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Financial Control of the Management of the resources given to Greece by the European Social Fund concerning Employment:

Legal and Institutional Aspects

DIMITRIOS SKIADAS

Thesis submitted for the degree of

DOCTOR OF PHILOSOPHY

UNIVERSITY OF DURHAM

DEPARTMENT OF LAW

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DURHAM
2000

19 JUN 2001

Dimitrios Skiadas

Financial Control of the Management of the resources given to Greece by the European Social Fund concerning Employment: Legal and Institutional Aspects

Thesis submitted for the Degree of Doctor of Philosophy
University of Durham - Department of Law
2000

ABSTRACT

The thesis at first examines the institutional and political background of the employment policies adopted by the European Union and implemented through the European Social Fund, under the new legislative framework regarding the Structural Funds. The implementation of these policies in Greece is highlighted.

Then, the thesis focuses on the system of financial control of the European Union. It examines in detail, based on the relevant Community legislation, the institutional and operational aspects of this system, with reference to the management of the resources given to Greece by the European Social Fund in order to finance the implementation of the employment policies. Afterwards, the thesis examines in the same manner the national (Greek) system of financial control, always with reference to the resources given by the European Social Fund to Greece. Special reference is made to the judicial review proceedings regarding the European and Greek system of financial control. Throughout the analysis, there are examples of the financial control of operations regarding the promotion of employment in Greece, financed by the European Social Fund.

After this examination, there are suggestions regarding the reform of the institutional framework of the European and Greek systems of financial control, as well as of the relevant controlling operations, in light of the problems identified during the analysis of the existing schemes.

At the end, in order to verify the effectiveness of the operations financed by the European Social Fund in Greece, as this effectiveness has been established through the European and Greek financial control mechanisms, there is an examination of the impact of these operations on the Greek labour market.

Omnes legum servi sumus
Ut liberi esse possumus

(We all are servants of the laws
in order to be able to be free)

Marcus Tullius Cicero (106 – 43 B.C.)
Pro Cluente, 53

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Table of Contents

ACKNOWLEDGEMENTS **3**

TABLE OF CONTENTS **4**

ABBREVIATIONS **8**

INTRODUCTION **9**

CHAPTER ONE: THE EUROPEAN SOCIAL FUND: A EUROPEAN STRUCTURAL INSTRUMENT **17**

1.1. HISTORICAL DEVELOPMENT 17
1.1.1. The early years *17*
1.1.2. The first reforms in the 1970s *18*
1.1.3. The situation in the early 1980s *20*
1.1.4. Appraisal of the early reforms *21*
1.1.5. The Single European Act and the 1988 reform of the Structural Funds *23*
1.1.6. The Treaty of Maastricht and the 1993 reform of the Structural Funds *25*
1.1.7. Appraisal of the 1988 and 1993 reforms *26*
1.2. CURRENT PROVISIONS REGARDING THE EUROPEAN SOCIAL FUND 28
1.2.1. The Treaty of Amsterdam *28*
1.2.2. The 1999 Regulations regarding the Structural Funds *30*
1.2.3. Regulation 99/1260/EC *32*
1.2.3.1. Structural Objectives 32
1.2.3.2. Partnership 35
1.2.3.3. Integration of Community Structural action with national policies 37
1.2.3.4. Better financial management of the Structural Funds 38
1.2.3.5. Simplification, Monitoring, Flexibility of Community Structural action .. 40
1.2.3.6. Community Support Frameworks 41
1.2.3.7. Operational programmes 42
1.2.3.8. Single Programming Documents 43
1.2.3.9. Community Initiatives 43
1.2.3.10. Other provisions 44
1.2.4. Regulation 99/1784/EC *46*
1.2.5. Appraisal of the 1999 reform *47*

CHAPTER TWO: EUROPEAN AND NATIONAL EMPLOYMENT POLICIES FINANCED BY THE EUROPEAN SOCIAL FUND IN GREECE **49**

2.1. THE LEGISLATIVE, INSTITUTIONAL AND POLITICAL FRAMEWORK OF EUROPEAN EMPLOYMENT POLICIES 49
2.2. MEASURES FOR THE PROMOTION OF EMPLOYMENT FINANCED BY THE EUROPEAN SOCIAL FUND IN GREECE 57
2.2.1. Resources given to Greece by the European Social Fund: An Overview *58*
2.2.2. Greek Community Support Frameworks *59*
2.2.3. National Action Plans for Employment *61*
2.2.3.1. Measures improving employability 62
2.2.3.2. Measures developing enterpreneurship 64

2.2.3.3. Measures encouraging adaptability of businesses enterprises and their employees 65
2.2.3.4. Measures on strengthening equal opportunities policies for women and men 66
2.2.3.5. Measures of horizontal effect 66
2.2.4. Other Measures *67*
2.2.4.1. Exceptional financial support in favour of Greece in the social field 67
2.2.4.2. Integrated Mediterranean Programmes 68
2.2.4.3. Article 6 Pilot Projects 69
2.2.4.4. Projects on Third System and Employment 70
2.2.5. The Community Initiatives *71*
2.2.5.1. The EMPLOYMENT Initiative 72
2.2.5.2. The ADAPT Initiative 74
2.2.5.3. The EQUAL Initiative 75

CHAPTER THREE: THE COMMUNITY LEGAL FRAMEWORK ON CONTROLLING THE FINANCIAL MANAGEMENT OF ESF RESOURCES IN GREECE - DISPOSITIONS OF THE TREATIES 78

