

Using One Agent to Control Another? The European Parliament and the European Court of Auditors

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Introduction

“The European Community is there to serve its peoples and citizens who have a rightful claim to assurance that money into European coffers is spent wisely and in accordance with the principle of sound budget management. It falls to the representatives of the peoples of Europe –and the Members of the European Parliament consider themselves as such- to be the guarantors of clear-cut and responsible financial management on the part of the European Community...”

- Heinrich Aigner, in Introduction to *“The case for a European Audit Office”* (European Parliament 1973: 15).

Correct implementation of budget is one of major concerns for a government. The European Court of Auditors (ECA, henceforth) is at the front of such concern in the European Union. Established as a body by the Brussels Treaty in 1975 and promoted to the status of institution by the Maastricht Treaty in 1992, it has worked as “the financial conscience” of the EU. It is charged with reporting about implementation of the EU budget to the representatives of the peoples of the Union, consisting of the European Parliament and the Council of Ministers. Although its independence is clearly

mentioned by the treaty, it has had cooperative relationship particularly with the EP for criticizing the implementation of EU budget by the European Commission.

From a principal-agent approach, I investigate the reason for such close relationship between the two institutions. I consider the ECA as an oversight agent with a mixture of police-patrol and fire-alarm for the two budgetary authorities of the EU- the EP and the Council. By comparing the interaction of the ECA with the EP to that with the Council, I explain why the ECA and the EP help each other undertake their respective treaty-given tasks. Effective accomplishment of their functions is necessary to strengthen their institutional positions. And they find cooperation between them necessary for such accomplishment. Such compatibility of interests is much weaker in the case of the ECA-Council relationship.

I organize this paper as following. In the next section I discuss the inter-institutional relationship of the ECA in the light of studies of oversight mechanisms. Then I compare the attitude of the EP toward to the ECA with that of the Council in the establishment and strengthening of the ECA, and appointment of its members. The difference of the usage of the information from the ECA between the two institutions is examined next. After that I turn to how the ECA responds to their different attitudes. Finally I conclude.

The European Court of Auditors as police-patrol plus fire-alarm.

The ECA has been less studied than any other institutions of the EU. Its relatively short history partly explains it. It was established after all other institutions of the European Communities had been put in place for almost twenty years. Although its predecessor,

the European Audit Board, had served similar functions to those given to the ECA since the beginning of the European integration, the rather fragile status of the Board makes it difficult to consider its history as continuation of the Board. Not huge attention to it also owes to its relatively limited powers. It does not have any formal policy-making power. It merely advises other institutions without any power to enforce them to listen to.

To the knowledge of this paper, the political analysis of the ECA is scarce (e.g. Harden, White, and Donnelly 1995; Laffan (1999) and Levy (1996)). Not a judicial body, interestingly the ECA got relatively high proportion of works from legal scholarship compared to those from political science at least in the English literature (e.g. Kok 1989; O'Keefe 1994; Skiadas 2000).¹ However, both principles do not cover many important questions about the role of the ECA. The relationship between the ECA and other EU institutions is one of these questions. Whereas the literature on the ECA revealed some part of the ECA –Commission relationship as an auditor-auditee relation, it has not offered us no more than snap-shot descriptions about how the ECA interacts with the budgetary authorities-the EP and the Council. However, the inter-institutional relationship should be investigated not only for pure curiosity as advising the two is the major task of the ECA. The ECA can be effective only when helped by other institutions due to its advisory character. In this sense, its relationship with the others is a key to understand the ECA and budgetary politics of the EU.

Based on its treaty-given functions, I put the ECA in the principal-agent context where the Commission is an agent of the member states and the EP as multiple principals in the EU budgetary politics. In that context it is an oversight body, an information-provider for the principals about the behaviour of the agent. The principal-agent model has three stages: (i) Principal and agent make an ex-ante contract, (ii) The

agent acts for undertaking the contract, (iii) Principal considers the fate of the contract ex-post. For the effective use of the third stage, the principal needs information on the behaviour of the agent in the second stage. Such information is required for two purposes: assessing the behaviour of the agent to give the reward to or impose sanction on it as written in the initial contract and designing a new form of contract that will be better to make the agent serve the principal's interests. Although the principal can require for the agent to reveal such information, it is usually not sufficient because the agent may hide or distort information in favour of itself. To get more reliable information on the agent, the principal establishes mechanisms of oversight

Such principal-agent-oversight relationship takes place in the EU. The Commission is delegated to implement most of the EU budgetary decision made jointly by the Council and the EP as its principals. Under budgetary discharge procedure, the EP makes the final assessment of the working of the Commission although the Council is involved with the process by making recommendations on the discharge to it under the Art. 276 TEU (ex Art. 206). The Commission is obliged to submit an annual report of its implementation of the EU budget under Art. 275 TEU (ex Art. 205a) with the EP's right to request further information as guaranteed the Art. 276 (ex Art. 206).² However, the Council and the EP cannot entirely rely on the report of the Commission on its own activity since the Commission can be better off by making a false report in order to its shortcomings. They reduce the information asymmetry by obtaining information from the ECA. The ECA is to provide the information of implementation of the EU budget to the two budgetary authorities of the EU.

Going back to oversight mechanisms, McCubbins and Schwartz (1984) classified them into two types- police-patrol and fire-alarm- on the study of

Congressional control over the U.S. bureaucracy. According to them, police-patrol oversight is “centralized, active and direct” mechanism where Congress examines the activities of the executive agency at its own initiative. Compared with the police-patrol oversight, the fire-alarm oversight is “less centralized” mechanism involving “less active and direct intervention”(McCubbins and Schwartz 1984: 166). It is a system where Congress enables individuals and interest groups to examine the activities of the executive agencies, to charge them with violating congressional goals the violation and to seek remedies from Congress or other governmental bodies. Reflecting these definitions, as shown in Table 1, I extract four features distinguishing the types: the degree and time of the involvement of the principal in the oversight, frequency of oversight, involvement of third parties, and the degree and time of the principal’s involvement in control of the agent. Their definition in relative terms implicitly opens possibility of a mixture of the two like the ECA. The table shows how the functions of the ECA are similar to both types in the four features.

