovation. And that public

statement, across all of the five institutions of advise within the field of public audit in the UK, has been a tremendous strength in fending off some of the attacks that are inevitable from audited bodies and some civil servants.

Mr. Chairman, Ladies and Gentlemen, those were the points that I wanted to make to you.

Concluding remarks



Left to right:

- *M. Giorgio Clemente* (European Court of Auditors)
- *M. Dieter Engels* (SAI of Germany)
- President of EUROSAI, *M. François Logerot*
- *M. Jean-Philippe Vachia* (RAI of Midi-Pyrénées-France)
- *Ms. Gisela von der Aue* (RAI of Land of Brandenburg-Germany)

1st Session

Reporter: SAI of Germany

In order to summarise the contributions of the first working group we must of course start by recalling the excellent speech by Professor de Sousa. It is impossible to repeat all of his propositions here – otherwise I would be stealing time from my fellow *rapporteurs*. Nonetheless, I will try to integrate his propositions within these conclusions, as well as the responses to the questions posed by Mr. Kovacs.



Dieter Engels

I believe we can draw seven main conclusions from the session.

1. *The different government systems and organisation*

The base propositions of all our reports was not contested: i.e. Different government systems – some Federal States, others Unitary States – implies different forms of organisation of external government auditing. This was also one of Professor de Sousa's core propositions.

2. *The distinguishing characteristic between a Federal and Unitary State*

The most important distinguishing characteristic between a Federal and Unitary State consists in the fact that in the Federal State, both the Federal Government and the constituent Federated States have the quality of being a state. By contrast, in the Unitary State, only the Central Government has the quality of being a state, whereas decentralised administrative organisations do not. We did not discuss the defining criteria of the quality of being a state, although Mr. Kovacs advised us to establish such a definition. Nonetheless, Professor de Sousa presented us with an important indicator. We can use the term "State" when an administrative organisational body has the sovereign power to concede a constitution to itself.

3. *Impact on the forms of organisation*

The proposition regarding the impact on the forms of organisation was also not contested:

In the *Federal State*, a specific Court of Auditors exists for both the Federal Government and for each federated state. It is thus possible to speak of a parallelism between the different Courts of Auditors, conditioned by the system.

By contrast, the *Unitary State* tends to concentrate external financial control in a supreme audit institution. In the event that this form of organisation is executed in a completely categorical form, the problem of parallelism of various organisations of external financial control will not, *a priori*, arise.

Also in Unitary States, – and Professor de Sousa presented us with very clear examples in this regard – we mainly find, parallel forms of a supreme audit institution, on the one hand, and regional audit institutions, on the other. In this model of organisation, the supreme audit institution is normally responsible for auditing matters of central government, while the regional audit institution is responsible for auditing regional matters, related to the district or department.

4. *Exercise of the functions of Audit Institutions*

Mr. Sarmas of Greece stated yesterday, very clearly, and in my opinion, quite correctly, that the name in which control is exercised is of decisive importance. I interpreted this reference as an aspect of my thesis.

In the event that various audit institutions are in activity in the respective Federal or Unitary State, the exercise of their functions depends on the fact of whether or not each of them carries out work for a Parliament.

This aspect is important, on the one hand, for the organisation of the respective Court of Auditors, for example in relation to the question as to who has competencies in the election and nomination of presidents and members, as well as other collaborators. On the other hand,

this aspect is relevant for the function of the audit institution, for example, if this same function is limited to the activity of auditing or also covers consulting functions for Parliament. Thirdly, this aspect is important for the question of the Court of Auditors' power of execution: since the fact as to whether or not Parliament exercises power over the work of a Court of Auditors has a decisive impact on the question of the Court's own power of execution. Examples of this form of organisation are most typically found in Federal States.