3.1. INTERNAL FINANCIAL CONTROL 79
3.2. EXTERNAL AUDIT 80
3.2.1. Extent of Audit *82*
3.2.2. Method and types of audit *83*
3.3. PARLIAMENTARY CONTROL 86
3.3.1. The European Court of Auditors in the discharge procedure *88*
3.3.2. The Council in the discharge procedure *92*
3.3.3. The European Parliament in the discharge procedure *92*
3.4. DECENTRALISED AUDIT 94
3.4.1. Decentralisation in internal financial control *96*
3.4.2. Decentralisation in external audit *97*
3.4.3. The Amsterdam Treaty amendments *99*
3.5. APPRAISAL OF THE DISPOSITIONS OF THE TREATIES 101

CHAPTER FOUR: THE COMMUNITY LEGAL FRAMEWORK ON CONTROLLING THE FINANCIAL MANAGEMENT OF ESF RESOURCES IN GREECE-SECONDARY LEGISLATION 106

4.1. FINANCIAL REGULATION OF 1977 APPLICABLE TO THE GENERAL BUDGET OF THE EUROPEAN COMMUNITIES 106
4.1.1. Internal Financial Control *108*
4.1.2. External Audit *111*
4.1.3. Parliamentary Control *115*
4.1.4. Decentralised Audit *117*
4.2. REGULATIONS REGARDING THE STRUCTURAL FUNDS 118
4.2.1. The early Legislation *118*
4.2.2. The 1988 and 1993 Regulations *119*
4.2.2.1. Council Regulations 88/2052/EEC and 93/2081/EEC 119
4.2.2.2. Regulations 88/4253/EEC and 93/2082/EEC 120
4.2.2.3. Criticisms and further developments 122
4.2.3. The new Structural Funds Regulations *124*
4.3. DISPOSITIONS ABOUT THE FIGHT AGAINST FRAUD IN THE EUROPEAN UNION 128
4.3.1. The problem, its nature and its impact *128*

4.3.2. The solutions adopted.....131
4.4. REFORM OF THE SYSTEM OF FINANCIAL CONTROL OF THE EUROPEAN UNION 140
4.4.1. Responsibility and Accountability of Authorising Officers and Line Managers 142
4.4.2. Overhauling Financial Management, Control and Audit 143
4.4.3. Protecting the Communities' Financial Interests 146
4.4.4. Reflections on the Reform.....147

CHAPTER FIVE: THE NATIONAL LEGAL FRAMEWORK ON CONTROLLING THE FINANCIAL MANAGEMENT OF ESF RESOURCES IN GREECE.....149

5.1. GENERAL PROVISIONS ABOUT FINANCIAL CONTROL 152
5.1.1. The Greek Constitution.....152
5.1.2. Dispositions of the Public Accounting Code 154
5.1.3. The Presidential Decree 774/1980.....156
5.1.3.1. Ex ante Financial Control.....157
5.1.3.2. Ex post Financial Control 159
5.2. PROVISIONS ADOPTED ESPECIALLY FOR THE CONTROL OF THE FINANCIAL MANAGEMENT OF RESOURCES GIVEN TO GREECE BY THE EUROPEAN UNION, PARTICULARLY THE EUROPEAN SOCIAL FUND.....160
5.2.1. Legislation providing for the financial control of actions financed by the ESF through the Community Support Frameworks and the Community Initiatives.....160
5.2.1.1. First Community Support Framework.....160
5.2.1.2. Second Community Support Framework 163
5.2.2. Legislation providing for the institutional framework of the financial management and control of resources given to Greece by the ESF.....164
5.2.2.1. Restructuring the Ministry of Labour and Social Security.....165
5.2.2.2. The Special Coordinating Body of Control of the Programmes financed by the European Union 165
5.2.2.3. The Greek Management Organisation Unit of the Community Support Framework.....166
5.2.3. The case of the Greek Vocational Training Centres: An unpleasant experience.....168
5.3. OVERALL EVALUATION OF THE SYSTEM OF FINANCIAL MANAGEMENT AND CONTROL OF COMMUNITY RESOURCES IN GREECE 171
5.3.1. The Greek Experience 171
5.3.2. Lessons from the other Member States of the European Union.....177

CHAPTER SIX: JUDICIAL REVIEW AT COMMUNITY LEVEL OF THE FINANCIAL MANAGEMENT OF RESOURCES OF THE EUROPEAN SOCIAL FUND IN GREECE.....183

6.1. DIRECT ACTIONS FOR ANNULMENT 183
6.1.1. Reviewable Acts.....184
6.1.2. Locus Standi.....189
6.1.3. Grounds for Annulment.....195
6.1.3.1. Lack of Competence.....196
6.1.3.2. Infringement of an essential procedural requirement.....196
6.1.3.3. Infringement of the Treaty or any rule of law relating to its application 200
6.1.3.4. Misuse of Powers 202
6.1.4. Time Limits 202

6.2. ACTIONS FOR FAILURE TO ACT 204
6.3. ENFORCEMENT ACTIONS 206
6.4. PRELIMINARY RULINGS 208
6.5. ACTIONS FOR DAMAGES 209
6.6. JUDICIAL REVIEW OF FINANCIAL CONTROL 211

CHAPTER SEVEN: JUDICIAL REVIEW AT NATIONAL LEVEL OF THE FINANCIAL MANAGEMENT OF RESOURCES OF THE EUROPEAN SOCIAL FUND IN GREECE 220

