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Research Article

Sixty-Five Years of Auditing Europe

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Abstract

This article surveys the evolution of multi-level audit governance in the European Union. It traces sixty-five years of financial control, from the work of a single auditor at the European Coal and Steel Community (1952) to the creation of the Audit Board of the European Communities (1959-1977), and from the establishment of an independent European Court of Auditors (1977) to audit the newly established EU budget, to the setting up of a European Anti-Fraud Office (1999). The article addresses the challenges of securing effective cooperation between audit bodies at the national and supranational level. It also analyses how the Community's external auditor started to 'hold to account' EU policies and traces the tensions and inter-institutional conflict that arose between the Court and the Commission and Council. Using an analytical approach set out by Tömmel (2016) that recognises different 'modes of governance', it identifies the main *phases* and *turning points* that have shaped audit governance. It shows how the audit task has changed since the Maastricht Treaty, and considers the way the Court works to identify error and fraud in budgetary spending, acknowledging the challenges of shared implementation for policies financed by the budget. The latter part of the article addresses current institutional reform and innovation. It examines the dilemma for audit governance brought by the Eurozone financial crisis and the emergence of new tools and mechanisms paid for by taxpayer money beyond the EU budget.

Keywords

Accountability; EU budget; European Court of Auditors; Evaluation; Fraud; Implementation

Financial accountability is a subset of administrative accountability, itself at the heart of political accountability. Financial accountability depends on external control and effective scrutiny through audit. The approach to audit practice in the European Union has been influenced by the European integration process, by inter-institutional politics and by the norms and values that have emerged over time at the supranational level inside today's European Court of Auditors (henceforth 'the Court') (1977) as well as 28 national audit offices. How have structures emerged to 'give account' of public policies financed by the EU budget? How have institutions shaped audit practice to underpin the mechanisms, rules and procedures used in the governance of financial control today?

Auditing is carried out in an increasingly complex and fraught system of 'shared governance': *internally* in the member states at the programme/project level of intervention (i.e. by the final beneficiaries), and in the Commission and national ministries at the level of policy programming; *externally* by private auditors at programme/project level and by the national audit offices and European Court of Auditors at the policy level. The Court of Auditors promotes accountability and transparency by assisting the European Parliament (henceforth 'the Parliament') so it can 'give discharge' on budgetary expenditure, but depends on cooperation with national audit offices (supreme audit institutions). It has struggled to promote the concept of 'single audit' to reduce duplication and overlap.

In the current economic climate, sound public policy audit and the rigorous financial control of EU funds are more crucial than ever. There is considerable political pressure upon the EU institutions, member states and national parliaments, to be more accountable to the European taxpayer

regarding how their money is spent. The EU currently seeks to promote the value-added of EU policies, i.e. to demonstrate 'additionality' and value for money to citizens. Indeed, the 'EU Budget Focused on Results' conference of 22 September 2015 brought together 500 participants, including the Commission President Jean-Claude Juncker and leading Commissioners, to discuss how to improve the efficiency of spending and to achieve more with the limited resources available (European Commission 2015a).

Current developments in the control framework at EU and national levels affect the 'chain-of-accountability' that enables the Commission to take overall responsibility for the implementation of the budget. The euro crisis, budgetary pressures, negotiations for the multi-annual financial framework 2014-2020 and new tools of economic governance have brought major challenges to public accountability. The legal mandate of the European Court of Auditors has traditionally been limited to the EU budget. Recent developments have called into question who should audit the Commission's new European Fund for Strategic Investment (EFSI) that puts forward 21 billion Euros of EU funding alongside 5 billion Euros of money from the European Investment Bank (EIB) (European Commission 2015b; European Parliament and Council 2015).

The first aim of this article is to provide a broad overview of the development of audit governance over the last 65 years, and to trace the institutionalisation of financial control. The second aim is to understand why there is pressure to reform the Court and what the challenges ahead are in terms of improving audit. The analysis is informed by the work of Tömmel (this issue), after Kooiman (2003) and Tömmel and Verdun (2009), which identified four 'phases' in the evolution of European governance, and a series of accompanying 'turning points': the end of the 1960s, when the Commission sought to expand the realm of its policies but met with resistance; the mid-1980s, when the Commission and member states faced up to the need for political action in the face of globalisation; the mid-1990s, when national governments refused the major transfer of competences to the European level; and 2008 with the global financial and Eurozone crises. To what extent do these phases align with the phases of audit governance?

This sorting mechanism of phases and turning points offers an alternative to the notion of *critical junctures* found within the literature on historical institutionalism (Hall and Taylor 1996; Pierson 1996; Pollack 1996). As such, rather than identify incidences of *path dependence* and *unintended consequences* in audit governance over time (Stephenson 2013), the article considers the three orders of governance at play: 'first order' governance concerns the actual process of actors solving problems; 'second order governance' relates to the creation and maintenance of institutions and the structural aspects of governing; 'third order' governance (or 'meta-governance') pertains to the norms shaping the governance process, what would elsewhere be a concern of sociological institutionalism (Bulmer 1993; Kooiman 2003; Tömmel 2016; Tömmel and Verdun 2009; Zafirovski 2004).