5. *The distribution of competencies between the various audit institutions of the Federal and Unitary State*

Mr. Kovacs raised the question as to whether it is possible to determine universal criteria within a State in order to classify the functions of the different audit institutions. I believe that it is possible to provide at least a partial response:

The organisation of "parallelism" between the various external audit institutions in a State specifically depends on the functions exercised by the Central Government and those exercised by each federated State or sub-divisions. In the event that these perform state functions with their own specific competencies – such as occurs in *Federated States* – autonomous areas will be attributed, on the one hand, to a supreme audit institution, and on the other hand, to other audit institutions. Except in certain rare exceptions, these two types of audit institution are clearly delineated: they follow the respective competencies of the Federation or the federated states, whereby the supreme audit institution is responsible for auditing matters that concern the Federation and each of the other audit institutions is responsible for auditing matters concerning the respective federated states. This rule does not apply for Unitary States for the following reason: in relation to the question as to whether decentralised audit institutions in the Unitary State, have areas of delineated autonomous functions, alongside those of the supreme audit institution, different regulations exist. Normally, the supreme audit institution is responsible for auditing matters of central government. In other situations, the

differences between the role and functions of regional audit institutions are so great that it is impossible to summarise them here in a conclusive manner. Nonetheless, I would like to recall Professor de Sousa's proposition: the differences depend, amongst other factors, on the degree of decentralisation and also on the powers of decision held by the sub-divisions: in situations where the regions are relatively autonomous and in fact almost attain the status of being a State, the respective regional audit institutions perform a role almost identical to that of the Federal State's audit institution. But in situations where the degree of autonomy is less marked, the organisational forms are selected in such a manner that the regional audit institutions have clearly delineated areas of autonomous functions.

6. *The relationship between a supreme audit institution and regional audit institutions*

Here, I would like to insist, only one more time, on my description. In a general manner, in Federal States the model that applies is that in which the supreme audit institution, on the one hand, and regional audit institutions, on the other, are totally autonomous entities in legal terms, with an independent function and equivalent category, with no relationship of subordination. Equally, in this model there is no right of control or authority of the supreme audit institution over regional audit institutions. By contrast, the Unitary State tends to organise the audit institution as a regional sub-division of the supreme audit institution. In this model the audit institutions are organisations that are subject to control by the supreme audit institution which, at the same time, also has authority. There is nonetheless great diversity in the scope of the respective directives and the forms of organisation. This issue was covered in greater detail in proposition 11.

7. *Intersections of the competencies of different Courts of Auditors*

Mr. Kovacs expressly referred to the need for us to establish criteria and procedures in order to overcome possible intersections of the competencies of different national audit institutions.

Such intersections tend to arise with greater facility in the Federal State with independent audit institutions of a category equivalent to that in the Unitary State – in which auditing of accounts is also organised in a hierarchical manner.

In general, intersections result from the fact that the competencies between the central government and federated states is not always delineated in an exact fashion – in breach of the principle dictated by the general rule.

Such situations of undefined competencies provokes a situation of dispersion that, on the one hand, affects the independence of the Courts of Auditors of the Federation and the Federated States and, on the other hand, may lead to the danger of double auditing or areas that are not subject to auditing. Such perils may be resolved in a relatively easy manner if the relationship between the supreme audit institution and the audit institution is structured in a hierarchical manner; namely through control or authority.

If, on the contrary, the supreme audit institution and the audit institution are organised in an equivalent hierarchical form, it is necessary to take into consideration the independence of the audit institutions during selection of the means used to combat the existence of areas that are not subject to auditing and the duplication of audits. The means used until now – I will recapitulate them since this is highly relevant from a practical viewpoint – range from joint preparation of legal specification, votes on planning to the interchange of reports on various matters, and encompass general agreements between audit institutions, and even certain bilateral or multilateral agreements. The nature of such means covers a vast field of possible types of regulation: exact delineation of the objects of auditing, an agreement regarding joint audits, transmission of audit rights, procedural agreements, etc.

In addition to these formal mechanisms, there are countless informal ways to achieve national collaboration: conferences between presidents, committees, working groups and other working sessions.