<Table 1. Comparison of police-patrol and fire-alarm with the ECA>

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To flesh out the table, I briefly explain how the ECA undertakes its role. To validate the Commission’s report, the ECA produces information in four forms: an annual report, the Statement of Assurance published with the annual report, special reports, and opinions. (Art. 248 TEU) The annual report contains the result of examination done by the ECA on the all revenue and expenditure processed by the Commission and other EU institutions (Art. 276 TEU). The Statement of Assurance is

on “the reliability of the accounts and legality and regularity of the transactions” born by the budget implementation (Art. 248 (1)). Special reports either accompany with the annual report in order to clarify the areas for special concern or are submitted to the EP and the Council at any time. The opinion is made at the request of one of the other institutions of the Community and submitted at any time within the discretion of the ECA. Since those reports include not only the assessment of what has done by the EU institutions but also suggestions for improvement of the better management of the budget, the ECA provide for the principals the information not only for assessing the behaviour of their agent but also for setting future budget implemented by the agent. They are adopted by a majority of its members of the ECA (Art. 248(4) TEU).

Such mixed character of the ECA originates from the characteristics of the budgetary politics in general and the EU in particular which hinder effective fire-alarm oversight. McCubbins and Schwartz (1984) maintain that principals prefer fire-alarm oversight to police-patrol because the former provide an effective oversight with low costs. If the fire-alarm is not effective, the principal needs to find other ways for overseeing the agent. The budgetary politics of the EU lacks the two conditions for successful fire-alarm oversight: interested third parties and their information advantage (Horn 1995:70). The cost of mal-administration of the budget is diffused among the taxpayers in the EU while the benefit is concentrated on the relatively small number of beneficiaries of the budget. Most cases of the mal-implementation of the EU budget are either late collection of repayment from farmers or contractors of the projects in the Structural Fund or overpayment to them. This means that there are no special interest groups with strong incentives to report such problems to the budgetary authorities. Also, there is difficulty in thorough observation of the collection and implementation of the

EU budget. Even if some public interest groups are interested in reporting such problems, they are usually not equipped to have information enough to notice them.

However, it is still costly for the two budgetary authorities to oversee the Commission themselves. Especially in the multiple-principal environment with two budget authorities, police-patrol oversight may cause collective-action problems, such as waste of resources caused by duplication of oversight, conflicts between principals having different views on the agent's behaviour, and insufficient oversight caused by free-riding principals. To avoid all these possible problems, it is ideal for them to have a third party bearing the cost of oversight for them but being capable of thoroughly overseeing the agent. This is why they created the external audit body, the ECA. It is endowed powers to exercise oversight on any EU institution involved with the EU budget. It is a governmental body that is obliged to pursue public interests. As it can enhance its institutional stance only with making sure sound management of the EU budget, it has institutional interest in it.

Nonetheless, the principal cannot entirely rely on such an independent oversight body. The body has their own interests different from those of principal such as enhancing its prerogatives and promoting its status vis-à-vis other institutions. It tends to serve the interests of the principals in a way that it can also strengthen its own institutional position. Knowing this the principal does not grant full discretion to the oversight body. Holding the power to strengthen or weaken its institutional status and to decide how to use the information from it, it induces the oversight body to behave in favour of itself. Thus, the relationship between the principal and the oversight body is not a permanent alliance but rather conditional cooperation. The principal strengthen and listen to the body only if it offers information valuable for the principal. The

oversight body, in turn, has an incentive to reveal information wanted by the principal only when its organizational independence is not under threat and the principal promotes its institutional stance. In the rest of this paper, I show that this is the case of the ECA's relationship with the two budgetary authorities.

Setting up an oversight agent

Establishment of the ECA³

All the principals of the Commission share interests in establishing an independent body that will provide them with 'objective' information on the revenue and expenditure supervised by the Commission. The design of the ECA reflects such shared interests. The information should meet two criteria, comprehensiveness and credibility. For comprehensive information, the body needs to have a power to investigate the Commission. The power of to investigate, however, should be limited to the extent that the body would not be too strong to interrupt the Commission for accomplishing its tasks given by the principals. On the other hand, for credibility, the body should be independent of the Commission so that it can provide information unbiased by the pressure from the Commission. It also should be independent from the principals, as each principal has interests in distorting information on itself for the purpose of getting more money from the EU budget than necessary.

The EP played a leading role in establishing the ECA despite its lack of competence in treaty making. The power of purse is the only real policy-making power for the EP up to the post-SEA period when the EP gained a legislative power. As a weak institution vis-à-vis the Council and the Commission, the EP tried to use its budgetary

power to enhance its institutional status. The idea of strong independent public sector audit appeared in the EP resolution in 1964 (Skiadas 2000: 4) Even when the Council was slow to deliver the plan for the ECA (European Parliament 1973: 16), the EP repeatedly expressed its support for an external, full-time, audit body of the European Communities. In 1973 the EP published a report on request for the ECA, led by a German MEP Aigner, the vice-chair of the Budget Committee. (Laffan 1997: 193)

Responding to the request of the EP and meeting their own demands, the member states agreed to establish the ECA in the 1975 Brussels Treaty, modelled on the French Cour des Comptes (Wallace 1980:102) Interestingly its major auditee, the Commission, played an important role to design it. It was the Commission's proposal that the negotiation on the ECA was based on. This clearly shows the information asymmetry between the two budgetary authorities as principals and the Commission as their agent. Even when the principals, the EP and the Council, try to establish a mechanism for monitoring the agent, they need information possessed by the agent. The function of the ECA was much bigger than that of the European Audit Board. While the Board could audit only revenue and the expenditure shown in the budget, the ECA can examine all revenue and expenditure of the Communities. Also in addition to monitoring on ex-post basis by obligatory annual report, member states endowed the ECA with some ex-ante audit power in form of special reports and opinions. The Court had obligation to submit an annual report to the Council and the EP. It had power to produce special reports for the areas of special concern. In order to secure the flow of information, the Council and the EP had power to request the ECA for providing more information on the areas of their concern in the forms of special reports and opinions.

