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THE RESPONSIBILITY FOR IMPLEMENTING THE COMMUNITY BUDGET

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Society has the right to ask a public official for an accounting of his administration.

(Article 15 of the Declaration of the rights of man and the citizen of 26 August 1789)

The responsibility for implementing the Community budget

By Gabriele Cipriani [1]

Abstract

The action of the European Community is guided by the principles of subsidiarity and proportionality. These principles have been defined as follows by Article 5 of the Treaty establishing the European Community (TEC): *"The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein. In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community. Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty".*

Applied to the system of Community finance, the principles of subsidiarity and proportionality largely explain the *sui generis* nature of the Community budget, thus showing the incomplete character of the integration process between the Member States. This budget, *de facto* "auxiliary" in relation to the budgets of the Member States, is characterised by the concentration of expenditure on two principal policies (Agriculture and Economic and Social Cohesion), by the limited volume of the appropriations available (capped at 1.24% of the Gross national income of all the Member States, i.e. almost 120 billion €), by the rigidity of the multi-annual financial framework (the "Financial Perspectives") and by the absence of an autonomous financing system (the budget is primarily financed by national contributions).

The principles of subsidiarity and proportionality also explain another characteristic of the Community budget. Whereas the day-to-day management of the major part of its appropriations is carried out by Member State bodies, the EC Treaty entrusts the final responsibility for implementation of the budget to the European Commission alone. However, the latter, on the grounds of this particular context in which the budget is managed, is less and less prepared to shoulder this responsibility alone. This leads to an ambiguous situation regarding the responsibility for the implementation of the budget, to the extent that it affects the principles of public accounting and of the control of budgetary implementation, and thus even the principle of the accountability of public officials.

The identification of clear and complete responsibility regarding the implementation of the Community budget conditions its development as much as the volume of the appropriations to be authorised, the level of the contributions to be paid by each Member State and the typology of the policies to be financed. There is in fact no valid reason why the implementation of the Community budget, which is financed by the European taxpayer through general taxation, should not be subject to the principle of responsibility, or why it should be exempt from one of the fundamental principles of public finance.

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The implementation of the budget: several levels of responsibility

The EC Treaty and the Financial Regulation

When, in March 1957, it brought the European Economic Community into being, the Treaty of Rome defined, in its Article 205, first subparagraph, the responsibility for the implementation of the Community budget as follows:

"The Commission shall implement the budget, in accordance with the provisions of the Regulations made pursuant to Article 209 [2]*, on its own responsibility and within the limits of the appropriations".*

This provision remained unchanged until 1992 when, with the Maastricht Treaty [3], a few words were added to indicate that the budget is implemented *"in accordance with the principles of sound financial management"*. In fact, the Maastricht Treaty only "confirmed" a concept which had already been introduced two years before in the Financial Regulation applicable to the general budget of the European Communities. Indeed, a Regulation of 1990 had stipulated that *"the budget appropriations must be used in accordance with the principles of sound financial management, and in particular those of economy and cost-effectiveness. Quantified objectives must be identified and the progress of their realization monitored"* [4].

It may be observed in this respect that the concept of "sound financial management" made a late appearance in the provisions of the Treaty concerning the implementation of the budget. Indeed, as early as in the Treaty of 1957 establishing the European Economic Community auditing the budget had been entrusted to an Audit Board with the purpose of establishing that *"the financial management has been sound"* (Article 206 TEC). This same concept was taken up again by the Brussels Treaty of 1975 which created the European Court of Auditors [5].

It was more than convenient that the concept of "sound management" should figure from then on among the criteria meant to inform the implementation of the budget. Indeed, the volume of the general budget of the European Communities, which amounted to EUR 7.3 Million in 1958, had reached EUR 15.9 Million in 1980. Ten years later this amount had more than doubled and amounted to EUR 44.1 Million.

The increasing volume of Community expenditure and the predominant weight of agricultural and structural expenditure (almost 80% of the budget) was probably the reason behind the second amendment of Article 205 TEC (today Article 274 TEC) concerning the

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[2] Reference is made to the Financial Regulation applicable to the general budget of the European Communities, adopted by the Council of Ministers. As the Commission indicates, this Regulation constitutes *"the European Union's financial bible. It sets out the essential rules and principles governing the establishment and implementation of the budget and the control of Europe's finances"* (European Commission (2003 a), Foreword).

[3] Treaty on European Union signed in Maastricht on 7.2.1992.

[4] Article 2 of the Financial Regulation of 21.12.1977 applicable to the general budget of the European Communities as amended by Regulation n° 610/90. This provision was incorporated in a successive amendment of the Financial Regulation (Regulation n° 2333/95 of 18.9.1995), providing that the *"mobilization of Community resources must be preceded by an evaluation to ensure that the resultant benefits are in proportion to the resources applied. All operations must be subject to regular review, in particular within the budgetary procedure, so that their justification may be verified".*

[5] See Article 188 C (now Article 248 TEC) of the Treaty of 22.7.1975 amending certain financial provisions of the Treaty establishing the European Community.

responsibility of the Commission in the implementation of the budget. It was in 1997, in the Amsterdam Treaty, that the following sentence was added to the first subparagraph: *"Member States shall cooperate with the Commission to ensure that the appropriations are used in accordance with the principles of sound financial management"*. But once again, following a modification which had taken place in 1990, the Financial Regulation had already foreseen that *"Member States and the Commission shall cooperate to ensure the adequacy of systems for decentralized management of Community funds. Such cooperation shall include the prompt exchange of all necessary information"* [6].

This addition in Article 274 TEC could be regarded as a "translation" at the budgetary level of Article 10 TEC which, within the framework of the general principle of cooperation, asks the Member States to facilitate *"the achievement of the Community's tasks"* [7]. The same applies to Article 280 TEC whereby Member States are required to take the same measures to counter fraud affecting the financial interests of the Community as they take to counter fraud affecting their own financial interests.

Article 274 TEC has remained unchanged since 1997. On the other hand, in 2002 the Council carried out a complete re-modelling of the Financial Regulation. The new Financial Regulation continues to require that the Commission shall implement the budget *"on its own responsibility"* and that Member States *"shall cooperate with the Commission so that the appropriations are used in accordance with the principle of sound financial management"* [8]. This Regulation also provides for a number of specific obligations on the Member States when tasks that are part of the implementation of the Community budget are delegated to them. This involves in particular regular checks to ensure that the actions to be financed from the Community budget have been implemented correctly, the prevention of irregularities and fraud and the recovery of funds wrongly paid [9].

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[6] Article 2 of the Financial Regulation of 21.12.1977 as amended by the Regulation n° 610/90.

[7] In this context, the Court of Justice considered that under the terms of Article 10 TEC Member States are required to facilitate the carrying-out by the Commission of its mission, consisting in particular of ensuring that the provisions of the Treaty and the measures taken by the institutions pursuant thereto are applied (see, for example the judgments of 12.9.2000 (Commission v. the Netherlands, C-408/97, European Court reports 2000, p. I-6417, point 16) and of 7.3.2002 (Commission v. Italy, C-10/00, European Court reports 2002, p. I-2357, point 88).