7.1. THE INSTITUTIONAL NATURE OF THE GREEK COURT OF AUDIT 220
7.2. JURISDICTION OF THE GREEK COURT OF AUDIT 222
7.3. OTHER PROVISIONS REGARDING JUDICIAL REVIEW AT NATIONAL LEVEL 227
7.4. REFLECTIONS ON THE REFORM OF THE GREEK COURT OF AUDITORS 229

CHAPTER EIGHT: IMPACT OF THE EMPLOYMENT POLICIES FINANCED BY THE EUROPEAN SOCIAL FUND IN GREECE 235

8.1. UNEMPLOYMENT IN GREECE 236
8.2. EFFECTIVENESS OF THE EMPLOYMENT POLICIES IMPLEMENTED IN GREECE AND FINANCED BY THE EUROPEAN SOCIAL FUND 239
8.2.1. Effectiveness of the First Community Support Framework (1989-1993) 239
8.2.2. Effectiveness of the Second Community Support Framework (1994-1999) .241
8.2.2.1. Findings of evaluation at a general level 242
8.2.2.2. Effectiveness of the Operational Programme «Education and Basic-Initial Vocational Training» 247
8.2.2.3. Effectiveness of the Operational Programme «Continuing Vocational Training and Promotion of Employment» 249
8.2.2.4. Effectiveness of the Operational Programme «Combatting Exclusion from the Labour Market» 251
8.2.3. Effectiveness of the Community Initiative EMPLOYMENT 254
8.2.4. Effectiveness of other measures financed by the ESF 258

CONCLUSION 263

LIST OF CASES 269

I. NATIONAL COURTS 269
Greek Courts 269
British Courts 271
II. EUROPEAN COURTS 271
Court of First Instance 271
European Court of Justice 272
European Court of Human Rights 277

BIBLIOGRAPHY 278

I. PRIMARY SOURCES 278
Offical Documents 278
Newspapers 287
Interviews 287
Articles 288
II. SECONDARY SOURCES (BOOKS, ARTICLES FROM SCIENTIFIC JOURNALS, ETC) 289

ANNEXES 300

ABBREVIATIONS

Art.	Article
AthLRev.	Athens Law Review
BCC	Budgetary Control Committee
CEEC	Central and East European Countries
CMLRev.	Common Market Law Review
CSF	Community Support Framework
Dir.	Directive
EAGGF	European Agricultural Guidance and Guarantee Fund
Euratom	European Atomic Energy Community
ECA	European Court of Auditors
ECB	European Central Bank
ECF	European Cohesion Fund
ECJ	European Court of Justice
ECSC	European Coal and Steel Community
EC Treaty	European Community Treaty
ECU	European Currency Units
EDF	European Development Fund
EE	Scientific journal in Greece
EEA	European Economic Area
EEC	European Economic Community
EIB	European Investment Bank
EJPR	European Journal of Political Research
ELRev.	European Law Review
EurPL	European Public Law
ERDF	European Regional Development Fund
ESF	European Social Fund
EU Treaty	Treaty on the European Union
GDP	Gross Domestic Product
HelRevEL	Hellenic Review of European Law
IJGA	International Journal of Government Auditing
ILO	International Labour Office
LIEI	Legal Issues of European Integration
NUTS	Nomenclature of Territorial Units for Statistics
OJ	Official Journal of the European Communities
OLAF	European Anti-Fraud Office
RDE	Rivista del Diritto Europeo
Reg.	Regulation
RFFP	Revue Francaise des Finances Publiques
RHDI	Revue Hellenique de Droit International
Rev.Trim.Dr. Europ.	Revue Trimestrielle de Droit Europeen
SPD	Single Programming Document
VAT	Value Added Tax
Vol.	Volume
YBEL	Yearbook of European Law

Introduction

It is common knowledge that European unification has been regarded as the only way to end the tradition of conflict and suffering that has tormented the peoples of Europe throughout the centuries. The treaties establishing the European Communities and the European Union reflect this idea. They aim to establish a common market, and subsequently an economic and political union, to assert a pan-European presence globally, to promote balanced economic growth and social cohesion among the Member States, and to strengthen the protection of Community nationals.[1]

European integration includes economic and social aspects. The economic aims are as follows: harmonious development of economic activities, economic and monetary stability, balanced economic expansion raising the standard of living and a high level of employment. The social dimension was introduced in the early 1970s, when it became obvious that the economic mechanisms of the common market did not automatically generate social progress and full employment.[2] Subsequently, several steps were taken to consolidate European social integration, including the 1986 Single European Act, the 1989 Community Charter of the Fundamental Social Rights of Workers, the Social Protocol annexed to the EC Treaty by the EU Treaty in 1992, and several amendments introduced by the Amsterdam Treaty in 1997.

In order for the European Community to realize its social policy aims, it tried to establish a relevant European model. Social Policy in general is defined as government action concerned with establishing and maintaining the welfare state for the benefit of citizens, focusing especially on employment, social security, health care, welfare services, housing, education.[3] The European model of Social Policy, according to the European Commission, is based on a number of "shared values" such as democracy, individual rights, free collective bargaining, the market economy, equality of opportunity for all, social welfare and solidarity.[4] The existence of such a model (or as some call it "a

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[1] See Article 2, EC Treaty and Article 2, EU Treaty.

[2] Kl.-D. Borchardt, European Integration: The origins and growth of the European Union, Office for Official Publications of the European Communities, 1995, p. 24 & 27.

[3] T. Hervey, European Social Law and Policy, Longman Publications, 1998, p. 1, P. Tsakloglou, Social Policy, in Th. Georgakopoulos-E. Tsakalotos (Ed.), Economic Policies of the European Union, Stamoulis Publications, 1996, p. 205-233 at 205-206.