Apart from the increasing need for 'budgetary watchdog' due to the

expanding size of the EU budget, three other factors induced the member states to agree to establish the ECA. One is a cultural and ideological factor that the member states could not ignore the necessity of an external audit body for the democratic structure of the European Communities. Varying in forms, external audit bodies existed in all member states. For the member states, the European Communities with its own resources at the European level would not be complete without a body devoted to watch the spending of the 'European Money' (Laffan 1999: 254). Secondly the member states quickly responded to the demand of the EP for setting up the ECA because the EP was composed of the national parliamentarians appointed by member states until the first direct election in 1979. The pressure came from not only from the European level- i.e. from the EP to the Council- but also from the national level- from the national parliamentarians to their governments. The pressure at the national level could be effective because each treaty should be ratified by national parliaments. Thirdly, with accession of new member states in 1973- the United Kingdom, Denmark and Ireland- a strong coalition supporting the establishment of external audit body was formed among member states (O'Keeffe 1994: 178). In particular, the UK was supportive to the idea of establishing the ECA. (Laffan 1999: 254) Expectation to be a net contributor to the Communities budget and its culture of strong audit body at national level made it have a strong interest in tightening the process of implementation of the budget. It kept paying attention to the ECA by the series of reports of the House of Lords on the ECA in 1989, 1992, 1994 and 2001.

However, the need for comprehensive and credible information did not compromise the prerogatives of the member states and the EU institutions. For this purpose, the principals had an interest in giving limited power to the ECA. The power

was tightly confined to providing information with no competence to participate in policy-making. The ECA had no power to force EU institutions, member states government or other actors to hand in information or to follow its suggestions. The principals kept the right to be selective in adopting the information from their agent for oversight, the ECA. Such a cautious approach to delegation of oversight persisted when they strengthened the ECA for meeting the growing demand for control of the budgetary implementation. I turn to this in the next section.

Strengthening the ECA

Growing size of the ECU budget and increasing complexity of its implementation pushed the member states and the EP to strengthen the ECA. They strengthened the ECA by treaty revisions and by budgetary process, respectively. Before illustrating how it took place, it should be noted that support for stronger ECA was uneven among member states. The need for a stronger third party to watch other actors pushed certain member states to press for a stronger ECA. Levy (1996: 513) maintains that the demands for greater financial accountability increased as the number of the member states which were net contributor to the EU budget grew. Especially the French government has raised these concerns as it was expected to become one of the largest net contributors together with the UK and Germany⁴ Firstly, the member states changed the status of the ECA into an institution of the European Communities by the Maastricht Treaty and that of the European Union by the Amsterdam Treaty. This change was meaningful not only symbolically but also substantively. Becoming an institution under Maastricht Treaty gave the ECA the power to file an action for failure to act against another institution (Art. 232 TEU). However, this is a limited power. If a EU institution

makes a decision to refuse to grant access to information to the ECA, it could not be submitted the ECJ under Maastricht Treaty since it cannot be considered as an action for failure to act. To address this problem, responding to a request from the ECA in its 1995 IGC report Amsterdam Treaty explicitly mentioned the ECA's right to file an action for annulment before the ECJ under Art. 230 (3) for protecting its prerogatives (Inghelram 2000: 136). The EP also backed this. (Comfort, 1997) With these powers, member states gave the ECA the powers to enforce other institutions to do certain actions (particularly provide information for the ECA) indirectly through the ECJ. This improved the investigative powers of the ECA.

Secondly, the member states increased and specified the range of activities of the ECA. After establishing Statement of Assurance⁵ under the Maastricht Treaty, they gave under the Amsterdam Treaty an explicit responsibility in the area of fight against fraud. The Council is required to consult the ECA when it adopts measures in the field of the prevention of and fights against fraud affecting the financial interests of the Community (Art. 280 (4)). This new provision seems to be a response to the ECA's proposal, mentioned in its pre-Intergovernmental Conference Report of May 1995 to the "reflection Group" on the operation of the TEU (Inghelram 2000: 135). The member states also guaranteed the audience of the ECA by inserting the Art 206 TEU, which required the Council and the EP to consider any relevant special reports of the COA in addition to the annual report and the replies of the institutions. (O'Keefe 1994:183) The Nice Treaty further specified how the ECA conduct such new responsibilities by mandating it to supplement the statement of assurance with specific assessments of each major area of Community activity.

However, the member states have been cautious in strengthening the power

of the ECA vis-à-vis themselves. Whereas they strengthen the power of the ECA vis-à-vis other institutions, they did not increase the power of the ECA vis-à-vis an individual member state. They did not allow the ECA to sue a member state before the ECJ for infringement although the lack of power for the ECA to enforce member states to take an action was the major drawbacks in the financial management of the EU as the most of irregularities occurs at the national level. In contrast, the EP wanted to give the ECA such power vis-à-vis national audit bodies at the 1997 IGC (Comfort 1997). As Inghelram (2000: 140) points out, the ECA's power towards the member states could only be enforced through an action for infringement of the Treaty filed by the Commission. Moreover, granting new activities to the ECA was followed by specifying their contents. By doing so, the member states tried to gain benefits from increased information flow from the ECA without allowing it to intervene in policy-making in the EU. Furthermore, with the Treaty of Nice they set up a method to control the internal working of the ECA. They introduced a provision that the Council should approve by a qualified majority vote the Rules of Procedure of the ECA, the adoption of which used to be the exclusive competence of the ECA (Art. 248 (4) fourth paragraph, Treaty of Nice).

