1) **State of play *de jure* and in practice**

**FEU Treaty**

Article 287 of the FEU Treaty (ex Art. 248 EC) lays down that the Court of Auditors, as external auditor, shall examine the accounts of all revenue and expenditure of the Union, as well as the accounts of all revenue and expenditure of all bodies set up by the Union in so far as the relevant constituent instrument does not preclude such examination.

In accordance with Article 287, the tasks of the Court of Auditors include, *inter alia*:

- to provide the European Parliament and the Council with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions;
- to 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 doing so, the Court shall report in particular on any cases of irregularity;
- to carry out audits;
- to draw up an annual report after the close of every financial year, to be published together with the replies of the bodies concerned; and
- to submit observations, particularly in the form of special reports, on specific questions and to deliver opinions at the request of one of the other Institutions of the Union.

**Financial Regulation**

Articles 139 to 144 of the Financial Regulation specify in more detail the audit role of the Court as laid down in Article 287 of the Treaty, its cooperation with the Union bodies to be audited, and access to information and timetables applicable.

**Framework Financial Regulation**

Article 91 of the Framework Financial Regulation lays down that the Court of Auditors shall scrutinise the accounts of each Union body submitted to the FFR, in

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1 The Joint Actions establishing ISS, EUSC and EDA (which are financed on an intergovernmental basis) lay down budgetary control and discharge procedures which exclude the Court of Auditors. The Europol Convention (financed on an intergovernmental basis, Court of Auditors excluded) will be replaced as from 2010 by a Council Decision (financed from the Union budget, Court of Auditors as external auditor).

accordance with Article 278 of the FEU Treaty. Article 93 specifies that the scrutiny carried out by the Court of Auditors shall be governed by Articles 139-144 of the Financial Regulation.

Article 95 specifies that the discharge authority will examine the annual and special reports of the Court of Auditors, along with their corresponding statement of assurance.

**Annual specific reports**

The number of annual specific reports has increased considerably over the past years, following the increase in the number of (financially autonomous) agencies. In November 2009, the Court issued 24 annual specific reports, covering the Court's assessment of the reliability of the accounts and the legality and regularity of the underlying transactions for the financial year 2008, for the same number of agencies.

**Financial Regulations of the agencies**

The financial regulations of individual agencies do not deviate from the provisions set up in the Framework Financial Regulation, unless specific derogations have been granted by the Commission.

**Main findings related to the agencies**

Except in very rare occasions, the Court always gave a positive opinion without reserves on the accounts and on the legality and regularity of the underlying transactions.

The main and most frequent problems highlighted in the Court of Auditors' annual reports in relation to agencies concern procurement procedures, recruitment and over-budgeting. See in this regard also Fiche 28 (discharge).

The annual specific reports do not deal with performance of the agencies. As is the case for the DAS and annual report for the Commission, the reports concentrate on accounts, and legality/regularity of the transactions.

In its Special Report of June 2008, the Court of Auditors carried out a "performance audit", in a number of agencies to examine the way they were planning, monitoring and measuring their activities, as well as evaluating their results. See in this regard also Fiches 13 (annual work programmes) and 21 (Activity-Based Budgeting).

**Internal and External Audit**

The Court of Auditors and the IAS communicate on the work carried out in agencies. The IAS receives copy of findings and reports established by the Court of Auditors and, conversely, the Court of Auditors receives final reports of the IAS.

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4 As for CEPOL (budget year 2007)

2) Critical analysis of the issue at hand

Audit reports of the Court of Auditors (ECA)

For the ECA, as for the IAS, the main difficulty is to optimise the audit work carried out - which is increasing in scope with the number of agencies - under resources constraints: in recent years audit resources dedicated to agencies did not increase at the same pace as the number of agencies. According to international audit standards, audit work and resources should also be determined with due consideration to the financial materiality of agencies in the EU budget. As a result, the ECA focuses on the requirements foreseen by the legislation, at the expense of possible more in-depth audits on the effectiveness and performance of agencies. The audits carried out by ECA thus seem rather light (e.g. no mention of sample size and error frequency). The audits carried out by the Court of Auditors are mainly based on a representative sample for the examination of the legality and regularity of the transactions and an analysis of the budgetary and economic accounts.

This issue acquires a particular importance considering the fact that more information from ECA (e.g. in terms of agency's performance and internal control), would certainly affect the result of the work of the Discharge Authority.

As for the Commission, even if concerned, it is not invited in contradictory procedures, which can to a certain extent be explained with agencies' independence.

Overlaps between internal and external audit

Agencies express the opinion that there is an audit overload, with typically 1-2 audits carried out by the IAS and 2 by the ECA every year. An explanation may be that "internal audit" is carried out by a body which is perceived as external. Another explanation may be that IAS audits have become systematic only since 2008, mostly thanks to a substantial increase of IAS resources for internal audit of agencies. In any case, agencies see overlaps in what concerns providing same documents, answering similar questions, explaining disagreements, etc to different institutions/bodies at the same time. However, this has to be put into perspective: beneficiaries of EU funds often complain about over-auditing. Commission services and the Court try to coordinate their audit efforts – schedule and content - but the purpose of the controls is in most of the cases not comparable and this aspect is often neglected or not understood by the audited entity.

The burden of compliance

The burden of compliance with audit requirements differs depending on the agency's size, age and type of activities. For small and/or young agencies, audits are particularly burdensome in light of their limited resources and experience. At the same time the capacity to keep up easily to audit requirements depends largely on the available resources, the degree of organisation and of internal discipline of the agency, as well as the level of knowledge of the applicable rules.

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6 The views of the Court of Auditors will be sought via informal contacts.
7 EP study on common support, point 3.3.3, p. 70
8 EP study on common support, point 3.3.4, p. 78
Experience shows that agencies conducting operational activities spend less time for cooperation with ECA than agencies with other type of activities, i.e. soft coordination, providing expert advice, providing harmonised information, etc.