All these forms of collaboration are based on the principle of mutual trust. I would also like to sum up today, as I did yesterday in my re-

port, with this key word of trust, because there is no better way of describing our situation. Mr. Kovacs, however hard we strive to define collaboration procedures – the most important factor will always be the question of whether the pretension to achieve mutual trust is fulfilled and given living force.

2nd Session

Reporter: RAI of Midi-Pyrénées

The basic report of the 2nd session needs to be complemented by the two examples that were presented in the session by the session chairman, M. STEPASHIN and the moderator, M. STADERINI.

The system of the Russian Federation has undergone major reforms over recent years: special laws have established new independent audit institutions. Regional audit institutions have been created and recently a federation of these audit structures in Russia was organised. The underlying objective is the construction of a global control system.



*Jean-Philippe
Vachia*

The Italian system has also been subject to profound reforms as a result of decentralisation. The creation of autonomous regional audit institutions responsible for auditing the management of regional and local government is one example. It is important to note that these are State institutions and form part of the Italian Court of Auditors. At the heart of this court there are effective mechanisms of horizontal and vertical co-ordination (see the written contribution).

The conclusions to be drawn from this session are not of definitive but nonetheless reveal certain interesting trends.

Whatever the form of the state – unitary, regionalist and federal – there are always shared competencies and funding areas between central or federal government and local or regional authorities. Therefore external audit institutions in each state are led to harmonise their working methods and cannot ignore each other.

The competencies of the different levels of external audit institutions are occasionally mutually conflicting, and at other times are complementary. It is thus necessary to establish or develop co-ordination and co-operation mechanisms.

Co-ordination mechanisms may exist, provided by law or by audit institution statutes, but in practise they appear to be insufficient. In non-federal states, there is a general kind of right of inspection for the Supreme Audit Institution.

It is necessary to identify concrete objectives in order to guarantee complete control of public revenues and expenditures at every level, verifying whether they are in order and correctly managed.

For this purpose, the Supreme Audit Institutions and Regional Audit Institution must make an effort to achieve harmonious co-operation within the framework of each national system founded on trustworthy relations on a contractual or pragmatic basis.

Effective co-operation requires a common set of objectives and identical or comparable auditing methods. If auditing methods are neither identical nor comparable they must at least be complementary. In all circumstances, the transparency of auditing results should be guaranteed.

In order to improve auditing effectiveness, information exchanges on auditing techniques and methods should be organised between different levels of auditing institutions, using suitable methods.

Co-operation mechanisms may thus be implemented within the European Union, in terms of the relationship between Supreme Audit Institutions, Regional Audit Institutions and the European Court of Auditors.

3rd Session

Reporter: European Court of Auditors

I would like to emphasise, together with President Vachia, that I am not I would like to emphasise about to offer conclusions but rather paths of reflection, lines of work, because it is impossible to draw definitive conclusions at this stage.

One of these paths of reflection concerns the importance and contemporary relevance of the phenomenon of interdependence of budgets at the national, regional, local and Community level for all member states of the European Union. We have also observed that this interdependence often poses numerous problems in terms of the constitutional and institutional structure of the different forms of state organisation – unitary, federal and regional – and also at the Community level. We have also addressed the serious problem of the sovereignty of the people.



Giorgio Clemente

We have also stated that this situation inevitably has consequences for external auditing of the management of public funds, both in terms of national funds within a country and once again at the Community level. This is a genuine line of work. It is obviously necessary to achieve a certain degree of homogenisation of auditing techniques both within each state and between the member states and the European Community. The core consideration that has already been emphasised in the reports sent to you, is that such homogenisation is in fact increasingly imposed by the force of circumstances. Within the Community sphere, the national courts of auditors – i.e. the courts of auditors of the member states at the different levels, central, regional and local – and the European Court of Auditors must consequently make an effort to find new working methods and approaches that make it possible to pool together knowledge and results.