Compared to the member states, the EP's role in strengthening the ECA was limited due to lack of treaty-making power although it argued for extending its role into the entire EU competences at the 1997 IGC. Instead it provided the ECA with resources to fulfil its new responsibilities. John Wiggins, the British member of the ECA in 1998, recognized that the EP gave the ECA a significant number of extra posts by virtue of having last word on the matter. At the request from the ECA, the total number of its staffs increased from 350 in 1993 to 550 in 1998 approximately⁶. He interpreted the

support from the EP on the matter as originated from wish to keep the output of the ECA in other areas from being diminished due to introduction of the Statement of Assurance.

Appointment of the members of the ECA

Appointing the members of the ECA is another area where the member states and the EP interact with the ECA. The Council appoints the members of the ECA after consulting the EP.⁷ Despite the absence of the principle of one member per member state in the treaties, it has persisted as a norm. It is a method for them to keep the minimum control over the activism of the ECA. Admittedly, the power of appointment has limited effect because neither the Council nor the EP has power to sack the members of the ECA. They have a fixed six-year term, which can be put an end to only by the ruling of the ECJ on the application of the ECA. A member state may put pressure on the auditor from it only by holding the right of reappointment. (House of Lords 2001) The EP also exerts influence over the appointment. It puts a firm hand on the appointment by setting up hearings by the EP Budgetary Controls Committee and voting in the plenary similarly to the investiture procedure for appointing the Commissioners. In fact, it produced a resolution on the procedure for consulting the EP on the appointment of the members of the ECA in November 1992. Despite lack of formal power to reject the appointment, it has better record of influencing the appointment in the ECA than in the case of the Commission. ⁸The EP gave negative opinions on two out of six nominees proposed by the Council in 1989 and on one nominee in 1993 because it considered them less qualified for the job. (O’Keeffe 1994:180) Although the auditors carry the less political weight in the EU politics than

the Commissioners, it is notable that France withdrew its initial appointment after the negative opinion from the EP.

The common desire for the member states and the EP to influence the appointment of the members of the ECA is one thing; the preference over personnel for the job is another. The aim for appointment diverges between member states and the EP. For the member states, having 'their' auditors is a way to represent their views in the ECA. Although they all agree to the necessity for independent external audit of the Commission, they disagree the desirable nature of audit with each other. As Laffan (1997) points out, the member states have different culture of auditing. With the difference of their preference on the power of the EU itself, such cultural difference leads to the conflict between principals on the ideal activities of the ECA. By appointing the actors sharing their point of view, member states can have minimum degree of representation in the ECA.

For the EP, on the other hand, it is important to have members of the ECA sharing its preference over EU integration. The EP and the Council are likely to have diverse preference over the degree of transferring competence from the national level to the European one. Whereas the some, if not all, member states do not want a European institution to penetrate their own competence, the EP would not mind a European institution investigating deeply the activities of national agencies if it results in the sounder management of the EU budget. Therefore, the EP has interests preventing the member states from placing a person vulnerable to the external pressure. In fact, even in the paper suggesting establishment of the ECA, Heinrich Aigner wrote that "the danger is that the Communities' Audit Board will gradually come to resemble the committees of the Council of Ministers" concerning a few member states nominating officials from

their Ministries of Finance. He also argued for giving the EP the right to nominate the members of a new European Audit Office (European Parliament 1973: 19-26). In addition, even if a member state desires to appoint competent personnel for the members of the ECA, as seen the appointment of the Irish member of the ECA in 1999, political circumstances of national politics influences the choice of nominee for the job.⁹ For national politicians, a strong ECA with competent members may be less important than keeping the balance of power in the national politics. Free from such issues, the EP is more likely to emphasize the ability of the appointees..¹⁰

Using the ECA for information

The divergence of attitude toward the ECA between the EP and the Council is most obvious in their usage of information from the ECA. Once an oversight body is in place, the utility of using it depends on three factors: the amount of interests the principal gains from controlling the agent, the size of information asymmetry between the principal and its agent is, and the characteristics of information from the body. As these factors are different between the EP and the Council, their utility of the ECA varies.

I first explain the position of the Council in these three factors. Firstly, although all member states have common interests in preventing corruption done by the Commission officials, not all of them have strong interests in the sound implementation of the EU budget. O’Keeffe (1994: 190) argues that the Council lacks the will to take corrective action by improving adequate control mechanisms in the management of the EU budget. Once member states put their money into the pool of EU budget, each of them is better off by maximizing the amount of money redistributed to it. (Harden,

White, and Donnelly 1995: 626) If the misadministration of budget by the Commission results in extra money for itself, the member state has little reason for close look at the work of the Commission. Depending on their position on the EU budget in general the attitudes to the mismanagement of the EU budget vary even among the member states. The member states that are the net contributors tend to be more concerned of the management of the EU budget than net beneficiaries. (Edwards and Spence 1997:108) The net contributors do not gain much in the policy areas where the Commission exercises relatively large discretion in allocating a big portion of budget, such as the Structural Fund. If unnecessary money is contributed to the European level, they either want to reduce their contribution or to switch it to other policy areas where they can gain some of it. Due to such diverse preference over tightness of the management of the EU budget, the members in the Council cannot easily agree to fully scrutinize the Commission in the budgetary discharge. The Council has never made the recommendation to the EP that the EP should reject to grant the budgetary discharge to the European Commission in spite of critical report from the ECA. More or less the Council ignores the opinion of the ECA. (Price 1983; House of Lords 2001)

Secondly, the Council has more source of flow of information as almost four fifth of the EU budget is implemented at the national level with the Common Agricultural Policy and the Structural Funds covering the biggest share of the EU budget. Besides, the member states governments have more resources for gathering information thanks to their bureaucracy. One of the reasons for the Commission to work closely with the national agencies is, Nugent (2001: 289) maintains, that those agencies are in a better position to have more detailed information about what really happens at the front than the Commission. In such cases, there is a reverse information asymmetry between the

principal-the member states- and the agent-the Commission. Each member states does not have to rely on the information from outside, whether it is from the Commission or the ECA, at least concerning the budgetary implementation within its own territory.