The article argues a number of points. First, the Court is traditionally not engaged in first order governance tasks; it does not make policy or seek to solve problems. However, the shift towards performance audit sees it making recommendations and offering solutions that can (in theory) help other multi-level actors in the execution of first order tasks. The Court cannot itself act upon its special reports – problem-solving depends on the action of other supranational, national and subnational actors taking up its audits, be it through legislative scrutiny (Parliament and Council, national parliaments) or as part of *ex post* evaluation and policy reformulation (Commission, national ministries). Second, for four decades the Court has been 'interpreting' its mandate, long experimenting with its institutional design (second order tasks), in reaction to the changing demands of audit from policy expansion. This has, in turn, led to high error rates in financial control processes at lower levels, i.e. second order tasks performed elsewhere. The main challenge has been to check the institutional systems and processes for administering the monies used in policy implementation.

The Court continually asserts its legitimacy through the cultivation and promotion of audit norms and standards (third level governance). It derives its legitimacy from the way it engages with, and plays an active role in, international technical bodies of audit and accounting that cultivate and promote professional audit standards, including INTOSAI, the International Organisation of Supreme Audit Institutions. At the more micro level of the institution, its organisational leadership and management asserts that the Court's professional norms underpin its work; the Court *contributes* to delivering accountability.

The next section does two things: it introduces the audit function in the EU and provides a brief literature review of the scholarship to date on audit governance. The subsequent section, using Tömmel's *phases* and *turning points* as a sorting mechanism, provides a broad longitudinal analysis of over six decades of institutionalisation to chart how the institutional architecture of financial control and the approach to audit have evolved. The conclusion examines how successive phases of audit governance correspond to the recognised phases of EU governance more generally.

BACKGROUND TO AUDIT

Role and Function of Audit in the EU

Audit in the EU is meant to be a shared governance arrangement with the member states, but there is ambiguity over roles (Castells 2005). As Sánchez Barrueco (2011) asserts, in a true system of shared management, the Internal Audit Service of the Commission would conduct the internal control on national authorities, just as a government department would do for the domestic budget. The challenge is that the member states' national authorities still perceive the Commission as an external control actor, even if vertical relations have improved since the Commission's proposal for an integrated control framework (European Commission 2006). Caldeira (2005), the current president of the Court of Auditors, has examined the notion and desirability of a 'single audit' meant to avoid 'overlapping and uncoordinated controls' at various levels (2005: 185), concluding that it could offer 'reasonable, but not absolute, assurance on the legality and regularity of transactions' (2005: 207).

Articles 285-287 (TFEU) define the role and prerogatives of the Court. Its audit is to be carried out with the aim of improving financial management, as well as making European citizens aware of how public funds are used, based on records and, if necessary, on the spot. The Court may request any information required to complete its task successfully from the EU institutions, national audit institutions and all persons, bodies and organisations in receipt of payments from the European budget. In practice, the Court checks the level of risk within the financial management systems of public authorities at regional and local level. It engages in spot-checks and carries out financial and compliance audits by sampling transactions throughout the project cycle, from a payment claim for incurred expenditure to its eventual reimbursement. In addition, the Court is increasingly engaged in performance audit, assessing the effectiveness, efficiency and economy (the three 'E's) of EU policies, and publishing its findings and recommendations in special reports.

The Court has set out general principles for internal control systems to operate in accordance with a 'single audit' model, based on the idea that each level of control, in a multi-level governance EU, builds on the preceding one (Court of Auditors 2004). The aim was to prevent duplication and reduce overall costs, while decreasing the administrative burden on auditees. The Commission increasingly relies on information provided by national audit bodies. However, the Court recognises the challenges of relying on the results of audits carried out at lower levels. Only four member states – Denmark, the Netherlands, Sweden and the United Kingdom, all net providers of the EU budget -

have agreed to provide national declarations of assurance, and yet the Court is meant to provide a single declaration that covers the whole of EU budgetary expenditure.

One might question whether one should expect the Parliament to 'sign off' the accounts of the Commission if 28 national parliaments and national audit offices (supreme audit institutions) are unwilling to do so to account for the validity of audits conducted in the member states on domestic transactions? In short, as García Crespo has stated, while EU integration has involved social, economic and fiscal policy, with a strong budgetary instrument, this trend has not been matched by 'the development of an adequate financial management and control system able to provide the assurance that European public funds are soundly expended' (2005: xi).

Existing Scholarship to Date

Power (1997) introduced the notion of 'audit society', arguing that the rise in audit had its roots in political demands for accountability and control. White and Hollingsworth (1999) made an explicit link between audit, accountability and government. They suggested that audit, as an accountability mechanism, had been underplayed to date and that greater significance should be attributed to its role in delivering both democratic accountability and, within government, managerial accountability.¹ Harlow made the point that 'no one ever sat down to make a blueprint of a new system of audit for the EU, suited to its particular needs. It has simply been left to evolve' (2002: 116). Bemelmans-Videc, Lonsdale and Perrin (2007) addressed the dilemmas of public sector accounting and audit with a view to 'making accountability work' in practice.