I would say that what we have learned, or what I learned this morning, is that in addition to theoretical problems, it is necessary to resolve genuine practical problems of liaison and information exchange between the different levels of auditing control – national, regional and Community.

It has been emphasised here that new rules are not required, but rather new instruments and procedures for co-operation between the external audit institutions at different levels.

Finally, we have emphasised the importance within the context of the European Union of a possible tripartite liaison in cases in which this is applicable or may be applied, between the European Court of Auditors, national courts of auditors and regional audit institutions. As I remarked at the beginning of my intervention, these are not conclusions but paths for reflection. That is the reason why I do not have final conclusions to propose for approval.

The participants at the "EUROSAI days", held in Madeira from 30 May to 2 June 2001, have taken into consideration the reports submitted by the SAI's and the RAI's of Germany, Austria, Spain, France, the Netherlands, Poland, Portugal, the United Kingdom, Switzerland, the Ukraine and Italy.

Following their discussions in various working sessions, they have reached the following conclusions and:

- 1) confirm the importance and relevance of the interdependence of budgets (at the Community, national, regional and local levels);
- 2) observe that this interdependence poses a number of problems in terms of the constitutional and institutional structures of the various organisational forms of the State (whether unitary, federal or regional);
- 3) note that such a situation necessarily has implications for the external audit of the management of public funds, of both national and Community origin;
- 4) agree on the need for external audit institutions to introduce cooperation at the Community, national, regional and local levels;
- 5) would like new instruments and procedures for collaboration between the external audit institutions to be tested in the context of EUROSAI in cooperation with EURORAI.

4th Session

Reporter: RAI of Land of Brandenburg

The aim of financial auditing is to control the use by public authorities of financial resources provided by tax-paying citizens, at the national, regional and local level.

Although the constitution of financial control differs widely in terms of competent institutions and scale of auditing, there is unanimity in regards to its key aim, purpose and criterion.

The common aim is to control public administration and use public funds in the various administrative levels in a manner that is of benefit to the general public.

The common purpose is to ensure account reports as a pre-requisite for the procedure of parliamentary approval of the respective officials of the government or public administration.

The common criterion is the autonomous definition of the correctness and efficiency of budgetary and economic management at each of the different levels of public administration, combined with the freedom of audit institutions to select the subject to be audited, and define the date and type of audit to be carried out.

External financial control is, with certain exceptions, organised from the perspective of public rights.

Given that the State participates in the financing of municipal authorities, it is also possible to carry out auditing of such municipal authorities in an indirect manner through control of State subsidies in those countries that refuse audits of municipalities authority budgets by supreme or regional audit institutions.

In those States in which municipalities have their own audit institutions we find, to a certain extent, duplication of auditing (by supreme or regional audit institutions). This is no cause for concern for the following two reasons:

1. Auditing is carried out from different perspectives and with different aims.



Gisela von der Aue

2. In an indirect manner, it is possible to determine, via audits by supreme or regional audit institutions, whether specific quality standards were met during the audits by municipal audit institutions.

It thus becomes necessary to delineate auditing competencies and clarify the collaboration between different audit institutions in order to avoid unnecessary double auditing.

Financial control of the different levels of regional and local administration has become more important for two main reasons:

1. A growing tendency towards decentralisation.
2. Alterations in the functions of the modern state and resulting modifications in financial auditing.

This will place considerable demands on financial auditing, and it is thus even more important, despite various differences recorded, to achieve continuous interchange of experiences and collaboration in auditing activities.

The current preparation and representation of different basic legal and effective conditions for municipal financial auditing, will form the basis for strengthened interchanges in this auditing area.

Synthesis of the conclusions



Held in Funchal, from 31 May to 1 June 2001, the Madeira EUROSAI Conference was attended by 26 Supreme Audit Institutions (SAI) members of EUROSAI, among which the European Court of Auditors, 16 Regional Audit Institutions (RAI), members of EURORAI.

The Conference was also attended by the President of the Association of the Brazilian Courts of Auditors as an observer.