[8] Article 48 of the Financial Regulation applicable to the general budget of the European Communities n° 1605/2002 of 25.6.2002. Article 27 of this same Regulation specifies in addition the conditions of use of the Community funds in accordance with the principles of economy, efficiency and effectiveness. Specific, measurable, achievable, relevant and timed objectives shall be set for all sectors of activity covered by the budget. For programmes and activities which entail significant spending, *ex ante* and *ex post* evaluations should be carried out and the evaluation results should be disseminated to the spending, legislative and budgetary authorities.

[9] Article 53(6) of the Financial Regulation n° 1605/2002. A draft amendment of this Regulation (document COM (2005) 181 of 3.5.2005) envisages strengthening these obligations by the following text: *"In order to ensure in shared management that the funds are used in accordance with the applicable rules and principles, the Member States shall take all the measures necessary to:*

(a) satisfy themselves that actions financed from the budget are actually carried out and to ensure that they are implemented correctly;

(b) prevent and deal with irregularities and fraud;

(c) recover funds wrongly paid or incorrectly used or funds lost as a result of irregularities or errors.

To that effect, the Member States shall conduct regular checks and shall put in place an effective internal control system. They shall bring judicial proceedings if necessary for the purposes of points (b) and (c)".

Differentiated methods of implementation

The increasing importance of the appropriations to be managed and the progressive extension of the fields of Community intervention led over time the Council of Ministers to envisage differentiated methods of implementation of the budget. The EC Treaty did not address directly the question of the methods of implementation of the budget. These methods of management (centralised management, shared or decentralised management, joint management) are defined in the secondary legislation, in particular in the Financial Regulation. Moreover, sectoral Regulations draw up special provisions regarding specific tasks to be carried out by the various participants in the management.

"Centralised management" means that the Commission implements the budget either directly or through the agency of third parties [10]. The "shared or decentralised management" concept implies that tasks of implementation of the budget are delegated by the Commission to Member States or to third countries. In the event of "joint management", certain implementation tasks are entrusted by the Commission to international organisations.

One of the characteristics of the Community budget is that almost all income and expenditure is managed by parties other than the Commission. The latter carries out, in a system of "centralised management", only its own income and administrative expenditure [11], some expenditure in the area of research and certain external actions. All the remaining appropriations (more than 80 %) are disbursed either under "shared management" with the Member States (Own resources [12], Agriculture and Economic and Social Cohesion) [13], or under "decentralised management" with third countries (pre-accession aids), or are disbursed jointly with international organisations (humanitarian aid).

It is important to stress that the choice of the method of management is a decision taken by the Member States which is binding on the Commission. Budgetary implementation under "shared management" is nothing other than the direct consequence of the principles of subsidiarity and proportionality. According to these principles, the Community intervenes only if (and insofar as) the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore be better achieved by the Community [14].

For example, the shared management of agricultural expenditure arises from the specific Regulation laid down by the Council pursuant to Article 37 TEC [15]. For the structural measures, shared management is a "practical" consequence of the Treaty (Article 158 TEC) which stipulates that Community actions contribute to the efforts by the Member States to strength

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10 This involves in particular agencies or bodies governed by Community law, national public-sector bodies or bodies governed by private law with a public-service mission.

11 In the same way each Institution or Community body manages its own income and expenditure.

12 The "shared management" concept is traditionally associated with expenditure. Own resources were included in this category by analogy, because national administrations are at the root of the fixing of the resources put at the disposal of the Communities to finance the budget.

13 Apart from the fields mentioned, the European Refugee Fund is implemented under shared management arrangements.

14 See Article 5 TEC.

15 Currently Council Regulation n° 1258/1999 of 17.5.1999 concerning the financing of the common agricultural policy.

the economic and social cohesion of the Community. Thus, a specific Regulation provides for management and control requirements by the Member States [16]. Concerning own resources, it is a Council Decision which fixes the principle that they are to be made available to the Communities by national administrations [17].

Despite fundamental differences [18] and the existence of provisions specific to each field, "shared management" is characterised by the fact that payments (or receipts) into the Community budget are made by the national authorities, though acting under Community provisions.

Thus, almost all Community agricultural expenditure is paid to the final recipients (farmers, intervention agencies for the storage of products, producers' associations) by a hundred national paying agencies especially authorised for this purpose by the Member States. These bodies ensure that the payments are made to the beneficiaries. Community expenditure in fact constitutes repayment of expenditure made (and pre-financed) by the Member States. This expenditure is then subject to checking by the Commission on the basis of an annual statement drawn up by the Member States.

Concerning the Structural Funds, the relevant Member State bodies (definitely more numerous than in the agricultural field) select the projects that are to be financed within areas defined by the Commission in agreement with the Member States and are responsible for the daily management of the projects. Unlike the case of agricultural expenditure, the Community provides only partial financing of the programmes. Implemented over a multi-annual period (7 years in most cases), these programmes must also be receiving national co-financing. Apart from an initial payment on account, the Community payments reimburse national expenditure actually incurred by the beneficiaries. This expenditure is then subject to checking by the Commission on the basis of statements drawn up by the Member States at the end of the period.

In the same way, the national administrations collect the own resources accruing from customs duties or other levies or calculate the assessment bases for the resources deriving from Value-added tax (VAT) or the Gross national income (GNI). These same administrations submit to the Commission the annual statements of revenue and are subject to Community controls.

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16 Currently Council Regulation n° 1260/1999 of 21.6.1999 on general provisions on the Structural Funds.

17 Currently Council Decision n° 2000/597/EC, Euratom of 29.9.2000 concerning the system of the own resources of the European Communities.

18 For example, agricultural expenditure (European Agricultural Guarantee and Guidance Fund - Guarantee Section) concerns a common policy where the Community meets the totality of expenditure. This is not the case of the Structural Funds, for which the Community co-finances national expenditure and consequently takes part in the Member States' effort. The situation is differentiated regarding own resources. For customs duties (and other levies) the competence of the Community is exclusive from the regulatory point of view. On the other hand, the establishment of VAT and GNI resources rests on national provisions within the framework of Community rules, the Community playing primarily a harmonising role.

Management "under scrutiny"

Apart from the important role played by national bodies in the implementation of the budget, another limitation is added to the Commission's freedom of action. This involves the phenomenon known as "commitology ", by which committees [19], composed of representatives of the Member States, experts or representatives of the interested parties, are required to state their position on measures proposed by the Commission. According to the field of action, an unfavourable opinion by the committee means conditioning the decision-making to differing degrees, and can go as far as determining a different Council Decision.

"Commitology" means associating, by a form of co-decision, the legislative (the Council especially, but also now the European Parliament) and executive powers (the Commission). It gives the Council the possibility of monitoring how the executive power delegated by it to the Commission is exercised. "Commitology" started to develop in the 1960s for the implementation of Council Regulations concerning the organisation of agricultural markets [20]. Since then, the development and the increasing diversification of these committees have vastly increased their number [21], so that now they are concerned with practically all the fields of Community intervention.