Thirdly, the characteristic of the information from the ECA does not make the member states comfortable. A big part of the reports of the ECA has pointed out the lack of the efforts for the Commission to supervise the control systems of the member states (O’Keeffe 1994: 189) and, in particular, to recover the money misallocated to the member states. Most of the fraud takes places in the implementation of the EU budget managed by the national authorities. (Stevens and Stevens: 157) The member states criticized by the ECA for their neglect of fraud in their territory do not feel easy about supporting the position of the ECA. The so-called Flechard case illustrates the position of actors involved such battle between EU institutions and the member state. Whereas the ECA reported the fraud case caused by a French firm and was supported by the EP, the Commission was reluctant to take action against the fraud case due to the pressure from the French government. (Shackleton 2002: 109) The EP later heavily criticized such hesitant attitude of the Commission when it considered granting the discharge to the Commission’s account of the relevant year.

Differently from the Council, the EP is in condition to have many gains from the information from the ECA. Firstly, it has no gain but loss for the bad implementation of EU budget by the Commission. Inefficient and unsound implementation of budget means only the loss of the policy outcome that the EP pursues. Secondly, the EP is more disadvantaged for gathering necessary information the budget implementation than the Council.¹¹ Thirdly, the nature of the information supplied by the ECA has met the demands of the EP. Like the EP, the ECA has

interests in sound management of the EU budget. As the ECA can prove its usefulness by pointing out the problems of the management of the EU budget by the Commission, the EP can influence over the working of the Community in the aspect of budgetary policy by scrutinizing the Commission. The criticism made by the ECA on the Commission is the sort of information that the EP looks for. The criticism targeting the member states also can be a good basis for the EP to strengthen its institutional position vis-à-vis the governments of the member states. The EP is in the position to welcome the negative assessment of the management of the EU budget from the ECA while the ECA is in the position to try to find out the basis for such negative assessment.

With all these factors, the independent status of the ECA designed to protect it from political pressure makes also it attractive to the EP as a basis for strengthening its position vis-à-vis the Commission and Council. By using supposedly objective external opinion as evidence for its criticism against the Commission, the EP can legitimise its attack. However, the EP does not advocate the independence of the ECA at the expense of its control over the ECA. The efforts for the EP to secure its hold on the ECA have been seen in several occasions. Because of its role in the establishment of the ECA, the EP has maintained an “almost paternal” attitude toward it. (Westlake 1994: 47) Some members of the Budgetary Committee argued for organic link between the ECA and the EP (Laffan 1997: 194). To secure its informal privileged position for getting information from the ECA, in 1999 the EP voted by 171 to 120 not to accept the annual report of the ECA because it leaked it to a German newspaper before the EP was submitted to (The Guardian, November 17, 1999).

Such collusive interests of the two were clearly pointed out by the major target of their resulting cooperation, the Commission. A notable example was the first

special report of the ECA on the expenses of the Commissioners. The report was written on the request of the EP that pursued to exert its power over the Commission. As the EP anticipated, the report revealed that the expenses were great in amount. With the report, the ECA provided the EP Committee of Budgetary Control with ground to call the President of the Commission to a hearing. (Laffan 1999: 258) The president had to assure the introduction of new control system in the hearing. In another occasion, the EP and the ECA cooperated for weakening the stance of the Commission vis-à-vis the ECA. When the ECA included in its annual report some comments on the institutions' replies as a rejoinder, the Commission renounced it denying the ECA's right to do so. The EP took the side of the ECA in the resolution for the granting discharge for the 1979 EC budget. For the EP, such additional comments from the ECA were nothing but beneficial as they increase the information provided for the EP. For the ECA, on the other hand, such additional right to comment endowed it with an opportunity to strengthen its argument. (Skiadas 2000: 18)

Moreover, the EP expressed its views compatible with those of the ECA. In various resolutions concerning the management of the EU budget by the Commission, the EP shared the view of the ECA and usually cited it in its resolutions. (O'Keefe 1994: 184) If the EP had felt uneasy about accepting the view of the ECA, it would not have supported it and rather would have ignored it as the Council did. Even if increasing the volume of information itself is meaningful to narrow the information asymmetry between the principal and agent, the principal has nothing to gain from supporting the point of view that conflicts with its own interests. The trust of the EP to the ECA can be also found from the former's support for the latter's value for money approach. The value for money approach to auditing allows the maximum room for the

ECA to make its own judgment on the desirability of the financial management of the Commission. It allows the ECA to assess the policy implementation of the Commission. Whereas this approach was highly criticized by the Commission as beyond the competence of the ECA (Laffan 1999: 258), the EP praised its contribution. This means that the EP is ready to welcome a subjective view of the ECA. In fact, according to Skiadas (2000), the Commission has always considered the ECA to be the EP's instrument, acting against it.