The institutionalisation of early financial control and the emergence of the Audit Board of the European Communities from 1951 have been analysed through extensive archival material (Stephenson 2016). Scholars have provided limited insights into the early days of the European Court of Auditors (House of Lords 1987; Isaac 1977; Price 1982; Sacchetti 1977; Wilmott 1984; Wooldridge and Sassella 1976). De Crouy-Chanel and Perron (1988) provided a valuable introduction in French to the Court's historical development after its first ten years. From a legal perspective, Kok (1989) saw the Court as an enigma – after a decade up and running, it was merely 'the other European Court in Luxembourg'. Herein lies the confusion since its creation, for the Court is not a court; it is an advisory body with no legal powers. Desmond (1996) provided valuable insights into the management of European finances, but it is Laffan (1999; 2003a; 2003b; Karakatsanis and Laffan 2012) who has made the most significant contribution to our understanding of the Court by addressing inter-institutional relations over time, and conceiving of principals and agent in audit practice. She explored the dynamics of EU financial accountability, considering it as a subset of administrative accountability that contributes to parliamentary accountability – audit findings inform scrutiny processes – and explored the emergence of the Court as the EU's 'financial conscience'. With Inghelram (2000) again focusing on legal issues, we can see that few scholars researched the Court in its early years, though the Court published an overview of the first twenty years of audit activity (Court of Auditors 1998a).

Jumping ahead a decade, and taking into account the creation of new institutions, there has been a modest revival of interest in the institutional dimension of audit governance. Kourtikakis (2010) examined the European Ombudsman vis-à-vis the Court while Stefanou, White and Xanthaki (2011) analysed the establishment of the European Anti-Fraud Office (OLAF). Cipriani (2010), an official at the Court, wrote an extensive think-tank piece on the relationship between accountability and political responsibility when it comes to the EU budget. Sánchez Barrueco (2011) analysed the link between EU legitimacy and audit governance post-Lisbon, and more recently the implication of crisis on financial accountability in the EU (Sánchez Barrueco 2015). Meuwese (2011) looked at the Court's new involvement in impact assessments. Stephenson (2014) examined the procedure for appointing

members of the Court and the role of collegiality, as well as the shift to performance audit (Stephenson 2015). De Bondt (2014) questioned the focus on accountability in performance audit, positing that the Court's special reports would be more effective if they focused more on securing learning on the part of final beneficiaries who manage EU funds. Are the goals of accountability and learning mutually exclusive? Karakatsanis (2015), another Court official, considered the notion of accountability and its implications for audit today – how accountable can we expect to be in a policymaking environment of increasingly complex financial tools that are distant and abstract? Finally, Aden (2015) looked to the future and the possible creation of a European Public Prosecutor's Office.

KEY PHASES IN THE EVOLUTION OF EUROPEAN AUDIT GOVERNANCE

In sixty-five years of Community spending, supranational audit governance has evolved from a single auditor at the European Coal and Steel Community (ECSC) in 1952, to around 950 staff members at today's European Court of Auditors, of whom 450-500 carry out audits. The Court cooperates with supreme audit institutions (SAIs) in the member states. Today's architecture of audit governance includes the Commission (internal audit services), Parliament (Budgetary Control committee) and the Council (Budget committee), while extending to international organisations, non-binding coordination committees (Contact Committee) and private auditors (such as Ernst & Young).

First Phase (1952-1972): the Struggle for Perceived Legitimacy and Independence

At the outset, the auditing of accounts was carried out separately for each Community. The Council stipulated the number of posts and the length of mandate: two years for the European Coal and Steel Community's comptroller (Commissaire aux Comptes, ECSC) and five years for the Audit Board of the European Communities (1959-1977). Tasks were limited to producing the annual report on Community expenditure, including observations, but without any scope to pursue further action, or demand that corrective action be taken. The foundations of Community audit were built on the existing practice of the founding member states. The part-time Audit Board was responsible to the Council. At the outset it was composed of one representative from each of the six national audit offices, who travelled once a month to Brussels, staying for two or three days. This was a time of great uncertainty for the 'founding fathers of audit' with the ECSC comptroller effectively mentoring them by sitting in on monthly meetings, overseeing the new temporary body and advising on operational procedures.

The exercise of giving discharge for the first year of accounts (1958) was considerably delayed. In the preface to its first report, the Audit Board mentions institutional resistance on the part of the Commission, when it came to providing receipts and answering questions. The auditors would have difficulty, despite being in Brussels, securing cooperation from third parties on questions concerning how monies were spent. The Audit Board requested justifications for institutional expenditure (purchase of furniture and equipment, telephone calls, travel, salaries), soon upsetting the Commission. In its first two years, it requested clarifications from the Commission on staff salaries and pensions, office furniture, chauffeurs, telephone calls, and travel abroad – and it had not even begun committing funds to policy areas.