"Commitology" is not provided for in the founding Treaties and has been the subject of institutional disputes. As from the end of the 1970s, the risk of "commitology" interfering in the implementation of the budget caused the Commission and the European Parliament to express reservations. In particular, they criticised the negative effects on the institutional balance and the

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19 Three types of procedures are in particular envisaged (advisory procedure, management procedure, regulatory procedure). The advisory procedure is applied in any case where it is considered to be the most appropriate, generally when the matters treated do not have major political sensitivity. The Commission submits to the committee a draft of the measures to be taken and has to keep *"the utmost account"* of the opinion delivered. The management procedure is used for management measures, such as those relating to the application of the common agricultural policy and the common fisheries policy (or those relating to the implementation of programmes having considerable budgetary incidence). When the measures adopted by the Commission are not in accordance with the opinion of the committee, the Commission has to communicate them to the Council, which may take a different decision. The regulatory procedure applies in particular for general measures implementing essential provisions of basic instruments (in particular the protection of the health or safety of humans, animals and plants, and in measures amending non-essential provisions of the basic instruments). The Commission is required to forward to the European Parliament all drafts of implementation measures involving a basic instrument adopted following the co-decision procedure (Article 251 TEC). If the European Parliament considers that the Commission proposal exceeds the Commission's implementing powers as provided for in the basic instrument, it may inform the Council, which may take account of this in its deliberations. The Commission can only adopt implementation measures if it receives a positive reaction from the Member States represented within the committee. Failing this, the proposed measure is returned to the Council. Finally, the Commission adopts the implementation measures if the Council cannot take a decision. The majority of the committees have exclusive functions (31 committees deal exclusively with the advisory procedure, 64 with the management procedure and 95 committees with the regulatory procedure). Other committees (55) function according to several procedures. For information on the proceedings of the committees, see Commission (2005 c).

20 The first management committee for agricultural expenditure was created by the Regulation n° 25/62 of 4.4.1962.

21 There are almost 250 committees. More than half operate in the fields of Transport and Energy, Environment, Enterprises and Agriculture.

separation of powers, the opacity, the unjustified delays and the pointless costs. The Court of Justice had nevertheless considered [22] that the mechanism of a management committee was not likely to distort the Community structure and institutional balance and that this procedure was one of the methods to which the Council could legitimately subordinate authorisation to the Commission.

It was in February 1986, in the Single European Act, that "commitology" was finally institutionalised by the insertion of Article 202 TEC. This provision envisaged the possibility of the Council conferring on the Commission *"in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down"*. The Council can thus *"impose certain requirements in respect of the exercise of these powers"* and it may *"reserve the right, in specific cases, to exercise directly implementing powers itself"*. This provision, accompanied by the Council's framework Decision of 13 July 1987, gave practical application to Article 211 TEC which stipulates that the Commission is to *"exercise the powers conferred on it by the Council for the implementation of the rules laid down by the latter"*.

The Commission, however, considered that the intervention of a management committee was likely to encroach on its exclusive responsibility as regards budgetary implementation. Indeed, the Council could ultimately have taken a different decision, which nevertheless would have involved the use of budget appropriations. In addition, any decision which would have interfered with this exclusive responsibility of the Commission's would at the same time have deprived the European Parliament of its supervisory powers in respect of the implementation of the budget. It was on this basis that the Commission decided to take the Council to the European Court of Justice, although it did not win the case. The Court judged indeed that the adoption by the Council of acts that are individual in scope, with financial consequences, which it then authorises the Commission to implement, does not prejudice the Commission's power to implement the budget on its own responsibility [23]. In this way, the implementation of the budget was interpreted by the Court of Justice as being on an equal footing with any other implementation power conferred by the Council on the Commission. In so doing, the Court identified the pre-eminence of the general rules enacted by Articles 202 and 211 TEC and did not find that Article 274 TEC constituted an example of a *lex specialis* .

The current methods used for the exercise of the executive powers conferred on the Commission are provided for by a Council Decision of 1999 [24]. The Commission's decisions within the framework of the implementation of the rules laid down by the Council are submitted for consultation or for the approval of these committees according to their importance [25]. It is interesting to note that in practice the referral of a matter to the Council following a disagreement within a committee constitutes an exceptional event, which shows the high level of consensus obtained beforehand in respect of the Commission proposals [26].

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[22] Judgment of 17.12.1970 (Case-law 25-70, European Court reports 1970, p. 1161, point 1-9).

[23] Case-law 16/88, the Commission/Council, Judgment of the Court of Justice of 24.10.1989, European Court reports 1989, p. 3457, points 16-17.

[24] Council Decision 1999/468/EC of 28.6.1999.

[25] See footnote 19.

[26] In 2004 the Council was asked to give a ruling on 17 occasions (including 12 in the field of the environment). This accounts for 0.5% approximately of all the implementation measures adopted by the Commission under the regulatory and management procedures. In addition the European Parliament intervened once in 2004 to ask for a modification of a draft Regulation.

The Treaty establishing a Constitution for Europe [27] did not envisage major amendments as regards "commitology". The Commission would have sole responsibility for "delegated European Regulations" which supplement or amend certain non-essential elements of a law or framework law (article I-36). This, however, is in a context that defines explicitly the objectives, content, scope and duration of the delegation of power. This provision specifies in addition that the essential elements of a given area shall be reserved for a European law or framework law and accordingly shall not be the subject of a delegation of power. Concerning the implementing acts (article I-37), material implementation would normally be the prerogative of the Member States, except where uniform implementing conditions are needed. In that case implementing powers could be conferred on the Commission, accompanied however with rules and general principles concerning mechanisms allowing for control by Member States.

The gap between responsibilities and reality

An absolute final responsibility

Although the bulk of the budget is implemented under "shared or decentralised management", the applicable provisions entrust to the Commission the final responsibility for the implementation of the budget. And this is true whatever the method of management. One could not state this principle more solemnly than by referring to the Financial Regulation:

"The implementation methods should guarantee that the procedures for protecting Community funds are complied with, whatever the entity responsible for all or part of this implementation and must confirm that final responsibility for budgetary implementation lies with the Commission in accordance with Article 274 of the Treaty". [28]

It is indeed for the Commission, which *"shall implement the budget"* under the terms of Article 274 TEC, to take decisions and individual acts implying use of the appropriations. In the event of "shared or decentralised management", the delegation has to be understood as covering specific implementation tasks, not the budgetary implementation as such [29]. The responsibility itself cannot be delegated [30]. The Commission is consequently required to make sure that all the conditions necessary for such a delegation are met (in practice, that the national

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27 European Council (2004), Official Journal C 310, 16.12.2004.

28 Financial Regulation n° 1605/2002, recital n° 16. The Commission's full responsibility is reiterated in recital n° 37. Several judgments of the European Court of Justice have confirmed this interpretation (see for example Case-law C-16/88, the Commission/Council, 1989 European Court reports I-3457, point 15; Case-law C-106/96, United Kingdom v. Commission, 1998 European Court reports, I-2729, point 15).

29 See Article 53(3) of the Financial Regulation n° 1605/2002.

30 The European Parliament stressed that *"even though the day-to-day management is shared, financial responsibility remains indivisible and ultimate responsibility for implementation lies with the Commission (…)"* (European Parliament (2004), point 8). On this point see also European Parliament (2005), point 19. Nevertheless the Parliament recently emphasised that *"the overriding principle advocated by Parliament is that the relevant political authorities within the Member States take full responsibility for the funds placed at their disposal"* (European Parliament (2006 a), point 9). One may observe that this same concept was mentioned in the 2004 Discharge Resolution, omitting however the reference to the "full" responsibility of the Member States for the funds placed at their disposal (European Parliament (2006 b), point H).

management and control systems work properly). Thus, the Financial Regulation stipulates that *"the implementing tasks delegated must be clearly defined and fully supervised as to the use made of them"* [31].