Under the general theme, "*The relations Among The Different Public Sector Audit Structures*", whose subjects were:

- *the impact of Government Systems on Structural and Procedural Organization of External Government Auditing;*
- *Interrelation and Cooperation in the Matter of Public Sector Financial Control among the different External Audit Bodies;*
- *the Interdependence of Budgets (Communitarian, National, Regional and Local) and its effect on External Public Sector Audits;*
- *the Audit of Regional and Local Government performed by the different External Public Sector Audit Bodies,*

there were four working sessions.

In order to introduce the debates, there was a lecture by Professor Marcelo Rebelo de Sousa, a University Law Professor.

Having discussed the four aforementioned subjects, the delegates in this Conference, have produced the following conclusions:

- 1) differing government systems lead to differing organisational patterns of external government audit;
- 2) as a whole, audit institutions provide the audit of the revenues and the expenditures of administrative bodies, so that, at each level, the

representative body can approve the financial management or take note of the administrations performance through audit reports;

- 3) whatever the form of the state, there are always shared competencies and funding areas between central government and, if so, federal states, regional or local bodies;
- 4) therefore, external audit bodies, in each state, are led to harmonise their works and cannot ignore each other;
- 5) co-ordination mechanisms may exist, provided by law or audit bodies statutes, but, in practice, they appear to be insufficient in order to guarantee a complete control of public revenues and expenditure at every level, and to allow for the system of public audit to secure the more efficient and effective use of taxpayers funds to the benefit of all citizens;
- 6) to this end, it is appropriate to establish co-operation, founded on trustworthy relations on a contractual and pragmatic basis. This also concerns, within the European Union, the relations with the European Court of Auditors;
- 7) co-operation mechanisms and experiences still exist in various fields and between the different audit levels. They could be more widely shared and developed;
- 8) further exchanges of experiences, on concrete and professional issues (such as health, education, infrastructures...) appear to be desirable. EUROSAI and EURORAI will join their skills to fulfil these aims.

Closing session



Left to right:

- President of the Portuguese Court of Auditors, *M. Alfredo José de Sousa*
- General Secretary of EURORAI, *M. José Noguera de Roig*
- General Secretary of EUROSAI, *Ms. Milagros Garcia-Crespo*
- President of EUROSAI, *M. François Logerot*
- President of the Regional Parliament, *M. José Miguel Mendonça*
- President of EURORAI, *M. Bernard Levallois*
- Member of the Portuguese Court of Auditors in Madeira, *M. Pestana de Gouveia*

SPEECH BY THE PRESIDENT OF THE PORTUGUESE COURT OF AUDITORS

Alfredo José de Sousa

Excellencies,
Ladies and Gentlemen,



Alfredo José de Sousa

In this closing session of the Madeira EUROSAI Conference, I would first like to express my thanks for the honourable presence of their Excellencies, President of the Regional Legislative Assembly, President of EUROSAI, Secretary-General of EUROSAI, President of EURORAI, Secretary-General of EURORAI and Presiding Judge of the Tribunal de Contas in Madeira.

I would also like to once again thank Professor Marcelo Rebelo de Sousa for his brilliant lecture, which in addition to being highly informative was very stimulating and motivating, and inspired other speeches on the subjects he addressed.

In relation to the working sessions that we all had the pleasure to participate in, I would like to highlight the excellent collaboration of the participating Audit Institutions, via their delegations present. I would also like to emphasise that we managed to debate such highly interesting and complex topics in an enlightening and educating manner, in only four working sessions.

I would like to greatly thank various Institutions for their collaboration in this event, without which it would have been impossible to organise these debates. I would like to remind you of the work undertaken performed in the lead up to this Conference, given that various audit institutions, members of EUROSAI and EURORAI, have worked over many months in order to organise this event.

Our reflections were also based on written contributions on the four sub-topics within the general theme, "*The Relations Among the Different Public-Sector Audit Structures*". These contributions were prepared by various Institutions and are contained in the volume that was distributed to all participants. These contributions were analysed and systematised by the Institutions that served as

Moderators and Rapporteurs for the four working sessions, culminating in the conclusions that have just been presented.