Likewise, Euratom (the European Atomic Energy Community) showed great recalcitrance when the Audit Board set out to visit Ispra (the location of the nuclear research facility), claiming that the nature of Euratom activities was sensitive and confidential. The problem was the Audit Board's lack of political independence. Its reports were not even published, they were simply sent to all three

Community institutions, notably so that the Parliament and Council, as part of their then joint procedure for giving discharge on the Commission's accounts, could discuss them; there was no follow-up on their work. Audit was merely a formal *a posteriori* audit of expenses by examining and certifying receipts (O'Keeffe 1994: 178).

The audit function expanded rapidly as the Commission began to commit funds through agricultural, fisheries, research & development, and development policies. Even at this stage, however, the auditors did not envisage the audit function would involve site visits, but saw this as the task of the member states' own supreme SAIs. In these early years of audit governance, the approach was haphazard, an amalgam of existing national approaches – each member state with differing national political cultures and legal-administrative traditions – which was slow (based on correspondence by letter) and using limited technologies. Governance was heavily intergovernmental and with limited vertical cooperation. Acquiring information depended crucially on cultivating good relations with senior officials and repeatedly asserting that the Audit Board had an official remit to request information on behalf of the Council.

The creation of a Contact Committee in 1960 provided a coordination structure that could stimulate horizontal communication and exchange of best practice in audit. This non-political assembly, membership of which is voluntary, brings in SAIs across Europe, with annual meetings and a series of issue-based task forces. It has proven to have limited effectiveness but nonetheless provides a forum in which the Court and member state bodies can engage in dialogue about audit norms (third order governance). The Committee played a role in setting up the Court of Auditors, inviting it to become a member of the Committee in 1978.

The Merger Treaty in 1967 was a key legal development, establishing a single Audit Board for all three communities (ECSC, Euratom and EC) composed of six, then nine, part-time members and with 24 auditors and support staff (O'Keeffe 1994). ECSC mentoring came to an end; its auditor was left simply to audit the ECSC's institutional expenditure (but not expenditure related to its activities in coal and steel). Yet, there was already talk within the Council and the Parliamentary Assembly of reinforcing external control and the recognised need for more permanent audit governance structures (European Parliament 1973).

Second Phase (1973-1991): Forging a Common Audit Culture, Facing up to Institutional Conflict

The creation of a directly elected European Parliament was a first real turning point and key moment of political spillover in the integration process. The Parliament could not accept budgetary responsibility for taxpayers' money without an independent external controller in place. The 1973 report by the President of the Committee on Budgetary Control, Heinrich Aigner, called for the creation of a European audit office (European Parliament 1973). The imminent introduction of a system of own resources gave the Parliament good grounds but the Council objected, arguably on the grounds of comparative power distribution – creating a Court of Auditors would introduce a further Community body, indirectly reinforcing the role of the Parliament.

In the face of a number of newspaper stories exposing incidences of fraud in the use of agricultural funds, there was increasing pressure on the Commission and Parliament to demonstrate what was achieved for the taxpayer through Community policies. How *accountable* was European governance? There was a renewed focus on (third order) normative notions of *transparency* and *responsibility* implicit in the drive for *value for money*. The emerging normative concept of accountability drove the (second order) institutional architecture of audit at the supranational level. The establishment of an independent Court of Auditors thus resulted from the transformation of the budgetary process of the Community with the Treaty reforms of 1970 and 1975 ('Brussels Treaty'),

whereby financial accountability was linked to the norm of *democratic* budgetary control. These basic principles were anchored in the two treaties, but were difficult to implement. As a result, the Parliament set up new structures and procedures internally – including the ‘discharge procedure’ and the establishment of the new Budgetary Control Committee (CONT).

The Court of Auditors was constituted on 18 October 1977 and did its best to interpret the concept of ‘sound financial management’ as broadly as possible. The then-head of the European Court of Justice (ECJ), President Kutscher, said at the time, that the Court’s ambition was to become ‘Europe’s financial conscience’, and arguably it continues to consider itself as such. The Court had to ‘agree and establish an organizational structure; internal principles, processes and procedures for auditing; and relations with the bodies that it had to audit’ (Laffan 2003a: 797). It also needed to forge its own culture and methodology reconciling French-Mediterranean legal approaches to audit that traditionally emphasised legal compliance and regularity with the Anglo-Saxon focus on performance and value for money.

Only two Members of the Audit Board moved to the Court in 1977. There was reluctance at managerial level to ‘take up’ where the Board had left off. Nonetheless, the Court was no blank slate, with some auditors moving to the new institution, bringing established practices from Brussels to Luxembourg, including the norm of *collegiality*, best embodied in the college of members – one member (and their cabinet) per member state – as laid down in Article 1 of its internal rules. Nothing was set out to determine the Court’s internal organisation but the new rules made clear that the Members of the Court were themselves required to have previously belonged to an external audit body in their respective country or be ‘especially qualified’ for the office. Collegiality allowed for each member to have own responsibilities and, with the creation of audit groups from October 1985, to head up their own section.²