In this respect, it is the Community authorising officer [32] who is materially responsible for the implementation of the budget. As manager of the appropriations, he is responsible *"for implementing revenue and expenditure in accordance with the principles of sound financial management and for ensuring that the requirements of legality and regularity are complied with"* [33]. Moreover, the authorising officer is also required to put in place an organisational structure *"having due regard to the risks associated with the management environment and the nature of the actions financed"* [34]. Article 35 of the implementing rules of the Financial Regulation [35] also specifies that in the event of "shared management" the Commission *"shall first carry out document and on-the-spot checks into the existence, relevance and proper operation within the entities to which it entrusts implementation, in accordance with the rules of sound financial management"* of the procedures applied, of control systems, of accounting systems and procurement and grant award procedures.

In the event of "shared or decentralised management" the reality is however different, as the Commission does not normally give its "approval", much less *ex-ante*, to the national systems. It establishes common base standards as regards management and control in the Member States and provides guidelines in the form of handbooks and practical notes. The Commission's assurance on the proper functioning of the national systems is "declaratory", because it is mainly based on statements produced by the bodies entrusted by the Member States with the management and control of Community funds.

The existence of such an assurance is presumed in the absence of evidence to the contrary, as a corollary of the existence of specific responsibilities entrusted to the Member States. Reference is made in particular to certain provisions of the Financial Regulation [36] which, supplemented by sectoral rules, require the Member States to cooperate with the Commission *"so that the appropriations are used in accordance with the principle of sound financial management"*, to *"conduct regular checks to ensure that the actions to be financed from the Community budget have been implemented correctly"*, to *"prevent irregularities and fraud"* and to *"recover funds wrongly paid"*.

The existence of an obligation does not constitute a guarantee of its effective fulfilment. The Commission, however, can effectively carry out itself only limited controls - limited in number and in extent. Its services acknowledge, moreover, that they are unable to check systematically the reliability of information on the numerous national systems, in particular as regards the Structural Funds [37].

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31 Article 54(1) of the Financial Regulation n° 1605/2002.

32 Pursuant to the Financial Regulation n° 1605/2002 (Article 59(1)), it is the European Institution which exercises the authorising officer's functions. The Institution can also appoint deputy authorising officers. In the case of the Commission this normally means the Directors-General.

33 Article 60(1) of the Financial Regulation n° 1605/2002.

34 Article 60(4) of the Financial Regulation n° 1605/2002.

35 Commission Regulation n° 2342/2002 of 23.12.2002.

36 See in particular Articles 48(2) and 53(6) of the Financial Regulation n° 1605/2002.

37 European Commission (2004 b), page 8. In this context the European Parliament has just asked the Commission to *"present every six months a scoreboard showing Member States' progress as regards efficient implementation of supervisory and control systems"* in the framework of the structural actions (European Parliament (2006 b), point 135).

This shows that within the framework of "shared management" the Community authorising officer commits and validates the appropriations without normally having any genuine control of the way the management and control systems on the ground work [38]. This reduced control proportionately limits its room for manoeuvre. Consequently, for a large part of the budget, the competences and the obligations of the Community authorising officer, as defined by the Financial Regulation, are *de facto* largely inapplicable. The functions of authorising and validating income and expenditure are in the nature of "formalities" authorising a use of the appropriations which has already been decided on [39] and thus allowing the authorising officer to implement measures, the substance of which is predetermined. The implementation of the budget is thus no more than the utilisation of the appropriations; it does not include any genuine underlying decision, as is normally the case in national budgets. The decision-taking aspect is thus dissociated from the financial implementation.

It is interesting in this respect to remember the conclusion arrived at by the "Committee of Independent Experts" in 1999 with a view to contributing to improving the management by the Commission [40] : *"The ceiling of expenditure in each Member State is also a target (...). There is pressure on the national administrations to find and on the Commission to accept sufficient projects to attain the predetermined levels of expenditure in each Member State (...). The legislative and administrative development of the Structural Funds tends to the conclusion that the balance of decision-making power and effective control of direction and expenditure has passed decisively to the Member States"* [41].

The Economic and Social Committee also expressed itself rather severely, by observing that, to avoid cancellations of appropriations, national authorities *"are inclined to make hasty decisions on projects of dubious value, sometimes with the tacit cooperation of the European Commission"* [42].

One of the recommendations of the "Committee of Independent Experts" was summarised thus: *"Authorising officers must be responsible, consider themselves responsible, and held responsible"* [43]. The context goes rather against this recommendation. On the one hand, there is the difficulty of putting on the shoulders of the Community authorising officer alone the responsibility for any bad management which is ascribable "in the first place" to the Member

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38 A symptom of this limited control is illustrated by the persistent under-utilisation of appropriations which contrasts singularly with the recurring increases in the budget during the same period. As the European Court of Auditors indicated, *"it is contradictory to increase the budget each year when there is not the ability to absorb the resources on multi-annual programmes within the timescale foreseen"* (European Court of Auditors (2004), paragraph 2.49). Such a situation occurs in particular because the Commission does not have precise information on the state of implementation of the Community programmes that it should take into account in the preparation of the budget. The implementation of the budget for the financial year 2005 did, however, show an expenditure rate of 99%, a level which had not been reached since 1997.

39 The reference here is to the multi-annual framework of the "Financial Perspectives". This framework arises from an inter-institutional agreement (European Parliament, Council, Commission) which, since 1988, has fixed by sphere of activity (agriculture, structural measures, internal policies, external actions, administrative expenditure, reserves) the limits to the growth of expenditure inside the ceiling of the authorised appropriations. See European Commission (2002 a), Chapter 8.

40 Following allegations regarding fraud, mismanagement and nepotism at the European Commission, the European Parliament promoted (by a resolution of 14.1.1999 and of 23.3.1999) the setting up of a Committee of Independent Experts charged with examining the practices in force at the Commission. This committee produced two reports, dated respectively 15.3.1999 and 10.9.1999.

41 Committee of Independent Experts (1999), points 3.15.6 and 3.22.1.

42 Economic and Social Committee (2005), point 3.5.17.

43 Committee of Independent Experts (1999), Recommendation n° 10.

States and relating to their specific responsibilities. On the other hand, the reform of financial management carried out at the Commission since 2000 increased the responsibility of the deputy authorising officers (Directors-General), without implying at the same time that the true authorising officer, the Commission as a college, assumes as an Institution the direct responsibility (and not only "political") for the implementation of the budget. The European Parliament [44] and the Court of Auditors [45] were quick to identify this potential risk of further dilution of responsibilities, the Parliament having in addition observed that *"internal control in the Commission will never be stronger than the political will behind it"* [46].