[4] European Commission, European Social Policy – A Way forward for the Union, COM(94) 333, para 3.

European welfare state") is disputed,[5] however this does not fall within the scope of this thesis. So far, two methods have been used by the EU institutions in order to promote the European social policy model. First, the development of a legislative framework (including both primary and secondary Community legislation) regarding many aspects of social policy, and thus creating "European Social Law", "European Employment Law" and "European Labour Law". Second, the development of the so called "flanking policies",[6] meaning the use of structural instruments in order to reorientate and restructure the Member States' economies and thus fulfil the objectives of Art. 3 EC Treaty. This thesis will focus on the implementation of such policies in Greece and more specifically on those promoting employment.

The Structural Instruments are defined as the financing mechanisms managed by the Commission and the European Investment Bank (EIB), which may support actions or works realised within the Community for purposes of common interest: regional economic development, employment, environment, issues regarding energy, communications, etc.[7] Their overall aim is to promote a reduction in geographic and social disparities within the European Union, in terms of per capita Gross Domestic Product and (un)employment.[8] The main ones are the three Structural Funds (European Regional Development Fund - ERDF, European Social Fund - ESF, and the Guidance section of the European Agricultural Guidance and Guarantee Fund - EAGGF), the Financial Instrument for Fisheries Guidance - FIFG, and the European Cohesion Fund - ECF. The latter two were only recently established, in 1993[9] and 1994[10] respectively. The Structural Funds were established much earlier (the ESF in 1957[11], the EAGGF in 1962[12] and the ERDF in 1975[13]).

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[5] For an analysis of the relevant discussion see E. Szyszczak, EC Labour Law, Longman Publications, 2000, p. 164-170, P. Tsakloglou, op. cit., p. 210-211.
[6] E. Szyszczak, op. cit., p. 159.
[7] European Commission, Vade Mecum on the Reform of the European Community's Structural Funds, Brussels, 1989, p. 10.
[8] J. Scott, Regional Policy: An Evolutionary Perspective, in P. Graig, G. De Búrca, The Evolution of EU Law, Oxford University Press, 1999, p. 625-652 at 625.
[9] Regulation 93/2080/EEC, OJ 1993, L 193/1, Regulation 93/3699/EC, OJ 1993, L 346/1.
[10] Regulation 94/1164/EC, OJ 1994, L 130/1. This Fund was preceded by an interim scheme, the Cohesion Financial Instrument, (Regulation 93/792/EEC, OJ 1993, L 79/74). Their main objects of financing have been environmental and transport infrastructure projects. The beneficiary States are Spain, Portugal, Greece and Ireland.
[11] Art. 146 [ex 123] EC Treaty.
[12] Regulation 62/25/EEC, OJ 1962, L 30/991.
[13] Regulation 75/724/EEC, OJ 1975, L 73/1.

These Funds (especially their financing of operations) have had an enormous impact on the overall European economy as well as on the national economies of the Member States. This thesis will focus on the activities of one Fund, the European Social Fund (ESF), in Greece. Both these objectives (ESF and Greece) were selected on the basis of interest. More specifically, unemployment is one of the biggest (if not the biggest) problems of the European Union. The main instrument for tackling this problem is the ESF and the operations it finances. Also, Greece has been regarded for quite some time as the "basket case" of the European Union, in economic terms. However, during the last few years, Greece has made a substantial effort to join the economic and monetary union, using, *inter alia*, resources given by the Structural Funds. This effort has been successful.[14] Consequently, it is interesting to assess how Greece has managed these resources, especially those aimed at tackling unemployment in Greece, which were provided by the ESF. The most appropriate method for such an assessment is to examine the legal and institutional framework of the operations realised in Greece and financed by the ESF, especially the framework regarding the financial control of those operations' management.

Given these objectives, the points of reference of the analysis are the relevant legislative provisions at European and national (Greek) level. These provisions include the general provisions on financial control, applicable to every operation financed by the European Union (i.e. Financial Regulation for the European Union, Public Accounting Code for Greece, etc); the specific provisions adopted under the regime of the Regulations regarding the Structural Funds and relevant national legislation; the provisions for combating fraud in the European Union, etc. The references made to more general schemes of financial control are justified insofar as these schemes are applicable to the resources given to Greece by the ESF. Furthermore, since all items of Community expenditure, including those relating to the ESF, are shown in the budget,[15] the analysis in all Chapters (even if reference is made only to the European Union's Budget) also includes the resources paid by the ESF to Greece.

An examination of the legal aspects of this issue requires consideration of the applicable judicial review proceedings. Judicial review, at national and European level,

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[14] European Council, Presidency Conclusions, Santa Maria da Feira 19-20 June 2000, Doc 200/00, p. 8, Council Decision 2000/427/EC in accordance with Aricle 122(2) of the Treaty on the adoption by Greece of the single currency on 1 January 2001, OJ 2000, L 167/19.
[15] Art. 268(1) EC Treaty.

has been used by many parties (especially the European Parliament and the Member States) not only in order to attack a particular legislative measure, but also in order to publicise their viewpoint concerning the correct interpretation of particular provisions of Community law.[16] This observation is notably accurate with regard to interesting issues such as the implementation of the EU budget and issues of education, labour, employment, and social policy.[17] Obviously those areas involve operations financed by the Structural Funds, including of course those implemented in Greece and financed by the ESF. Therefore, a detailed analysis of the relevant judicial proceedings, focusing on issues of financial management and control, is undertaken. After all, such judicial proceedings affect the opinion of the institutions and the persons involved, concerning the institutional framework within which these operations are carried out, which may generate pressure for institutional change.[18]