Over the Conference's two days we have heard speeches that reflect a thorough knowledge of the subjects handled and offer a fascinating and highly educating exchange of experience that will stimulate pursuit of further analysis.

I'm sure we would all like to continue to deepen our knowledge on the topics discussed here, but unfortunately this Conference has to draw to an end. Nonetheless, I am sure that the solid foundations hereby laid will enable future opportunities to pursue the analysis presented here with proficiency and wisdom. Indeed, work of this nature is never truly completed, since there is a constant need to update our knowledge within a constantly evolving situation.

I sincerely hope that each of us will return to the Institutions where we perform our responsibilities, with genuine added-value when discussing the role to be performed by Court of Auditors and Congenerous Institutions in today's complex world.

Permit me to remind you that this role inevitably involves strengthening the articulation and co-operation between Audit Institutions that develop their activities at various institutional levels, sectors and sub-sectors of the Public Administration of each State.

In conclusion, I would like to thank EUROSAI's Governing Board for having chosen the *Tribunal de Contas* of Portugal to organise this Conference. To the member Institutions of the Technical Commission that prepared this Conference (and permit me here to specially thank Madame Laurence Fradin); to the Regional Authorities; to Your Excellencies the Minister of the Republic for the Autonomous Region of Madeira, President of the Regional Legislative Assembly and Regional Secretary for Tourism, who honoured us with your presence and gave firm support to this Conference; to the administration and staff of the *Tribunal de Contas*; to the interpreters and translators that have enabled better communication between us all; and to all those that have taken part in the organisation of this Conference, I would like to express my very warm thanks.

I hope that the social activities we have planned will help to further solidify the personal ties between us.

SPEECH BY THE PRESIDENT OF THE EUROSAI

François Logerot

Mr Chairman,
Fellow Presidents and dear colleagues,
Representatives of Presidents,
Ladies and Gentlemen,

My intervention will be brief, for reasons of our tight schedule and above all due to the high quality of speeches that we have heard during these two days. It appears to me that it is an impossible task to summarise in a few minutes the richness and variety of contributions heard and the ensuing debates. Even if that were possible, the excellent work of synthesis achieved by the reporters in the session of presentation of conclusions would render this exercise redundant and of no practical use. This would of course be absurd within a conference where one of our goals is to reflect on means whereby our work will neither be redundant nor superfluous, but increasingly efficient.



François Logerot

Please allow me therefore to simply express my warm thanks to all those who have contributed towards the success of this event, through their written and oral contributions, their speeches – balanced, incisive and always stimulating – and the reports presented. The various contributions have clarified the different aspects of the subject we have chosen to address, that is both of crucial important and difficult to approach.

Time permitting, I would also like to add two brief remarks and a desire for the future.

The first remark is to emphasise how impressed I was, as I'm sure many of you were, by the considerable variety of external audit institutions that exist in different countries. Using an ecological term, I would suggest that the different contributions clearly demonstrated the extraordinary “bio-diversity” of the administrative organisations and associated auditing systems. This rich and diverse

reality cannot be easily categorised within classical models or legal distinctions, such as that distinguishing the federal state from the unitary state. In each state, the system of external auditing is highly original and the origin of this irreducible originality lies in each state's historical roots and recent history and its political, legal and cultural traditions. These factors explain, for example, the very different conclusions that may be drawn in one country to the next, from the same general principles such as autonomy of local authorities.

This "bio-diversity" should encourage us to be humble and prudent. It would make no sense, in a uniform and blind manner, to transpose procedures or mechanisms that have been shown to work in a specific context, but which cannot be adjusted to another political and legal system. This should not, however, confine us to a form of protectionism. Our diversity is a source of richness, and we can use such diversity, in an awareness of our differences, in order to test new solutions with care. Returning to the ecological metaphor, and even more prosaic, that of gardening, without such curiosity and experimentation, Europe would never have been able to introduce the tomato or the potato!