Final responsibility reluctantly accepted

The combination of the absence of a genuine control of the management of the budget, together with the specific responsibilities entrusted to the Member States, led the Commission to interpret the concept of responsibility as basically limited to the implementation of the specific tasks that it considers its personal responsibility. Convinced that its responsibility as regards the implementation of the budget is broader than its executive powers, the Commission has developed a tendency to dissociate its own responsibilities from those that are specific to the Member States. Thus, the Commission's responsibilities would leave off where those of the Member States start.

For example, in response to comments by the Court of Auditors, the Commission stressed that *"Within the framework of shared management the responsibility for approval of supervisory companies lies within the Member States and the Commission has no intention to take it over"* [47], or that the *"The verification of the validity of proofs which are furnished by exporters(...) is the responsibility of Member States' paying agencies"* [48], or that *"Article 2 of Regulation (EC) No 2064/97 provided that Member States' systems should check the accuracy and eligibility of expenditure"* [49]. Such statements crop up year after year.

In the same spirit, the Commission has said that one of the main goals of its proposal for future legislation in the field of the Structural Funds *"is to clearly delimit on the basis of experience gained from the current body of law, the framework, the nature, and the division of responsibility between the different actors concerned by the execution of the Community budget. These include the Member States and the implementing bodies, on the one hand, and the Commission, on the other. In this respect, a clarification will contribute to improve efficiency, efficacy and the overall balance of the system"* [50]. One can observe that the proposal on the financing of the common agricultural policy for the 2007-2013 programming is more moderate on the matter, the objective of the Commission being *"to specify the terms of its responsibilities for implementing the budget and to clarify the Member States' cooperation obligations"* [51].

The legislative framework proposed for these two fields of expenditure for the future 2007-2013 programming period consequently envisages reinforcing the obligation for the national bodies to provide a statement of assurance certifying the legality and the regularity of

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44 European Parliament (2005), point 62; European Parliament (2006 b), points 74 to 80.

45 European Court of Auditors (2005 b), paragraph 1.57.

46 European Parliament (2006 b), point 78.

47 European Court of Auditors (2004), reply by the Commission to paragraph 4.87 a).

48 European Court of Auditors (2004), reply by the Commission to paragraph 4.87 b).

49 European Court of Auditors (2004), reply by the Commission to paragraph 5.27.

50 European Commission (2004 a), paragraph 5.3.

51 See recital n° 8 of the proposal for a Regulation (COM (2004) 489 final of 14.7.2004).

expenditure. This would constitute the essential base for the Commission to check the conformity of expenditure to the Community Regulations because, as it emphasises for the Structural Funds, Member States are *"responsible in the first instance for the management, monitoring and day-to-day financial control of the resources of the Funds"* [52]. It may be noted in this respect that nothing of the sort is planned for the Community Own Resources, while the national administrations (in particular the customs services) play a role as important and similar as in the fields of expenditure.

In the light of the important role played by the Member States in the budgetary implementation, the European Parliament has even suggested that each Minister for Finance draw up *"an annual ex-post Declaration of Assurance as regards the legality and regularity of the underlying transactions"* [53]. This however did not evoke a favourable echo in the Member States, the Council of Ministers invoking the need *"not to put into question the existing balance between the Commission and the Member States or to compromise responsibility and accountability at the operational level"* [54].

On the assumption that *"implementation of the common policies must be as decentralised as possible"* and inspired by the aim of *"considerably simplifying the management of the Structural Funds"*, the Commission took the opportunity of the work of the European Convention to request a revision of Article 274 TEC. The Commission called on the Convention *"to examine the feasibility of sharing responsibility for budget implementation when the Member States are responsible for most of the management of funds"* [55].

With the aim of making *"it possible to take better account of shared responsibility for the implementation of the budget through greater involvement of the Member States"* [56], this was reflected in article III-407 of the Treaty establishing a Constitution for Europe. The new provision on responsibility for the implementation of the budget reads as follows [57]: *"The Commission shall implement the budget in cooperation with the Member States, in accordance with the European law referred to in Article III-412, on its own responsibility and within the limits of the appropriations allocated, having regard to the principles of sound financial management. Member States shall cooperate with the Commission to ensure that the appropriations are used in accordance with those principles. The European law referred to in Article III-412 shall establish the control and audit obligations of the Member States in the implementation of the budget and the resulting responsibilities (...)".*

One may wonder whether this text would be likely to remove current ambiguities regarding the actual responsibility as regards implementation of the budget. Some have seen in it a risk of dilution of the Commission's final responsibility. Thus, in order to clearly define the competences, the Ministers for Foreign Affairs of Germany and France had proposed the removal, in the first subparagraph, of the words *"in cooperation with the Member States"* [58]. It should

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52 European Commission (2004 a), page 2.

53 European Parliament (2005), point 21.

54 Council of Ministers (2005), point 12.

55 European Commission (2002 b), pages 8-9.

56 Praesidium of the Convention – Draft sections of Part Three with comments – CONV 727/03, page 98.

57 Underlining by the writer to identify the principal modifications to the provisions currently in force.

58 See the proposals for an amendment in article III-309 (now article III-407 in the Treaty) of Messrs Fischer and de Villepin. Mr Fischer justified his proposal by stressing that the Commission's responsibility for the implementation of the budget should be reflected in the wording of Article 309 in the interest of a clear division of responsibilities. (In German: *" Die Kompetenz zur Haushaltsausführung liegt bei der Kommission. Im Interesse einer klaren Kompetenzabgrenzung sollte Art. 309 auch entsprechend formuliert werden*

be noted moreover that the institutional provisions of the constitutional Treaty stipulate that the Commission *"shall execute the budget and manage programmes"* (Article I-26): "cooperation with the Member States" as regards the implementation of the budget is no longer mentioned.

The Commission would probably have liked a form of words which clarifies further that, within the framework of shared management implemented in accordance with the principle of subsidiarity, responsibility for the implementation of the budget is shared with the Member States. This was why the Commission representatives to the European Convention had proposed[59], although unsuccessfully, that Member States take part, along with the Commission, in the procedure of auditing the accounts for the discharge. Thus, the annual report of the Court of Auditors would have been accompanied by the answers of the Member States. The European Parliament could also have asked to hear the Member States, which could even have been the subject of observations sent to them directly [60].

The financial corrections: a sufficient guarantee?

Due to the practical difficulties of controlling budgetary management on the ground, Community legislation has tended to associate closely the concept of responsibility and that of "financial correction", seeing in this a dissuasive instrument that makes it possible to guarantee the legality and the regularity of the expenditure. The underlying argument is that since precise responsibilities have been entrusted to the Member States by Community legislation (for example, the selection of the projects to be financed, the certification of eligible expenditure, the implementation of the controls, the recovery of sums paid out in error), Member States are required to assume full responsibility for this, in particular as regards the financial consequences.

The Financial Regulation [61] does indeed stipulate that in the area of shared or decentralised management, *"in order to ensure that the funds are used in accordance with the applicable rules, the Commission shall apply clearance-of-accounts procedures or financial correction mechanisms which enable it to assume final responsibility for the implementation of the budget"*.

". With the same aim a proposal for an amendment was tabled by Mr Hain, the British government representative.

59 See the proposal for an amendment to article III-311 of the draft Treaty submitted by Messrs Barnier, Vitorino, O' Sullivan and Ponzano.