Furthermore, there is a detailed examination of the relevant institutional framework, i.e. the bodies responsible, at national and European level, for performing this financial control. Several reasons underly this "institutionalist" approach.[19] First, it focuses on the shaping of political, legal and economic life by the institutions. Secondly, it highlights the significance of rules, procedures and norms as developed within an institutional framework in structuring political action. Thirdly, it demostrates the importance of the institutions in identifying and establishing rules about "appropriate" actions and behaviour. Studying the institutions allows for a better understanding of the progress of European Integration. Jean Monnet, the visionary architect of European Integration, had vast experience of working within European Institutions and therefore understood them better than anyone else. He summarised his experience in his memoirs: "Nothing is possible without men, nothing is lasting without institutions...."[20]

The scope of the research and the analysis is limited by several criteria. First, it must be noted that this thesis states the law as at 30 September 2000.

Secondly, only those programmes or projects financed by the ESF within the "Structural Operations" chapter of the EU budget are included. Programmes or projects

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[16] H. Cullen, A. Charlesworth, Diplomacy by other means: The use of legal basis litigation as a political strategy by the European Parliament and Member States, CMLRev 36, 1999, pp. 1243-1270 at 1245.
[17] Ibid, p. 1251-1253, 1254-1255, 1258-1260 and 1263-1264.
[18] J. Scott, op.cit., p. 637.
[19] B. Laffan, Becoming a "Living Institution": The Evolution of the European Court of Auditors, JCMS, Vol. 37, 1999, No 2, pp. 251-268 at 253.
[20] J. Monnet, Memoirs, Collins Publications, 1978, p. 304.

on education, training and employment, which are not financed through the ESF (i.e. those included in the "Internal Policies" chapter of the EU budget) are not examined.

Thirdly, the thesis mainly examines programmes or projects implemented by the Greek Ministry of Labour and Social Security or the Greek Manpower Employment Organisation. References to programmes or projects implemented by other Ministries are rare.

Fourthly, as Greece received financial support from the Structural Funds only under Objective 1, the analysis focuses on programmes and projects implemented under this Objective, under the relevant Community Support Frameworks and the National Action Plans for Employment. Nevertheless, reference is also made to projects implemented under other schemes financed by the Structural Funds, such as Community Initiatives, Integrated Mediterranean Programmes, Third System projects, etc.

Finally, the evaluation of the programmes' implementation is based mainly on qualitative, not quantitative information, since the latter is not yet available. Final reports regarding the implementation of the relevant Operational Programmes and Community Initiatives (which reports will contain quantitative information) have not yet been prepared. Their submission to the Commission is planned for 2001. It has also been estimated that the absorption (in terms of both commitments and payments) of the amounts made available to Greece through the Structural Funds for the programming period 1994-1999, will be completed in 2001. For the purposes of this research, the intermediate reports (prepared in 1997-1998) have been used, which contain mainly qualitative information regarding the implementation of the programmes. The quantitative information available is limited and is used in this thesis only when it is not provisional or when it offers reliable data concerning the implementation of the relevant projects.

The structure of the thesis has been adapted accordingly. More specifically, Chapter 1 examines the legislative provisions establishing the Structural Funds, their subsequent development, the problems identified and the extent to which various reforms resolved these. After a very brief examination of European employment policies developed during the last 10 years, an analysis of the relevant measures implemented in Greece and financed by the ESF is undertaken in Chapter 2. Chapters 3 to 5 analyse the financial control system in both the European Union and Greece, focusing upon the procedures used to audit the measures financed by the ESF in Greece. Chapters 6 and 7

analyse of the judicial review procedures regarding both the management of resources given to Greece by the ESF and the financial control thereof. This analysis includes both European and Greek proceedings. The final chapter examines the impact of the employment policies financed by the ESF on the Greek labour market. The conclusion includes some consideration of the present system of financial control, in view of the 2000-2006 period of structural operations in Greece financed by the Structural Funds and especially the ESF.

It is also necessary to clarify some decisions regarding the style of the information provided in the thesis. First, European legislative instruments adopted by the Council or jointly by the Council and the Parliament, are referred to simply as Regulations, Directives, Decisions etc while legislative instruments adopted by the Commission are referred to as Commission Regulations, Commission Decisions etc.

Secondly, in order to reduce confusion with reference to Treaty articles (especially after the Maastricht and Amsterdam amendments), reference is made only to the numbering of the Treaties established by the Treaty of Amsterdam. However, in the sections where there is an historical analysis, the old numbering (before the Amsterdam amendments) is also used to in order to facilitate the identification of the provisions in question.

Thirdly, references to currency units in this thesis are mainly in Euro (or ECU for amounts before 1999). However, in specific references to amounts given to Greece, there is a distinction between appropriations included in the budgets of programmes and actual payments. The former are presented in ECU or Euro while the latter are presented in drachmas. This distinction exists because it has not been possible to find the information regarding the actual payments expressed in Euro or ECU. To attempt to convert these amounts from drachmas to Euro would be misleading given that the current exchange rate between drachma and Euro is much higher than that prevailing at the time of the measures' implementation. A conversion using the current exchange rate or even an average exchange rate for all the years of the programmes' implementation would lead to erroneous amounts. This has already happened during an on-the-spot audit of the European Court of Auditors in Greece in October 1997.[21] It was found then that the Greek authorities had used average annual conversion rates in order to calculate the