My second remark, which flows on from the former: after having listened to the contributions, it seems to me that co-operation, in whatever forms are appropriate and which must be defined on a case by case basis is both inevitable and highly desirable between the different auditing structures. In this regard, the contributions presented by the audit institutions in Switzerland are in my opinion highly illuminating: in a confederation where the principle of the autonomy of local authorities is particularly strongly upheld, pragmatic solutions are nonetheless implemented in order to avoid duplication of work or loopholes, and to guarantee effective auditing control of the programmes financed from multiple sources. This is an excellent example of the victory of the principle of finesse over the principle of geometry! Without such flexibility, it would certainly be impossible for our audit institutions to master the increasingly complex framework of competencies and financing that are combined in all projects, however large or small.

Finally I would like to conclude with a dual desire. Firstly, that we will jointly continue to explore the topics that we have addressed in this conference: we have already harvested great fruits, but I am convinced that we have much more to discover together, for example in terms of the highly diverse working methods of external auditing of base local authorities. We have made a certain

number of incursions in this area that sparks our further curiosity and suggest further exploration of this issue. Finally, I hope that we build upon this first success in order to jointly examine the priority issues for which we can constitute a laboratory of ideas, in a framework to be decided subsequently (conference, working group or another form of discussion). In this manner we will be able to advance our reflections with concrete steps, in order to render articulation between the different levels of auditing control in each of our countries. Certain contributions such as that of the Catalanian regional audit institution open highly interesting approaches in this regard which deserve further exploration.

Thus, although this conference is drawing to a close, I am sure that it opens up a new field of fruitful collaboration between our audit institutions.

Thank you very much.

SPEECH BY THE PRESIDENT OF THE EURORAI

Bernard Levallois

Mr. President of the Regional Parliament of Madeira,
Mr. President of the Portuguese Court of Auditors,
Mr. President of EUROSAI,
Mr. General Secretary of EUROSAI,
Mr. General Secretary of EURORAI,
Member of the Portuguese Court of Auditors in Madeira,
Ladies and Gentlemen Presidents,
Dear colleagues,

The fact that Supreme Audit Institutions, members of EUROSAI, and Regional Audit Institutions, members of EURORAI had to wait almost ten years for a joint plenary meeting is not due to bad luck or negligence.



Bernard Levallois

As our debates have amply illustrated, the relations between SAIs and RAIs are rarely simple because it is difficult to abstract from the legitimate apprehensions and susceptibilities of the regional institutions who do not wish to be considered inferior *simply because the others are superior bodies*.

These two days of work have shown us that we must overcome our apprehensions and biases, and that this is possible.

It is necessary to overcome our apprehensions and susceptibilities because SAIs and RAIs need to pool their forces and mutually support each other in order to maximise the effectiveness of the auditing of public funds. We have often stated and repeated that the multiplicity of financing sources of public-sector activities obliges co-operation between different audit institutions.

A pre-requisite of such co-operation between SAIs and RAIs is that they

learn to talk to each other and better understand each other. This is taking place in each country from an individual viewpoint. But this has not been the case until now from a collective viewpoint.

As the President of EUROSAI said in his speech yesterday evening, the name of Madeira will remain forever associated to this historic step in the history of our two organisations.

In Madeira, Europe's SAIs and RAIs have met together for the first time in order to communicate and learn how to better understand each other.

We must now decide how to give further continuation to this magnificent kick-off.

Firstly, I believe that for reasons of efficiency we should advance with modest but real conditions.

Concretely, and in full agreement with the President of EUROSAI, I believe that our two organisations should consider alternating organising professional seminars on specific topics, in order to address issues of co-ordination methods that arise from complex auditing situations that cause complications within various different auditing levels.

I will now propose to EURORAI's Governing Board that we identify subjects within our working sessions that could form the basis for joint seminars with EUROSAI.