60 Currently, pursuant to the Financial Regulation, n° 1605/2002 (Article 143(6)), Member States forward their comments to the Commission, which draws up a report for this purpose. In the report concerning the financial year 2002 (see Commission 2005 a, page 14) the Commission reiterates its wish to include the Member States in the contradictory procedure with the Court of Auditors in order for them to defend their point of view directly.

61 See in particular Article 53(5) of the Financial Regulation n° 1605/2002 and Article 42 of the Regulation n° 2342/2002 of the Commission of the 23.12.2002. This procedure implies essentially three stages:

- a statement, by the Member States, of expenditure made in the form of certified accounts;

- control by the Commission of the accounts and of the operations financed and the determination of the eligible expenditure to be financed by the budget;

- the calculation of a financial correction.

The specific Regulations, in particular concerning Agriculture and Structural measures, confirm this design, centred on the application of financial corrections in the event of "failure" ascribable to the "delegated" bodies [62].

The general objective of the Commission in cases of shared management is to *"continue to work to increase the responsibility of the bodies entrusted by the Member States with the management, payment and control of Community funds"*, while strengthening *"the Commission's powers to correct irregularities"* [63]. In its Communication on a roadmap to an integrated internal control framework the Commission pointed out that *"when a Member State fails to adequately address the risk of error, the Commission will protect the EC budget by rigorously applying the existing provisions for the suspension of payments and financial corrections"* [64]. The Commission has thus established a parallel between the increase in the responsibilities incumbent on the Member States and the strengthening of the powers which it itself has to correct irregularities. The financial correction mechanism would thus constitute an essential counterweight to the delegation of responsibility to the Member States and would thus provide reasonable assurance regarding the legality, regularity and sound financial management of the measures financed.

It should firstly be emphasised that the regulatory framework is quite different in the two major fields of expenditure. In the agricultural field, for at least the last 15 years, payments to the Member States have been subject to a procedure called "clearance of the accounts" which enables the Commission to apply financial corrections [65]. However, the application of financial corrections to the Structural Funds is a rather recent phenomenon.

Because they are likely to lead to legal disputes, financial corrections often generate long drawn-out procedures the outcome of which is uncertain [66]. In addition, the clearance of the accounts in the agricultural field extends over several years. As the European Court of Auditors pointed out in its report on the financial year 2004, at the end of 2004 the clearance of the accounts had not yet been completed for the financial years after 1998. Moreover, the corrections of the amounts declared by the Member States are tending to decrease. Whereas between 1991 and 1998 corrections accounted for 2% of the amounts declared, for the financial years 1999 to 2003 (although they are not yet definitively closed), this percentage was only 0.5%

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62 See, for example, Council Regulation n° 1258/1999 of 17.5.1999 (in particular Article 7) relating to the financing of the common agricultural policy or Commission Regulations n° 438/2001 and 448/2001 of 2.3.2001 in the field of the Structural Funds.

63 European Commission (2004 b), page 12.

64 European Commission (2005 b), page 7.

65 The clearance of accounts procedure includes both an "accounting clearance" and a "compliance clearance". The first covers the completeness, accuracy and veracity of the accounts submitted. The "accounting clearance" leads to an annual Commission Decision establishing the amounts to be borne by the budget. This decision is however without prejudice to the "compliance clearance", which concerns the legality and regularity of the underlying transactions and which can result (in particular after controls) in the imposition of flat-rate corrections. These corrections can range from 2% to 10 %, according to the gravity of the loopholes in the control system implemented by the national authorities and the consequences as regards the eligibility of the expenditure.

66 In its proposal on the financing of the common agricultural policy (see recital n° 27 of COM (2004) 489 final of 14.7.2004), the Commission recognises that *"the recovery procedures used by the Member States may have the effect of delaying recoveries for a number of years, with no guarantee that the outcome will actually be successful. The cost of implementing these procedures may also be out of proportion to the amounts which are or may be collected"*. According to the Commission, only 20% of the irregular payments recorded since 1971 in the agricultural field had been recovered in May 2004 (see European Court of Auditors (2004), response to paragraph 4.116).

[67]. Regarding the Structural Funds, despite the intentions expressed by the Commission [68], the amount of the financial corrections is not particularly high [69], so it is not possible to argue that the financial corrections have a key dissuasive effect. Concerning the own resources, financial corrections are applied only to the traditional own resources (agricultural levies, sugar levies and customs duties) [70]. On the basis of the information available it is estimated that the percentage of the corrections applied to the traditional own resources as a result of controls was about 0,4% for the period 2000-2002 [71].

The practical possibility of imposing financial corrections is also limited by the necessarily reduced number of controls. For example, compared with the several thousand interventions financed by the sole Structural Funds, the number of Community controls cannot but appear limited [72], in a field where the Commission recognises that *"the Member States have yet to demonstrate that the controls in place are effective in limiting the risk of error"* [73]. Only on-the-spot checks would allow the Commission to check the conformity of the measures financed, in order to disclose correctly the degree of materiality and the impact of weaknesses affecting Member States' management and control systems rather than individual transactions. Indeed, current controls are often specific, aimed at auditing known problems, and are generally carried out at the end of a programme i.e. at a stage where, despite any possible financial correction, it is no longer possible to intervene on fundamental system weaknesses and on the objectives to be achieved by the co-financed policies. As Mr Aigner, a former vice-President of the Budget Committee of the European Parliament, observed: *"The disadvantage of any form of retrospective control is that expenditure is queried after the event. (…) This disadvantage of ex-post control increases with the time lapse between the date on which expenditure is made and that on which it is queried"* [74].

In addition, financial corrections do not constitute genuine financial sanctions. They essentially represent the recovery of irregular expenditure, the impact of which is moreover often neutralised by the replacement of one project by another, as happens in the case of the

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67 European Court of Auditors (2005 b), paragraphs 4.22 and 4.24 and table 4.3.

68 As part of its administrative reform, in 2001 the Commission decided on a specific action to reinforce its audits of the information submitted by the Member States, as well as its audits of the effectiveness of their procedures. Financial corrections enforced through compensation mechanisms would have been applied if a Member State had failed to introduce sufficient controls or provide adequate information.

69 In the absence of specific data, one can estimate that financial corrections account for a minimal percentage (of some 0.0X %) of the annual payments in favour of Structural measures.

70 According to the financial year, this type of resource represents between 10% and 15% of the total budget revenue.

71 See in this respect the Commission (2003 b), page 15. This percentage represents all the same an appreciable increase in relation to the period 1997-1999, when this rate was only of 0.007 %.

72 In its annual report for the financial year 2003 the Court of Auditors had observed that the Commission had carried out a limited number of controls of the national systems. The Commission replied: *"The Commission considers that the supervision and control it exercises over the Member States are an adequate response to the risk of irregularity in the underlying transactions. In a given year the Commission can cover by its own audit work a limited number of Member States' systems, particularly having regard to other risks, such as the closure of the previous programme period, to which the Court refers. The Commission has a multiannual audit strategy for its own audit work aimed at achieving a reasonable assurance on the functioning of the systems during the programme period"* (European Court of Auditors (2004), paragraph 5.8).

73 European Commission (2005 b), page 8.

74 European Parliament (1973), point 12.

Structural Funds [75]. In addition the cost is generally borne by the Member States, and not by the final recipients.