For more systemic examination, I analysed special reports of the ECA in relation to the EP's resolutions to them. This can show well the interaction between the two institutions, as they are not obliged to act by the Treaty. Differently from annual reports, the ECA can choose to write a special report on the area for its concern whenever it wants. Although other institutions may request a special report, it is not obliged to respond to it. The EP is not obliged to respond to the ECA special reports whereas obliged to examine the annual reports in the course of annual budgetary discharge. If the special reports from the ECA do not serve its interests, the EP has no reason to make a positive audience to the ECA. From 1994 to 2001, the ECA produced eighty special reports. In the same period, the EP produced fifteen resolutions on twenty special reports from the ECA. All these reports were on the activities of the Commission. The EP did not make any resolutions on special reports in 1994, 1995 and 1999. Excluding the thirteen reports in 2001, as they did not have enough time to be considered by the EP, roughly 28 per cent of the special reports were responded by the EP's resolutions. All the EP resolutions supported the ECA's view in the special reports, which were mostly critical on the Commission. In these resolutions, the EP not only "[w]elcomes the ECA' report as an objective and critical examination"¹² but also

demands the Commission to take actions suggested by the ECA in the special reports. It also utilize the special reports a doorstep to increase its own information on the Commission. The EP called on the Commission to report it on the progress made after taking into account the recommendation of the ECA. The EP's positive response to the special reports is illustrated well in the fact that in one of these resolutions it requested the ECA to produce another special report. ¹³

Using the principals for power

In the last section I explained how and hwy the E supports the ECA. Now it is turn to examine what motivates the ECA respond to demands from the EP. As the use of the ECA by the Council and the EP is strategic, the ECA also selectively responds to the explicit or implicit demands from them in order to maximize its institutional interests. Balance between responsiveness and neutrality is a key for the ECA to enhance its stance. Since credibility of information provided by it is the essence of its role, the ECA needs to be seen neutral enough to keep its independence. In respect of independence, the ECA can neither remain independent nor effective without cooperation with them. Its institutional independence is vulnerable to treaty reforms. Audit bodies at the national level in the EU take diverse forms with varying degree of subordination to the executive branch or legislative branch of government. (European Parliament 1973) Such diversity of national audit offices exposes the fate of the ECA to continuous discussion. At the select committee of House of Lords, the question on a desirable inter-institutional position of the ECA met diverse opinions from the participants. Two MEPs from the EP committee of budgetary control -Michiel van Hulten MEP and Eluned Morgan MEP-

arguing for the ECA to “be operation ally independent but ultimately subordinated to the European Parliament”. In contrast, a former member of the ECA, Jo Carey, maintained that a Court should be beholden only to the Council. (House of Lords 2001)

Responsiveness to at least one of the budgetary authorities of the EU is necessary for the ECA to be effective. Having no power to enforce the audited the ECA is dependent on other institutions. I define effectiveness of the ECA in both output and input sides. In its input side, effectiveness means having sufficient information to produce its reports. If being unable to access necessary information, the ECA cannot function as an information-provider of the budgetary authorities. Most of information is held by the audited. As the interests of an auditing body and those of its audited are inherently in conflict, however, the cooperation from the latter is unlikely. For instance, the ECA often faces the rejection of the Commission to pass requested documents to it (O’Keeffe 1994: 185). In the Flechard case mentioned earlier, the Commission refused to pass the documents requested by the ECA and stated that some of the documents were simply missing when asked by the EP (European Parliament 2000: 16). The lack of power over the audited puts the ECA in a highly difficult position where it should rely on the cooperation of its audited to accomplish its tasks and firmly ground its intuitional stance. It may be arguable that the ECA has a power to enforce its audited to take a certain action in order to access information. As explained above, indeed the ECA may bring an action against the Council, the Commission and the EP, for failure to take measures to respect obligation arising under the treaty (O’Keeffe 1994: 192). However, this measure has many drawbacks. First, it is not a very practical tool because it takes long time to gain the rulings from the ECJ. Even if the ECJ rules in favour of the ECA, the Commission may still refuse to follow the ruling of the ECJ. Despite the request of

the ECJ, the Commission refused to provide any information to the ECA in 1989 exercise. (O’Keeffe 1994: 185) Second, it is not frequently usable since the ECA cannot always find a ground firm enough to win in such lawsuit against other EU institutions. Third, it is a risky measure since it cannot predict the rulings of the ECJ. If it would lose its case, such a failure to win could lead to more serious non-cooperation of all audited, let alone the deteriorating relationship with the audited body it sued (Harden, White, and Donnelly 1995: 617). Lastly, this has a limited scope due to the fact that it cannot be used against the national agencies. In fact, so far there has been no occasion that the ECA brought a case against anybody to the ECJ.

In the aspect of its output, the ECA can be said to be effective only if its opinion is respected and its auditees adopt its suggestion. Although its formal role is limited to providing information to the budgetary authorities, it cannot be effective if the information provided by it does not make any difference in reality. The audited are not obliged to take its suggestions. The ECA has no power to enforce its audited to correct their misbehaviour in the implementation of budget. The option for going to the ECJ is available only for gaining information. It cannot be used for the purpose of forcing the audited to adopt the suggestions from the ECA. It is not likely for the audited to follow its suggestions if those suggestions are accompanied with strong criticism and even suspicion of corruption of their staffs. As Dinan (1994: 311) describes their relationship “inherently adversarial”, the Commission mainly reacted to the criticism from the ECA with strong objections and even resentment as shown in the case of the Budget Commissioner, Christopher Tugendhat until 1984 (O’Keeffe 1994:184).

Under such circumstances the ECA needs to turn to the budgetary authorities – i.e. principals of the Commission-, the EP and the Council. They possess powers to

enforce the Commission to give the information to the ECA and to put its suggestions into practice. The Council is the strongest institution with biggest power over the Commission. The member states governments are in the position to commit their national agencies to supply information to the ECA. However, the Council has not been cooperative to the ECA due to the collective action problem mentioned in the previous section. In some occasions, certain member states actively hampered the working of the ECA by unilaterally limiting the audit enquires (O’Keeffe 1994: 185). The ECA can expect the member states to respond to its opinion for correcting the mismanagement within their own territory even in the less degree than they would do at the European level. Even if they decide to correct such problems, they tend to deal with the problem for themselves without involving external actors like the ECA. It is not their interests to expose its shortcomings to the European public and other member states.