In 1983, the Stuttgart European Council invited the Court to produce a report on ‘sound financial management’. This was an opportunity to establish audit governance at the European level. Directors of the audit groups inside the Court were asked to check the soundness of financial management in the three main areas of expenditure: the Agricultural Guarantee Fund (Common Agricultural Policy), structural funds and development aid, on the basis of observations made by the Court in its latest reports. The Court highlighted political and administrative shortcomings in the conduct of Community policies – often related to the Commission’s own financial management systems and internal audit procedures – which ‘caused a chill in relations with the Commission, which proposed, without success, that the Court should not be allowed to publish an opinion without the consent of the requesting Institution’ (O’Keeffe 1994: 183). In short, the Court had attempted to formulate normative statements on issues of financial management but met with considerable resistance from the executive. The Court subsequently secured a higher level of authority and control, clearing the way for it to put forward assertions and value judgements on the soundness of EU policies, as it does today in its special reports.

The Court provides administrative support to EUROSAI (European Organisation of Supreme Audit Institutions), established in 1990 as the newest of seven regional groupings of INTOSAI. This is a vital area of third order governance and a forum in which norms are shaped, negotiated and thereafter internalised. Work is organised into four teams: capacity building, professional standards, knowledge sharing, and governance and communication. INTOSAI strives for good governance, including accountability, transparency and integrity. Its objectives are: to promote professional cooperation among SAI members and other organisations; to encourage the exchange of information and documentation; to advance the study of public sector audit; to stimulate the creation of university professorships in this subject; and to work towards the harmonisation of terminology in the field of public sector audit.

In short, over the first 15 years, the Court emerged as a 'living institution' (Laffan 1999), building up its expertise, developing its own audit culture and methodology, and asserting itself as an independent body, working to deliver its findings to the European Parliament.

Third Phase (1992-1999): Securing Official Status and Providing Assurance

The Maastricht Treaty was a second turning point. Drafted in 1991, it raised the Court's status to official institution from 1 November 1993, conferring upon it new powers, and making its Luxembourg seat permanent. It introduced the 'Statement of Assurance' (commonly known as the 'DAS' or '*Déclaration d'Assurance*'), whereby the Court collects annual data on financial management and reports on the degree of error in various policy areas as its contribution to the discharge procedure on the Commission's annual accounts. Its report to the Parliament and Council covers the reliability of transactions carried out using the EU budget. The first DAS, delivered in November 1995 (for the year 1994), flagged up the weakness of accounting, in terms of management and control systems, within the multi-level administrations of the EU. The Court acknowledged that the information it received was often incorrect or incomplete – as such the Court extrapolates when it comes to providing 'assurance'.

Maastricht also underlined the role of 'special reports' and enabled the Court to submit 'observations' at any time as well. Article 206 modified the provisions concerning the discharge procedure so that the Council and Parliament were formally required to consider the special reports in addition to both the annual reports and replies of the institutions to the observations of the Court. This signalled an area of task expansion, and one to which the Court would allocate more of its resources over the next 20 years as it shifted towards performance audit, while maintaining its compliance obligations.

There is discussion today as to whether or not to continue with a full annual DAS - often referred to as 'core business' inside the Court – or to carry out a selective DAS (i.e. not audit all policies each year). Some Court officials feel the media focuses excessively on the Court's annual report to the detriment of its other audit reports, and even then fails to understand its findings, often confusing 'error' with 'fraud'. Nonetheless, most agree that the introduction of the DAS empowered the Court and that it remains central to its role as the EU's external auditor.³

Fourth Phase (2000-2008): Organisational Change and Task Consolidation

The resignation of the Santer Commission as a result of financial irregularities picked up by the Court was a third turning point. Audits revealed the severe dysfunction in the financial management and control by the Commission. This must be seen as a turning point in the institutionalisation of audit governance in the EU since it soon led to the creation of a new institution 'devoted' to fraud. The Court was critical of the internal structure of the Commission's Unit for the Coordination of Fraud Prevention (UCLAF), which 'more or less painted a picture of a disorganised Commission unit in which internal administration was either non-existent or not functioning' (Stefanou, White and Xanthaki 2011: 159). Its 1998 special report was instrumental in the development of a new legislative framework to create the Anti-Fraud Office (OLAF) in 1999 (Court of Auditors 1998b).

The paradox is that Commission President Santer had emphasised his commitment to develop constructive relations between the Court and Commission, after two difficult decades marked by inter-institutional conflict and distrust. The Commission had been 'very defensive, resents criticism, and is slow to change its rules and procedures', even referring to its audit dialogue as an 'adversarial procedure' (OJ C 330/299, in O'Keefe 1994: 184). O'Keefe (1994: 185) refers to 'the impression of

warfare', citing the 'inexcusable' clash over the 1989 exercise, where the Commission refused to provide the Court with information on cases where approval had not been given by the financial controller. The Court has supported the hybrid nature of OLAF, recognising that it benefits from the Commission's administrative and logistical support structure, but been wary of OLAF encroaching on its territory. A more formal link between the two would arguably have given the Court additional powers, making it the EU's 'all-seeing eye' and upsetting the overall institutional balance (Stefanou, White and Xanthaki 2011: 160).