Finally, by their very nature, financial corrections can be applied only in the event of established violation of precise rules. They are therefore much more suitable for sanctioning violations of legality and regularity rather than weaknesses in terms of sound financial management. Observance of the latter principle is however a key element of the conditions on which the implementation of the budget should be based.

It must therefore be concluded that the possibility of imposing financial corrections does not, by itself, ensure the legality of the operations financed by the budget. In particular, these measures cannot replace the necessary control of current management. For all these reasons the Commission's confidence in the capacity of this instrument to ensure observance of the applicable provisions, thus making good any loss to the Community's budget, does not meet with unanimous agreement. The European Parliament wondered for example *"if the current system of financial correction is sufficient to encourage Member States to combat fraud and irregularities"»* [76]. The Court of Auditors observed that the financial corrections could provide no more *"than a limited, auxiliary contribution to the necessary rigour of everyday management. Their effectiveness is essentially dependent on the number of checks performed. Furthermore, since financial corrections would intervene only after the fact, they could not be enough on their own to make good all the consequences of any transactions that might be implemented even though they did not meet the necessary regulatory requirements"* [77].

The consequences of an ambiguous situation

From "delegation" to "devolution"

The raison d'être of a major part of the Community budget, and of the Commission's management powers in respect of it, is based on Article 5 TEC, on the ground that *"the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community"*. These same Member States are however required, under the terms of the principles of subsidiarity and proportionality enacted by this provision of the Treaty, to ensure in practice the implementation of the Community objectives through their management of the measures financed.

Giving exclusive responsibility to the Member States for the implementation of the Community measures carried out in their territory would mean changing the nature of the "delegation" of tasks, which would then rather appear as a form of "devolution". This would involve in fact a kind of "restoration" process, the Member States taking back the competences that they had formerly delegated to the Community. The main justification for the Community budget would then be represented, within a logic of "financial equalisation", by a transfer of appropriations resulting from the solidarity between Member States.

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[75] This practice consists of replacing projects that are ineligible for Community funding (and which are therefore financed from national funds only) with others (eligible ones), thus cancelling the financial impact of the ineligibility uncovered.

[76] European Parliament (2002), point 78.

[77] European Court of Auditors (2005 a), paragraph 14.

A double external control

Once the responsibilities that relate to the authorisation of the appropriations have been split up, authorisation being transformed into a "procedural" operation, management is no longer "shared" but is rather "separated". This also means that there is no longer a single internal control [78]. For the Member States, the Commission functions as an "external" controller rather than as a genuine partner in the management of the actions. It only has a role in the management of the Community funds when financial corrections are imposed.

The implementation of the Community budget is thus subject to a twofold external control. To the institutional control by the Court of Auditors is added the control carried out by the Commission. In fact control is exercised on two levels: the first (by the Court of Auditors) is rather "declaratory" in nature since the European Court of Auditors is not a court of law and its observations do not have any direct financial consequences, whereas that is on the contrary possible at the second level (that of the Commission), due to the financial corrections which, despite the limits of this instrument, the Commission could impose.

Self-controlling by the Member States?

It is undeniable that the implementation of the Community budget brings substantial and, at the same time, direct interests into play for the Member States. The Member States finance the budget through national contributions, they play a key role, through the "Financial Perspectives", in the definition of the policies financed, and they contribute in a decisive way to the adoption of the Regulations laying down the methods of management of these policies. Finally, Member States are also recipients (directly or through their nationals) of the bulk of Community payments, the daily management of which is moreover in the hands of their national administrations.

Such a situation raises an objective risk of a conflict of interests. This concept is by the way mentioned in several provisions of the Financial Regulation [79]. Thus Article 52(1) prescribes that *"All financial actors shall be prohibited from taking any measures of budgetary implementation which may bring their own interests into conflict with those of the Communities"*. Article 54 stipulates that *"The Commission may not entrust to third parties the executive powers it enjoys under the Treaties where they involve a large measure of discretion implying political choices"* and that implementing tasks may not give rise to *"conflicts of interests "*.

The independence of financial agents constitutes in fact a general principle of sound management. But if the full responsibility by the Commission were to disappear, the measures that are the subject of "shared management" would inevitably be subject to nothing more than self-audit by the Member States themselves. This would put the Member States in a situation that would have all the characteristics of a "potestative" state [80].

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78 It should be noted that the "Economic and Financial Affairs" Council underlined *"the need for a strict distinction between internal control and external audit. External bodies are not part of the internal control framework"* (Council of Ministers (2005), point 13).

79 In addition to recital n° 25, the concept is dealt with in Articles 52, 54, 56, 94, 164. Article 52(2) specifies that *"There is a conflict of interests where the impartial and objective exercise of the functions of a player in the implementation of the budget or an internal auditor is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with the beneficiary"*.

80 In its conclusions concerning Case 16/88 (the Commission/Council, judgment of the Court of Justice of 24.10.1989, European Court reports 1989, p. 3480), Advocate General Darmon envisaged the

Which future for the discharge?

Reflecting, as it does, one of the fundamental principles of public finance, the discharge procedure constitutes one of the principal responsibilities of the European Parliament. It is in fact the latter which, acting on a recommendation from the Council, *"shall give a discharge to the Commission in respect of the implementation of the budget"* (Article 276(1) TEC). Before taking this decision, the European Parliament *"may ask to hear the Commission give evidence with regard to the execution of expenditure or the operation of financial control systems. The Commission shall submit any necessary information to the European Parliament at the latter's request"* (Article 276(2) TEC). As a result of the discharge Decision, the *"Commission shall take all appropriate steps to act on the observations"* (Article 276(3) TEC) formulated by the European Parliament and the Council in this context.

It is by means of the discharge procedure that *"the right to ask a public official for an accounting of his administration"* is materialised [81]. Indeed, the discharge procedure constitutes not only the formal act of closing of the accounts, but also represents an opportunity for a political judgement on the way the Commission has discharged its responsibilities [82].

However, in the field of "shared or decentralised" management the exercise of presentation of the accounts concerning the funds spent via the Community budget has traditionally proved to be extremely difficult. The separation of responsibilities as regards implementation objectively deprives the European Parliament of a real interlocutor. In this respect, the European Court of Auditors has expressed concern that *"if the Commission no longer had final responsibility for implementing the budget, the Community's financial process, and in particular the discharge procedure, would lose a good deal of its significance. The budgetary authorities' recommendations (Article 276 (3) of the EC Treaty) would be deprived of all practical effect"* [83].

On the one hand, the Commission does not hesitate to point out the responsibilities specifically allocated to the Member States whenever the management on the ground is challenged. On the other the European Parliament does not have the authority to question national administrations regarding their management of Community funds. In such a situation, the share of the budgetary implementation that has been "devolved" to the Member States - more than 80% it must be pointed out - is likely ultimately to escape any genuine exercise of presentation of the accounts.

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possibility of a "potestative" situation where the Council *"would ultimately have the power to empty of their substance the powers"* of the Commission.