For the ECA, thus, the EP is almost the only route for getting help to obtain information and to influence the activities of the Commission. Its right to grant the budgetary discharge to the Commission enables the EP to influence the Commission. Rejecting or postponing discharge has been considered as seriously undermining the stance of the Commission. It even led to the resignation of the Santer Commission in 1999. The process for granting discharge is long and sophisticated enough to leave room for the ECA to seek the EP’s support for its effectiveness.

There are three ways for the EP to support the stance of the ECA. Firstly, the ECA can ask the EP to put the pressure on the Commission and member states to reveal those documents to which it is refused to get access. The ECA has maintained a good working relationship with the EP Budgetary Control Committee, informally the first destination of its reports. Laffan (1999: 260) maintains that the committee

considers the ECA as an “ally in its search for more control over the Commission and the EU budget”. According to Eluned Morgan MEP, the committee is so supportive for the ECA that it wanted to give the ECA full rights of access to information held by the state audit bodies and public administrations concerning EU expenditure. (House of Lords 2001) The committee can influence the Commission by threatening to submit a negative report to the plenary of the EP. More formally the ECA can express its difficulty of gathering information from the Commission to the EP anytime with a special report. Responding to special reports, the EP may draw resolutions containing a formal request for the Commission to cooperate with the ECA although it does not always succeed in forcing the Commission to supply the information (O’Keeffe 1994:185). In the MED affair (European Parliament 2000: 17), after the Commission repeatedly refused to reveal all the files of the case, the EP threatened to bring proceedings against the Commission, pursuant to Article 175 of the Treaty, for failure to act should the Commission fail once again to respond to this request within two weeks¹⁴.

Secondly, the ECA can pursue its cases in more depth through the EP Facing non-cooperative attitude of the audited, the ECA submits to the EP a special report on the case with stating the difficulties of the particular auditing and the consequent necessity for further investigation by the EP in order to clarify the situation. Or it can indirectly signal the need for further investigation by simply mentioning its dissatisfaction about the working of the audited in an annual report. Depending on its judgment on the importance of the cases, the EP responded to the wishes of the ECA either by ordering its Budgetary Control Committee to deal with them (O’Keeffe 1994: 184) or, in more serious circumstances, by setting up a temporary committee of inquiry like the one into BSE (bovine spongiform encephalopathy) between September 1996

and February 1997. On salient issues the EP may establish an independent committee of experts after inter-institutional negotiation with the Council and the Commission. The saga of resignation of the Santer Commission triggered by the critical report of the ECA is an evidence for this. The establishment of the committee of independent experts in the saga shows that the EP shares the view of the ECA about the secretive Commission trying to cover up its faults. Close cooperation between the two institutions in this saga did not stop at the submission of the annual report by the ECA. Some of the former members of the ECA became the members of the committee. It is notable that the committee of independent experts had the former president of the ECA, Middlehoek. He was known to have had continuous struggle with the former Commission President Delors, whose Commission was pointed out the root of the mismanagement in the Commission. During his term in office, he was also committed to strengthen the institutional status of the ECA (Laffan 2002: 238).

Thirdly and lastly, with the Council mainly ignoring it, the ECA has been dependent on the EP to be heard by its audited. The budgetary discharge does not have only political and symbolic scrutiny over the Commission. The process of granting discharge has been used by the EP to induce the Commission to behave as the former wants. By postponing the discharge, the EP puts the pressure on the Commission to address the shortcomings identified by the ECA in order to gain the discharge (Nugent 2001:192). If the nature of the weakness of the management is too deeply rooted one to be addressed in a short term, the Commission is forced to promise the EP to take further action in the future. In most of time, the EP supported the opinions of the ECA in its resolutions on the budgetary discharge. The opinion of the ECA inserted in the EP resolutions has real implication for the Commission since Art. 90 of the Financial

Regulation oblige all institutions to “take all appropriate steps to act on the comments appearing in the decisions giving discharge”. With this, the report of the ECA has gained its life. The EP has required for the Commission to adopt the suggestions from the ECA in most years of its working. An example can be found in the process of establishing the OLAF (European Anti-fraud Office), the predecessor of the UCLAF (Coordination of Fraud Prevention Unit). After the repeated criticism of the inadequacy of the UCLAF from the ECA, the EP pushed hard the Commission to submit a proposal for establishing the OLAF.

Acknowledging that the EP has similar rationale for scrutinizing the process of the EU budget implementation, the ECA has sincerely served as monitor of the Commission on behalf of the EP. Like its special reports No. 3/96 and 1/97, it writes special reports in response to the EP. Although critical in its reports on the expenses of MEPs and the transnational political groups in the EP, it has taken efforts to quickly serve the request from the EP for assistance. (Laffan 1999: 261)

Conclusion

The role of the ECA as a tool for EP has evolved with the mutual consent between the two institutions. Laffan (2002: 251) even states that the ECA seems to have altered the balance in relations between the EP and the Commission in a manner that strengthened parliamentary control over the Commission. However, the desirability of their closeness is questionable. A politicised court of auditors is good neither for the ECA nor for the EP. If the ECA is not free from political battle from outside, it is difficult for it to function as a reliable source of information to the EP. Once the relationship

between the principal and its independent oversight agent looks politicised, the credibility of the oversight may be in danger. If such politicisation got deeper, the EP might not present a unified judgment about the information from the ECA. Division on the given information would make difficult for the EP to scrutinize the Commission effectively. The previously mentioned case that the EP rejected to accept the report of ECA in 1999 shows such possibility. The centre-right parties, which have never complained about leaks in previous years when one of their supporters was in charge of the court, was seen by some observers determined to embarrass Jan Karlsson, who is a socialist president of the ECA (Guardian, November 17 1999). The internal division of the EP in this incident was obvious. Enrique Baron, the socialist group leader, did not hide his dissatisfaction about the critical attitude of the EPP group and ELDR group.