In December 2001, the Convention on the Future of Europe was meant to prepare a new constitution, representing a window of opportunity to improve audit governance. However, as Flizot (2012) points out, the reflection document on the functioning of the institutions produced by the Convention of January 2003 only related to the five main institutions (including the European Council), even though the Court had been given formal institutional status at Maastricht in 1992 (European Convention Secretariat 2003).

The draft European Constitution (2004) and Intergovernmental Conference (IGC) (2007) prior to the Lisbon Treaty proposed removing this EU institutional status. The Contact Committee of the heads of the national audit offices (SAIs) expressed concerns about the future of the Court in the EU's institutional architecture. At a meeting in Prague in December 2003, the committee drew up a resolution (Contact Committee 2003), which it sent with a letter addressed to Berlusconi, president of the IGC, signed by the two committee co-chairs (the acting president of the Czech SAI and the UK's comptroller and auditor general), stating:

- The Contact Committee would like to state that an institution entrusted with external audit of public finance should be placed at the same level as the bodies it audits. Therefore, it considers that the mentioning of the European Court of Auditors among the 'other institutions and bodies' is not appropriate. The right place for the external auditor of public finance is, in the opinion of the Contact Committee, in the single institutional framework.
- The Contact Committee is of the opinion that independent of the outcome of the IGC on the above mentioned issue, the Treaty (Article III-312, par. 3) should be amended in order to ensure the European Court of Auditors its own part in the budget. A separate budget is one of the guarantees of the independence of any Supreme Audit Institution. (Contact Committee 2003.)

As a former Spanish member of the Court asserted, it was only because the Court of Auditors and Contact Committee (of national audit offices) reacted in time that it remained an official institution in the Treaty on the Functioning of the European Union (see Articles 285-287 of consolidated version) (Court of Auditors 2012: 5).

At the time, some member states submitted proposals on how to reorganise the Court, but nothing was done: 'the great issues were found to be so overwhelming that all other matters were put aside. And the court itself did not seek to raise the issue' (Stefanou White and Xanthaki 2011: 159). The Nice Treaty (in force 2003) did at least legally recognise the need to adopt internal rules formally at the Court. It encouraged a better institutional framework and improved conditions for cooperation between the Court and SAIs, while (crucially) maintaining the autonomy of each, and supporting the continued role of the long established contact committee. The member states formally stipulated there should be one member per member state (then numbering 15) rather than overhauling the Court and introducing a smaller College of three to seven members, as some member states (including the Netherlands) had proposed. Political decision-makers shirked any reform, failing to face up to the prospect that enlargement would see the Court's management almost double in size.

The Court warned of the critical impact of the 2004 enlargement on its functioning, fearing the excessive fragmentation of its decision-making and management – its collegial leadership structure was threatened. In 1994 there were just 400 staff, of whom 200-250 were auditors, but within a decade the staff had doubled to 800. Each Court member had a private office of five posts, meaning almost one in five staff members was engaged in top-down management activities outside the regular audit function. College meetings became formal and more secretive, where previously non-members had sat in while members discussed freely. The number of special reports published annually fell from fifteen to six as decision-making to launch new audits slowed and the management of audits in progress became more complex.

Facing political pressure from the member states, the Court underwent a critical self-assessment exercise in 2007, followed by an external peer review exercise in 2008, which endorsed the Court's audit management framework (Court of Auditors 2008). Subsequently, the introduction of new internal rules in 2010 created vertical chambers, with decision-making powers delegated to them, away from the College. It freed up decision-making after the paralysis brought about by enlargement but led to the reinforcing of internal silos, and fragmentation, as each chamber competed to outperform the other. A communications department was created around the President to promote the Court's activities and professionalise the presentation and dissemination of its special reports, which, less dense than the annual reports, could make 'arresting reading' (O'Keefe 1994: 183). The Court was now viewed as 'rigorously independent and objective, without an axe to grind' (ibid: 194), even if it still struggled with external visibility. We see the Court concentrating resources on its external projection (and perceived legitimacy) as a highly professional body in the vanguard of audit practice globally, i.e. it is engaged in third order governance tasks. Nonetheless, much of this phase was essentially concerned with second order tasks related to the establishment of new structures, the consolidation of existing rule and frameworks, and the re-organisation of an institution, i.e. restructuring in order to govern more effectively.

Fifth Phase (2009-): Coping with Crisis and Complexity – Risk, Relevance and Responsiveness

The 2008 financial crisis was arguably a fourth turning point, raising huge questions about the needs of audit governance in the EU (Sánchez Barrueco 2015). The legal base for the existing Community medium-term financial assistance facility gives the Court the right to carry out financial controls or audits that it considers necessary (Council 2009). With the creation of a European Financial Stabilisation Mechanism (EFSM) in 2010, the Court had a similar right to audit the beneficiary and to audit the reliability of loan disbursements as part of its task to audit the implementation of the EU budget (Council 2010).