[21] Information concerning this audit can be found in European Court of Auditors, Doc. 54/16.1.1998 including Letter of Audit No 1/1998 on the audit of the European Social Fund operations in Greece of October 1997, addressed to the Greek Court of Audit, p. 1.

amounts of the final payments for several programmes financed by the ESF under the first Greek Community Support Framework (1989-1993). This resulted in several discrepancies between the amounts included in the initial budgets and the amounts included in the applications for final payment. These applications had to be resubmitted, including new calculations of the amounts, using the exchange rate at the date of the programmes' implementation. This resulted in a very long delay in closing the accounts of the programmes in question. The problem of variations in the exchange rate between the national currency and the ECU/Euro has been acknowledged as having adverse effects on the monitoring and the financial control of the structural operations.[22] The measures are implemented in national currency but the accounts regarding the financial plans and the Community assistance given to these measures are drawn up in ECU/Euro. This is a very complex system which will hopefully be abolished after the adoption of the Euro as a common currency for all transactions.

Finally, with regard to references to percentages regarding employment, unemployment and other relevant issues, the figures referred to are those presented by Eurostat and the National Statistical Service of Greece. Especially regarding unemployment, it must be pointed out that so far in Greece several methods have been used to calculate unemployment percentages. All use the Greek labour force as their point of reference. The first is the method currently employed by the National Statistical Service of Greece, using the definition of unemployment provided by the International Labour Office (ILO) and Eurostat. This defines the "unemployed" as all persons aged 15 and over who are a) without work, b) currently available to start work (within the next two weeks) and c) seeking work by taking specific steps during the previous four weeks (e.g. applying to employers, placing or answering newspaper advertisements, looking for equipment to start their own enterprise, registering at public or private employment exchange etc).[23] This definition excludes certain age groups which have been disappointed and discouraged by not finding employment, so are not interested in working: this is known as "latent unemployment".[24] Another definition, originally used by the National Statistical Service of Greece, included not only the categories mentioned above but also those enrolled in apprenticeship schemes, those who had participated in a

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[22] European Court of Auditors, Special Report 16/1998 on the implementation of appropriations for structural operations for the programming period 1994-1999, OJ 1998, C 347/48 at 60.
[23] See International Labour Office, Yearbook of Labour Statistics, 1994, Geneva, p. 483.
[24] See interview of Professor S. Robolis in To Vima, 11.10.1998, p. D10.

contest to find a job, those aged 14.5 to 15, those registered with the Greek Manpower Employment Organization and those waiting a reply from a private undertaking. A third definition of unemployment is used by the European Observatory of Employment. This is similar to the ILO/Eurostat definition, but also includes latent unemployment and those only involved in part-time employment The final definition of unemployment is used by the Greek Manpower Employment Organization, which considers as unemployed all those who are entitled to receive unemployment benefit under Greek employment legislation, as well as those registered as unemployed in order to be included in subsidized vocational training programmes.[25] Inclusion in training programmes offers a serious motive for many unemployed persons to register as such. This method has the potential to present an accurate percentage of unemployment since the aforementioned motive urges more and more unemployed persons (usually young persons with or without university degrees), who otherwise would not have been included in the calculations, to register as unemployed.

The result of using different definitions of unemployment is, obviously, confusion concerning the exact percentage of unemployment in Greece. For instance, in 1997 the National Statistical Service calculated, using its original method, the percentage at 10.25%. Eurostat calculated 9.8%, the Greek Manpower Employment Organization 10%, and the European Observatory of Employment 13.3%. Usually, such different percentages of unemployment are used by the government or the opposition for political purposes.[26] In order to avoid confusion, in this thesis reference is made to the information provided by the National Statistical Service of Greece and Eurostat, according to the current calculation method.

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[25] Ibid, p. D10.
[26] See Oikonomikos Tachydromos, 27.05.1999, p. 26.

Chapter One: The European Social Fund: A European Structural Instrument

For the past 40 years, especially the two last decades, the European Social Fund (ESF) has been the European Union's main source of finance to help people to help themselves.[1] The ESF is the only Structural Instrument established directly by the EC Treaty. This constitutional basis (primary EC legislation) is an indication of the Fund's importance.[2] However, the ESF did not always enjoy the same status as it does today.

1.1. Historical Development

1.1.1. The early years

Although established in 1957, the ESF did not become operational until 1962.[3] Its aim, according to the original wording of Article 3 [ex 3] point (i) EC Treaty, was improve employment opportunities for workers and to raise their standard of living. The original Article 146 [ex 123] EC Treaty established the ESF, setting it to render the employment of workers easier and to increase their geographical and occupational mobility within the Community. The ESF would cover 50% of public expenditure incurred for vocational retraining, resettlement allowances and aid for workers with reduced employment following conversion of an undertaking to other production (original Article 148 [ex 125]).

The expenditure covered by the ESF (in the form of reimbursing amounts) had to be incurred by a Member State or body governed by public law. Thus the provisions excluded all private law bodies, especially non-governmental organizations (NGOs) involved in employment issues. However, at that time, all employment issues were managed by governments or public law bodies, so there could be no provision regarding NGOs or other private law bodies. Such bodies appeared in the 1980s and were included in future provisions concerning the ESF.

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[1] European Commission, The European Social Fund, an overview of the programming period 1994-1999, March 1998, Available on line at http://www.europa.eu.int/comm/dg05/esf/en/public/overview, on 15.10.1998.

[2] F. Valdés Dal-Ré, Economic and Social Cohesion and the European Social Fund, in P. Davies, A. Lyon-Caen, S. Sciarra, S. Simitis, (editors), European Community Labour Law: Principles and Perspectives, Clarendon Press, 1996, pp. 261-273 at 261.