Nevertheless, the ECA does not merely subordinate itself to the EP for getting audience and effective enforcement of the audited (House of Lords 2001). Since the reason for cooperation with the EP is improvement of its institutional status, it does so as long as its independence is not hindered. Sometimes it refused to give information required by the EP either not to enter into politically sensitive grounds or not to hurt its credibility by providing uncertain information. For instance, a rapporteur on the 1999 budget discharge expressed the EP's criticism of its reluctance to put detailed facts and figures in the ECA annual report. The ECA tries to control the flow of information from it. With regard to the rate of error, although it had stop publishing an official rate because of distortion in the media, a member of the ECA gave a figure of the previous year at a press conference. In some other cases, the ECA provided information to the Commission but refused to give it to the EP Budgetary Control Committee especially when the information was produced at the request of the Commission. (Harden, et. al.

1995: 625) Finally, it tries to keep its independence on its internal matters. Michiel van Hulten MEP and Christopher Heaton-Harris MEP denounced that the ECA refused to have input into its work program. Jo Carey, a former member of the ECA, backed such attitude of the ECA as a legitimate way to protect its independence from interference of any institution (House of Lords 2001). In short, the relation between the EP and the ECA is not free from information asymmetry and conflict for discretion.

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Table 1. . Comparison of police-patrol and fire-alarm with the ECA

	Police-Patrol Oversight	Oversight through the European Court of Auditors.	Fire-Alarm Oversight
Time of principal's control	Both Ex-ante and ex-post of the action of the agent	Annual report – ex-post Special report- either ex-post or ex-ante Opinion- ex-ante	Ex-post of the agent's action.
Frequency	All the time “on going fashion” (Hopenhayn and Lohmann 1996: 196)	Annual report- regular Special report- occasional Opinion- when the principal wants	Occasional- only when a third party's interest is under threat. (Hopenhayn and Lohmann 1996: 203)
Decision to control the agent	Always by the principal	Always by the principals: the EP and the Council in the budgetary discharge process	Not always by the principal. -mainly by judicial branches of government
Principal's involvement	Direct - Legislative committees	Medium -the principal may request the ECA to oversee certain aspect although the ECA is not obliged to do so.	Indirect
Third Party involvement	Indirect -only when the principal is interested in to listen to the third parties.	Direct ECA is a governmental organization.	Direct Non-government third party

Notes

¹ The ECA provides a bibliography of the study of itself. See <http://www.eca.eu.int/EN/citizen.htm>.

² Of course, the Commission justifies their refusal for offering certain information to the EP with other reasons. The Budget Commissioner Schreyer in 2000 explained its refusal for passing some documents requested by the EP by stating that “The Commission has nothing to hide and this Commission sees it as its duty to support Parliament fully in the performance of its duties. But we need a procedure which safeguards the confidentiality of information and, more importantly, the principle of the rule of law” whereby people cannot be pre-judged.” (Debate of the European Parliament, Sittings of 11 April 2000)

³ Wooldridge and Sassella (1976) provide a detailed research on the process of establishment of the ECA.

⁴ See the article by then Prime Minister Edouard Balladur in *Le Monde*, 30 November 1994.

⁵ The Statement of Assurance is an overall opinion on the accounts and the transactions underlying them for each financial year. This gives more easily understandable information for the budgetary authorities to assess the Commission’s performance. It is originated from a British proposal. (Inghelram 2000: 132)

⁶ Minutes of evidence taken before the select committee on European legislation, House of Commons, 31 March 1998.

⁷ It is notable that the appointment of the ECA required the approval of the EP before the EP gained such power over the appointment of the Commission. (Wallace 1980:102)

⁸ Rule 35 of Rules of Procedure of the European Parliament says “4. If the opinion adopted by Parliament is negative, the President shall request the Council to withdraw its nomination and submit a new nomination to Parliament.”

⁹ When Maire Geoghegan-Quinn, the member of the ECA 2000-2005, was chosen, there was suspicion that she was nominated for the job “in compensation for the poor treatment of her over the EU Commissioner job” (*The Irish Times*, September 1, 1999). She had not belonged to an external audit body or any equivalent or

comparable body before her job in the ECA, although Art. 188b.2 of the Treaty on the European Union states:

"The members of the ECA shall be chosen from among persons who belong or have belonged in their respective countries to external audit bodies or who are especially qualified for this office."

¹⁰ Currently (December 2002) there are two members of the ECA who used to be members of the EP, Maarten B. Engwirda and Juan Manuel Fabra Valles. In particular, Fabra Valles became the President of the ECA on January 16, 2002. He was a member of the European Parliament during Parliaments IV (1994-1999) and V (1999-2004) serving as a member of the Committee on Budgets (1994-2000), and of the Committee on Budgetary Control (1994 -1999).

¹¹ Levy (1996: 512) argues that the feature of the value-for-money audit involving assessment of the policy outcome of the implementation of the budget in particular requires more technical expertise than the MEPs even in the budgetary controls committee have. He also points out their short-term focus conditioned by the regular changes in the composition of the committee and elections for the reason of impossibility of such style of audit by the EP. Considering that the eventual purpose of the EP's scrutiny over the Commission reside on the securing the intended policy outcome, the ECA's value-for-money audit provides the EP with the very needed information.

¹² EP resolution on ECA Special Report No 3/97 on the decentralized system for the implementation of the Phare Programme, together with the Commission's replies (Minutes of 06/11/97)

¹³ EP resolution on the European ECA' Special Report No 11/2000 on the support scheme for olive oil, accompanied by the Commission's replies. (Minutes of 17/05/2001)

¹⁴ EP Resolution on the repercussions of the affair of the MED programmes Minutes of 17/11/1998.