In 2010, the Court submitted proposals for enhanced surveillance of member states' fiscal policies, macroeconomic policies and structural reforms, and in 2011 it discussed with member state SAIs how to audit the European Semester (Court of Auditors 2011). The situation was different for the European Financial Stability Facility (EFSF) – essentially a private company with 100 per cent sovereign ownership under national (Luxembourgish) law. The agreement between the Euro Area member states and the EFSF had no provision for external public audit, but a private auditor was appointed to check financial assistance up to 440 billion Euros.

The public hearing at the EP in May 2012 may have been a missed opportunity (European Parliament 2012; 2014). Its President, Vitor Caldeira, spoke of a set of values developed to help the institution play its role effectively: *independence, integrity, impartiality* and *professionalism* – values that emerged over time by interpreting its mission from the Treaty. He did not push for treaty reform to give it the competence to audit beyond the EU budget, but referred to the Court becoming 'a more efficient knowledge-based organisation' and spoke of the need to 'streamline the key processes by

which we create and transfer that knowledge' (Caldeira 2012). As the Estonian member of the Court further stated:

The Court's mandate as established by the Treaty provides the reference framework for the Court to fulfil its role as the independent external audit body of the Union. The mandate does not only consist of obligations – like the DAS – but ensures a rather big room for manoeuvre for the Court to carry out its mission. Plainly speaking, the mandate [...] allows the Court to keep in line with international auditing standards and new developments in the EU, and the proposals [a]rising from our current debate will definitely influence how we interpret our mandate (Kaljulaid 2012).

A second peer review report criticised the responsiveness of the Court, in terms of the time taken to conduct special reports and the timely launching of new audits on high-risk topics (Court of Auditors 2014a). In October 2014 the Court published its first Landscape Review (Court of Auditors 2014b), which takes up Bovens, Curtin and 't Hart 's (2010: 41) model of accountability, advocating it to be 'the relation between 'actors' and a 'forum', in which actors inform the forum about their conduct and performance'. As such, the Court considers that it 'accounts' for the performance of the EU budget vis-à-vis the Parliament's Budgetary Control Committee. By recognising that 'the forum is vested with the authority to judge the actors and requires them to take corrective actions if necessary' (Court of Auditors 2014b: 11), the Court places the onus for further action or mandate on the Parliament. In November 2014, the Court elected a new Member for Institutional Relations (MIR) to reform working practices with the Parliament and the Council, in the hope of securing more impact from its work from decision-makers. It has been working hard to secure direct access to the sectoral (spending) committees beyond CONT (Budgetary Control), in order to maximise the impact of its works with MEPs and the legislature.

The question remains whether the Court has the financial expertise and in-house knowledge to audit new tools of economic governance. How exactly to divide up work in this area, between public and private auditors, and between EU institutions and national supreme audit institutions? The arrangements for future external public audit remain uncertain. The former first Director General and Chief Internal Auditor at the Commission has claimed: 'we will witness the systemic consequences of working with empty toolkits on matters which are of global monetary significance'. He asserted that the Court must play a 'macro-prudential diagnostic role' so that it is 'more robust' in its assessment of the effectiveness of policies and activities, and to 'minimize financial fragility' throughout the EU (Muis 2012).

In January 2015, the Commission proposed the 'European Fund for Strategic Investment (EFSI)' or 'Juncker Plan' (European Commission 2015b). The EFSI established a trust fund within the European Investment Bank (EIB). A guarantee of up to 16 billion Euros was to be set up, backed by the EU budget using funds to a total of 8 billion Euros. The money was intended to mobilise over 300 billion Euros in investment. In March, acting quickly, and in cooperation with the European Parliament, the Court was able to publish an opinion critical of the Commission's proposal, which had failed to recognise the audit mandate of the Court on *all* revenue and expenditure of the EU (Court of Auditors 2015; Euractiv 2015; UK Parliament 2015). The Court made the point that 'instruments where the EU collaborates with the private sector need to have an adequate level of transparency and accountability of public funds', and successfully secured partial rights of audit (Court of Auditors 2015: 8).

In early 2016, the Court is introducing internal reforms in an attempt to be more flexible and responsive as an organisation. It is abolishing the thirty or so units and the role of *head of unit*. The *director* of each chamber can henceforth designate a *head of task* for each audit that is directly responsible to a *reporting member* (of the Court); the *director* can also delegate own responsibilities for the management of staff and finances to a *principal manager*. Yet these plans ignore what many

inside the Court see as the long-standing 'elephant in the room': the persistently top-heavy management. This reform aims to show the Members of the Court active in day-to-day auditing, which may be an attempt to appease critical voices from the European Parliament and the member states (Sender 2012). Members (with their qualified cabinet staff) may or may not choose to play a greater role in leading performance audits. Reform also means the creation of a large pool of auditors, and potentially, more direct working relations between junior auditors and senior members. While this flatter, more flexible structure might seem attractive, the removal of middle management structures brings uncertainty for junior staff in terms of career progression, and the availability of steady professional supervision and guidance. It raises questions also regarding the competence of non-auditor Court Members to lead technical work. The reform logic appears to be inspired by a model for organisational reform both fit for, and authored by, a private sector audit firm, rather than a large EU public sector institution. Court officials themselves admit that only time will tell.⁴

CONCLUSION

European audit governance sees the Commission, national audit offices and the Court of Auditors striving to avoid duplication and overlap in the financial control of the EU budget. Despite official status conferred at Maastricht, the Court of Auditors has arguably not managed to assert itself on an equal footing with the other EU institutions, though perhaps this is to be expected given that it was a relative latecomer, and owing to the comparative lack of interest in *ex post* governance issues, as opposed to *ex ante*; there is great political interest in renegotiating the EU budget, but less interest in evaluating how the budget fared.