[3] R. Nielsen, E. Szyszczak, The Social Dimension of the European Union, Handelshøjskolens Forlag, Copenhagen Business School Press, 1997, p. 25.

Secondly, the aims of the financing substantially limited the effectiveness of the ESF. It was clear from the original provisions of Article 148 [ex 125] EC Treaty that all funding on behalf of the ESF was aimed at retraining workers who lost their jobs, or who had to resettle. So a necessary condition for funding was that the final beneficiary had to be a worker. This automatically excluded people who had never worked before, especially young people. The fact that some people had never had an opportunity to work was ignored. On the other hand, the special provisions concerning workers affected by conversions of undertakings show that one of the major concerns of the ESF was to tackle all negative consequences of industrial change.

The administration of the ESF lay with the Commission, assisted by a Committee composed of representatives of Member States' governments, trade unions and employers organizations (original Article 147 [ex 124] EC Treaty). The Council, however, was competent to decide the conditions under which assistance was to be given under the provisions of Art. 148 [ex 125], when to cease granting this assistance, and which new tasks could be entrusted to the ESF (original Art. 149 [ex 126] and Art. 150 [ex 127]). This reservation of competence to the Council was a clear indication of the Member States' intention to maintain everything regarding assistance from ESF at an intergovernmental level.

1.1.2. The first reforms in the 1970s

It is true that during the early years of the Communities' existence there was limited concern about structural interventions in the field of social policy in general, and the focus was on the economic aspects of the common market. The lack of any substantive dispositions on social policy created the problem of finding a legal basis for structural measures regarding social policy. The European Court of Justice provided the solution in *Defrenne II*, indicating that Articles 94 [ex 100], 211 [ex 155] and 308 [ex 235] EC Treaty were appropriate bases.[4]

Within this narrow and indirect framework of primary dispositions, the legislation concerning the ESF as a major instrument of social policy was limited. The main legislative measure was Decision 71/66/EEC[5] reforming the ESF. This was later

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[4] C-43/75, *Gabrielle Defrenne v. Société Anonyme Belge de Navigation Aérienne SABENA*, [1976] ECR 455 at 479 para 63.
[5] OJ 1971, L 28/15.

amended by Decision 77/801/EEC.[6] Both legislative instruments set new missions for the ESF. The ESF interventions aimed to ensure that that the offer and demand of labour was adapted to the standards of the common market. Also, the ESF could assist operations of the Member States aimed at solving problems arising in less developed regions, facilitating the adaptation of the labour force to the requirements of technical progress and assisting the entry or re-entry of handicapped people into economic activity. The legislative instruments used for the ESF's interventions were Council decisions.[7] The assistance granted by ESF would cover 50% (and in some cases 60% or more) of the expenditure incurred by public administrations, public organizations, organizations charged with missions of public interest, private organizations or equivalent entities.

Obviously, important steps were made by these reforms. The inclusion of new intervention targets such as self-employed people, less developed regions or adaptation to the conditions of a rapidly industrialized labour market was a novelty, which consolidated the hitherto weak social aspect of the common market. Furthermore, bodies governed by private law were also recognized as potential beneficiaries of the ESF's assistance, which eliminated a big disadvantage of the original provisions regarding the ESF.

Within the framework established by Decision 71/66/EEC, a series of other legislative initiatives have been taken. Regulations 71/2396/EEC,[8] 71/2397/EEC,[9] 71/2398/EEC,[10] were enacted in order to set out the procedural details for granting assistance on behalf of the ESF. Regulation 77/2893/EEC[11] amended Regulation 71/2396/EEC and repealed Regulations 71/2397/EEC and 71/2398/EEC. These latter amendments added the following to the ESF's intervention targets: long-term structural unemployment and under-employment, initial training of young people following completion of their compulsory education, and employment facilitation for older workers (aged over 50).

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[6] OJ 1977, L 337/8.
[7] See for instance Decision 77/804/EEC (OJ 1977, L 337/14), requiring the ESF to assist operations to encourage the employment of women who wanted to work for the first time or who had become unemployed.
[8] OJ 1971, L 28/54.
[9] OJ 1971, L 28/58.
[10] OJ 1971, L 249/61.
[11] OJ 1977, L 337/1.

Other legislative initiatives, within the framework of the 1971 reform, were more technical. Regulation 72/858/EEC,[12] as amended by Regulation 77/2894/EEC,[13] concerned administrative and financial procedures for the ESF's operation.

1.1.3. The situation in the early 1980s

In 1983, the European Court of Auditors (ECA) was asked by the Council to review the sound financial management of all Community activities. The ECA complied with this request and adopted a Report presenting its findings.[14] It examined, *inter alia*, the ESF's financial management system, as established by the aforementioned Regulations. The ECA noted that the Commission selected national applications for assistance, but decisive competence belonged to the Council. It also observed that the Commission, attempting to respect the budgetary ceiling, was using the method of a "weighted reduction" in response to each Member State's requests. Since this method was based on national socio-economic data, without taking into account the real situations prevailing in the sectors in question, the effectiveness of the financing was greatly reduced. The Community nature of these interventions was accordingly reduced, since they were in fact national measures financed by the Community, not based upon any Community initiative.[15]