81 Article 15 of the Declaration of the rights of man and the citizen of 26.8.1789. According to the Glossary of terms of the European Court of Auditors *"Accountability means the obligations of persons or entities, including public enterprises and corporations, entrusted with public resources to be answerable for the fiscal, managerial and programme responsibilities that have been conferred on them, and to report to those that have conferred these responsibilities on them".*

82 For example, Article 201 TEC envisages the resignation of the Commission as a result of the passing of a motion of censure by the European Parliament.

83 European Court of Auditors (2005 a), paragraph 6.

Conclusion

The Commission has rightly said that *"Taxpayers should have reasonable assurance that the funds of the European Union are managed in a legal and regular manner"* [84]. This is all the more necessary as the absence of a direct link between the European taxpayers and the Community budget encourages the false idea that these funds "grow on trees" and that they therefore constitute a kind of "manna" to be taken advantage of. In reality the Community budget, which represents an annual expenditure of about 120 billion euros, is financed by the national budgets. Consequently, its implementation must give the taxpayer (and the potential recipients of its policies) the same guarantees that exist in respect of national budgets.

This would require the Commission to take on full responsibility for the implementation of the budget, even if more than 80% of the appropriations are spent under "shared management" with the Member States. This full responsibility would require real control of the process of implementation, i.e. a direct, systematic and continuous monitoring of the various national systems of management and control whilst bearing in mind, as Mr Barnier, a former Commissioner responsible for regional policy, has said that there is no geography of good and bad administration [85].

Reality is quite different. But it is nothing more than a consequence of the incompleteness of the Community integration process, which in turn is also at the origin of other characteristics of Community public finance [86]. "Shared management", a consequence of the subsidiarity and proportionality principles, is the counterpart of the absence of a genuine Community "administration".

To what extent is it possible "to impose", in manuals and notes on best practice, however detailed, on thousands of national bodies which are not directly and functionally subordinated to the Commission the obligation of pursuing the Community interests? And to what extent can one "supervise" the activity of these organisms, from "Brussels", through a quantity of reports and statements? Can one simultaneously recommend the "simplification" of management, limiting thus the intervention and controls of the Commission, and ensure at the same time complete control of the budgetary implementation? One can even wonder whether the defining characteristic of budgetary implementation under "shared management" is not in fact the absence of full control by the Commission. Because if the Commission did have full control, it would end up in conflict with the prerogatives of the Member States, thus upsetting the institutional balance laid down by the Treaty.

The *"millefeuille"* of procedures, intervention levels and management and control bodies which characterises this type of budgetary implementation inevitably brings with it the dilution of the responsibilities of the various protagonists. In the absence of a "taker" for genuine final responsibility, the budgetary implementation is subject *de facto* to a "limited" form of responsibility, especially as the Member States refuse to accept full responsibility for the management tasks that are directly incumbent upon them. In any event, although the Court of Auditors has never been able to deliver an unqualified statement of assurance [87] concerning

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[84] European Commission (2005 b), page 2.

[85] In French : *"il n'y a pas une géographie de la bonne et de la mauvaise administration"* (Barnier, M. – *Speech to the conference on sharing responsibility for the decentralised management of the Structural Funds* – Brussels, 5.6.2000).

[86] For example, the financing of the budget by national contributions, the concentration of expenditure on two principal policies or the rigidity of the multi-annual framework of expenditure.

[87] Article 248 TEC stipulates that the Court of Auditors *"shall 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*

"shared management", the European Parliament has not, for all that, refused to give discharge to the Commission, or demanded its resignation by a censure vote. The context in which the budget is implemented encourages everyone *"to place the law at the service of what is possible rather than let it express the impossible"* [88].

The nature, the dimension and the policies financed by the Community budget have been the subject of numerous considerations over the recent years [89]. The recent discussions at the time of the adoption of the "Financial Perspectives" for the period 2007-2013 indeed showed that the issue was not simply the volume of funds to be authorised and the sharing of the burden between the Member States, but also the nature of the actions to be financed and the intervention sectors. In its conclusions of 15/16 December 2005, after agreement had been reached on the 2007-2013 "Financial Perspectives", the European Council said *"that the EU should carry out a comprehensive reassessment of the financial framework, covering both revenue and expenditure, to sustain modernisation and to enhance it, on an ongoing basis"*. It therefore called on the Commission *"to undertake a full, wide ranging review covering all aspects of EU spending, including the CAP, and of resources, including the UK rebate, to report in 2008/9"* [90].

This *"full, wide ranging review"* of the financial framework to be carried out by the Commission constitutes an opportunity also to examine which methods would make it possible for the financial actors to become fully accountable to the taxpayers. One can imagine that it will not be an easy task to obtain the necessary unanimous approval of the Member States on basic modifications of the financial framework and of the Community intervention sectors. But whatever the proposed future context, it will not be possible to escape two fundamental facts. The Community budget is financed by taxpayers. The latter have the right, in return, to genuine accountability.

In this respect, and even as of now, the current financial framework would gain in transparency if responsibility for the implementation of the budget were to be made subject to the same precept as was enshrined in the Treaty to ensure budgetary discipline (Article 270 TEC). Just as the Commission cannot make any proposal for a Community act *"without providing the assurance that that proposal or that measure is capable of being financed within the limit of the Community's own resources"*, so it should also first show if, up to what point and how, the management and control of different policies can be subject to complete acceptance of responsibility in respect of the implementation by a body that has been so charged [91]. In other words, the assurance in

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transactions". This obligation was introduced in 1992 by the Maastricht Treaty. The main objectives are to inform the discharge authority whether:

-the consolidated financial statements of the general budget of the European Union, as drawn up by the European Commission, present a true and fair view of the financial activities for the year and of the year-end situation;

and

-legal and contractual provisions have been respected when executing the budget.

88 To borrow an expression used by Advocate General Darmon in his conclusions concerning Case No 16/88, the Commission/Council, judgment of the Court of Justice of 24.10.1989, European Court reports 1989, p. 3472.

89 Among the most recent contributions, see for example, Alesina and others (2002), Sapir and others (2003), Blankart and Kirchner (2003), Buti and Nava (2003).

90 European Council (2005), points 79-80.

91 At the beginning of his mandate, after the dismissal of the Santer Commission, President Prodi had recommended enabling *"the Commission to deliver on our core business commitments in the years to come"*, in order to avoid *"the mismatch between resources and tasks"* and allow it to concentrate *"on its real job and does it efficiently*

terms of responsibility should exist at the time of deciding on the implementation of the actions. This assurance should be, in the full sense, one of the criteria enacted in Article 5 TEC so that one could conclude that the objectives of the action envisaged can *"by reason of the scale or effects (…) be better achieved by the Community"*.

Because, as P. Seguin, first President of the French Court of Auditors has said, public opinion will no longer accept bad management and irregularities in the use of public money remaining, usually, exempt from personalised sanctions [92].

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and well". He said: *"unless we are given the resources needed, we shall therefore refuse to take on any further non-core tasks"* (See the speech to the European Parliament, *2000-2005: Shaping the new Europe* – Strasbourg, 15.2.2000, pages 7 and 8).

92 In French: *"L'opinion publique ne supporte plus que la mauvaise gestion et les irrégularités dans l'utilisation de l'argent public demeurent, le plus souvent, sans sanctions personnalisées"* (P. Seguin, *Colloque "Finances publiques et responsabilité – l'autre réforme"*, April 2005).

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