In conclusion, I would like to emphasise that the success of this first joint conference would not have been possible without the material and immaterial investment of the Portuguese Court of Auditors.

The President of the Portuguese Court of Auditors and his collaborators were able to understand the particular sensibilities of the regional audit institutions and also knew how to share this understanding with all conference participants.

Please permit me then, to thank you all for your active and positive participation in this event, and give my special, and very strong and sincere thanks to our hosts the Portuguese Court of Auditors and the Madeira Chamber.

SPEECH BY THE PRESIDENT OF THE REGIONAL PARLIAMENT OF MADEIRA (PORTUGAL)

José Miguel Mendonça

Mr. President of EUROSAl,
Mr. President of the Portuguese Court of Auditors,
Mr. General Secretary of EUROSAl,
Mr. President of EURORAl,
Mr. General Secretary of EURORAl,
Mr. Counsellor of the Portuguese Court of Auditors for the
Autonomous Region of Madeira,



José Miguel Mendonça

I would like to begin by thanking His Excellency the President of the Tribunal de Contas of Portugal for his kind invitation to attend this closing session of the Madeira EUROSAl Conference. Given the participants' intellectual capacities and high level of duties in their respective countries and regions, I am sure that this Conference will have provided an excellent opportunity for a profitable and in-depth reflection on the different experiences and specific problems that now confront public-sector audit structures.

I would also like to emphasise how content and proud we are that Madeira was chosen to host this important event, bearing in mind our dual status as an Autonomous Region of Portugal and an island region located on the periphery of Europe.

This choice is undoubtedly due to the commitment of the President of the Tribunal de Contas of Portugal, Dr. Alfredo de Sousa, a person gifted with high intellectual skills and whose great human qualities and discreet and dialoguing character it is always a pleasure to experience. As we all know, the Tribunal de Contas of Portugal is a centuries-old institution that with the advent of democracy showed itself to be well equipped for the requirements of modern and efficient control of public finances.

Having re-acquired its constitutional status with the Fundamental Law of

the Portuguese Republic of 1976 and having benefited from the improvements introduced in the constitutional revisions of 1989 and 1997, that considerably widened the scope of its competencies and jurisdiction, the Tribunal de Contas is today a highly prestigious institution within Portuguese society and is highly considered and respected in our autonomous island society, in great part as a result of the work of the first counsellor of the Madeira Regional Chamber of the Tribunal de Contas, Judge Pestana de Gouveia.

No one is better placed than the illustrious participants to this Conference, to understand the growing importance of public-sector audit institutions in contemporary democratic societies.

In this regard, it is equally important to pursue a careful reflection on the important auditing functions that are generally entrusted to Parliaments and, in the specific case of the constitutional architecture of the Portuguese autonomous regions is entrusted, in first place, to the Legislative Assemblies, as citizens' representatives and as governing bodies from which the regional budgets emanate.

Although there has been a generalised degradation of the sense and practical significance of the financial powers of Parliaments, this noble function of Assemblies can still effectively be exercised, with the aid of the collaboration and support of public-sector supreme audit institutions.

In the specific case of Madeira, we have the necessary conditions to achieve this, above all because, paraphrasing the words of the distinguished Professor of Public Finances, Dr. Sousa Franco, the structures and persons that are needed exist in order to "combine rigour with dialogue, and to guarantee the two supreme values in terms of Regional Chambers of the Tribunal de Contas: *legality and regional autonomy*".

In this closing session of this specialist Conference, which has discussed and debated these subjects in full, I am left with the task, as President of the first specific governing body of this Portuguese Autonomous Region, to express my great thanks for such illustrious figures to have attended this event, and my sincere desire that the conclusions of your working session may lead to practical effective measures, and in the expectation that you may soon return to this Island, located on the very outskirts of Europe where we have groomed the art of welcoming visitors for almost six centuries.

I can reassure you that Madeira will be delighted to welcome you on your return and will hope that you leave the island with the memory of an excellent stay.