The last decade has seen considerable activity in terms of internal reform, with professionalisation, a greater focus on communication with stakeholders, and an increased concern for the impact of budgetary spending. The Court has promoted its special reports, which offer an assessment of 'value-for-money' and give recommendations to the Commission as to how greater policy effectiveness might be achieved in future policy expenditure. Its recommendations are practical, aimed to improve the effectiveness of implementation by the Commission and the member states by reinforcing financial systems management – and to this extent, the Court is arguably engaged in first order governance problem-solving.

The Court clings to its values of *independence* and *collegiality*, regularly looking to its original Treaty mandate, which arguably has room for further interpretation. This is particularly important vis-à-vis the Parliament, which increasingly makes requests for new audit topics; the Court listens but is not obliged to follow. It has become bolder in its institutional discourse; it is not *becoming a living institution* (Laffan 1999: 251), it is now alive and kicking. Nonetheless, the Court still essentially exercises second order and third order tasks. The move towards performance audit should help other actors engaged in policymaking be more effective in their first order governance tasks if they are able to act upon findings.

The Court is a norm-setter at the international level, and takes the lead when it comes to drafting audit standards for performance audit. What its continual pursuit of better technical standards and audit norms does most is to contribute to improving audit and financial management processes (second order tasks) in other multi-level institutional settings, the logic being that the adoption of better audit methodologies and harmonised approaches by final beneficiaries at the regional and national levels will lead to less error in compliance audit, i.e. actors will perform their second order tasks of administrative governance more correctly, regardless of whether policy is effective.

In European audit governance there has been a slight time delay in the turning points compared with those delineated by Tömmel (2016). Many of these have come about as the result of exogenous factors such as treaty change, as well as institutional and economic crises. The *first phase* of audit governance saw the ECSC making tentative beginnings at financial control and thereafter an Audit Board (1959-1977) that was politically and financially dependent on the Council and which relied on an amalgam of member state approaches, influenced by national approaches to audit. The *first turning point* did not come at the end of the 1960s when the EC sought to expand its realm of policies but arguably in 1973 with the Budget Committee's report making a case for an independent Court (European Parliament 1973). A *second phase* in audit governance saw the newly established Court experimenting with institutional design in response to the number and shape of policies implemented. It encountered conflict with the Commission but sought to assert itself through a number of reports and declarations. A *second turning point* did not come in the mid-1980s but with the recognition of the Court as an official institution at Maastricht in 1991, which emphasised the role of performance audit and introduced the DAS for compliance audit.

During a *third phase*, this newly empowered Court set about reinforcing its audit capacity and expanding in size, adopting common audit norms and playing an active role in the newly established EUROSAI. There was soon a *third turning point*, not, however, in the mid-1990s, but in 1999, with the resignation of the Santer Commission over allegations of fraud, which triggered the creation of a new body, OLAF, purely to pursue suspected cases of fraud. In this *fourth phase*, particularly since the arrival of a new president in January 2008, we have seen a more visible and emboldened Court, that is highly professionalised and that has taken on private sector norms. It is a phase of existential questioning about its mandate. The Court has undergone self-assessment, subjected itself to peer review, and confidently asserted its own ideas about audit and accountability that place the onus on parliamentary scrutiny. Its special reports are tackling riskier issue areas, but the Court strives to secure greater impact from its reports and to promote learning among financial managers at programme/project level.

Arguably, 2008 already saw a *fourth turning point*, triggered by the European financial crisis. The 2012 public hearing at the Parliament made a case for Court reform, including possible treaty change, accepting the challenges the EU now faces – and the limited mandate of the Court – to audit billions of euros of European (non-budgetary) expenditure effectively. This *fifth phase* may see key changes in the governance of audit, not only in terms of institutional redesign internally at the Court, but with the possible introduction of a European Public Prosecutor and other second order governance innovations in order to bolster European governance (Aden 2015).

In sum, the basic structures of audit governance have emerged through significant moments of treaty revision and institutional creation/dissolution, though also crisis – in the broader EU institutional architecture and the global financial system. However, the internal organisation, methodologies and social dynamics of the Court itself have evolved much more incrementally and may depend on leadership style, the amalgam of cultures and legal-administrative traditions. More research is needed to understand the life and practice of the Court and those factors shaping audit norms over time.

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¹ There is no room within this article to discuss the breadth of accountability literature (see Curtin, Mair and Papadopoulos 2010).

² There have been controversies over the election of some members to the College (see Stephenson 2014).

³ Impression based on more than 60 interviews conducted at the Court from February to July 2015.

⁴ As above.

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