After this report, the Council took action. Decision 83/516/EEC[16] redefined the tasks of the ESF in an attempt to make the Fund a more active and effective instrument to promote employment policies. Under this Decision the ESF had to finance operations concerning vocational training and guidance, recruitment and wage subsidies, resettlement and socio-vocational integration in connection with geographical mobility, services and technical advice concerned with job creation. The Fund's tasks were expanded to cover improvement of employment opportunities for: young people (following full-time compulsory education), long-term unemployed people, women, handicapped people, migrant workers and people working in small and medium sized

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[12] OJ 1972, L 101/3.
[13] OJ 1977, L 337/5.
[14] European Court of Auditors, Report in response to the conclusions of the European Council of 18 June 1983, OJ 1983, C 287/1.
[15] Ibid, p. 14.
[16] OJ 1983, L 289/38.

enterprises.[17] ESF assistance was granted at the rate of 50% (sometimes 60%) of the eligible expenditure. There were also incentives for certain operations intended to have a more global effect in promoting employment at Community level: The Member States did not guarantee the successful completion of operations fully financed by the ESF, and 75% of the appropriations made available annually for ESF assistance were allocated to promoting employment for young people (under 25). This encouraged Member States to promote such projects in order to avoid burdening their national budgets and to attract more financing.

The implementation of Decision 83/516/EEC was regulated by Regulation 83/2950/EEC[18] and Commission Decision 83/673/EEC.[19] These provided for: deadlines by which applications for financing had to be made, the application forms, the timetable of payments, the exact context of the assistance provided by the ESF, the conditions under which assistance could be suspended or reduced by the Commission, etc. After these amendments, competence to decide on ESF assistance was conferred on the Commission.

In 1983 the Commission submitted to the Council an overall report regarding the Structural Funds.[20] This report included a list of the inefficiencies spotted in the Funds' operations and recommended a) that greater discretion to be given to the Commission in the Funds' management, b) greater concentration of resources for the most severe problems and c) the financing of programmes rather than individual projects. This report, in conjunction with the aforementioned ECA's report, strongly indicated the direction that was to be followed from 1986 and onwards.

1.1.4. Appraisal of the early reforms

During the 1960s, 1970s and early 1980s, the main target of the ESF's activities, unemployment, was nothing like the problem it was to become. It was thought that a

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[17] Small and medium sized enterprises (SMEs) are defined in the Commission's Recommendation concerning the definition of SMEs, OJ 1996, L 107/4, according to which three cumulative conditions must be met: The enterprise must a) have fewer than 250 employees, b) have either an annual turnover not exceeding 40 million ECU or an annual balance sheet not exceeding 27 million ECU, c) be considered independent. An enterprise is independent if less than 25% of the capital or the voting rights is owned by an enterprise (or jointly by several enterprises) falling outside the above definition.

[18] OJ 1983, L 289/1.

[19] OJ 1983, L 377/1.

[20] European Commission, Report and proposals on the means of increasing the effectiveness of the Community's Structural Funds, COM (1983) 501 final.

policy of support for the training and mobility of workers could largely contain it.[21] Economic growth was expected to solve unemployment problems, so the ESF's interventions with regard to social and labour market policies were limited. From September 1960 to December 1973 the ESF provided grants totalling about 400 million ECU.[22] This was a very small amount compared with the figures of subsequent decades. Also, the system of retrospective grants, established by the original EC Treaty dispositions regarding the ESF, precluded any Community influence on national labour market and vocational training policies.[23]

The legislative initiatives regarding the ESF during the 1970s were in effect responses to problems identified during the very early period of the ESF's existence and operation. The main characteristics of these initiatives were the opening up of the ESF's assistance to the private sector, the focus on vocational training, the elimination of regional disparities within the Community, and the promotion of job creating activities. Of the resources given by the ESF during the early and mid-1970s 90% went to vocational training.[24]

In the early 1980s the worsening unemployment situation among young people was the target of the ESF's intervention. Combating youth unemployment was of primary importance since 42% of the unemployed in the Community were under 25.[25] Some of the novelties introduced by the 1983 amendments were the assistance in the modernization of small and medium-sized enterprises and in the training of instructors and the placement of development experts and agents for local initiatives.

The ESF's course during this period was unimpressive but important steps were made. Teething problems provided the stimulus for improvement. The main task for the Community's institutions during this period was to locate the disadvantages and try to eliminate them. The legislative initiatives were not always successful and sometimes created more problems than they solved, thus giving the impression of being spasmodic and fragmentary. The main problem regarding the ESF was the constant change of objectives and procedures. Expanding the areas of the Fund's intervention was good in substantive terms (more people were helped by the ESF's resources) but it confused the

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[21] European Commission, The European Social Fund, an overview of the programming period 1994-1999, op. cit , p. 4.
[22] Ibid, p. 4.
[23] Ibid, p. 5.
[24] Ibid, p. 6.
[25] Ibid, p. 7.

national authorities and all those involved in the projects. It was difficult to determine whether a project could actually be financed, and how. Furthermore, all those involved in the projects, regardless of legal status (national, regional or local authorities, public or private law bodies etc) were not used to handling structural operations, therefore their operating efficiency might have been reduced.

1.1.5. The Single European Act and the 1988 reform of the Structural Funds

In the middle 1980s, a series of events changed the Community's image and created the conditions necessary for a radical and drastic change in the ESF and the Structural Funds sector. The accession of Spain and Portugal and the adoption of the Single European Act had a major impact on the Community's approach to the social aspect of the common market.[26]

The Single European Act included, *inter alia*,[27] an attempt to promote the Community's social cohesion alongside its economic cohesion. Art. 23 of the Single European Act added a new title to the EC Treaty specifically concerning economic and social cohesion. According to Art. 158 [ex 130a] EC Treaty the Community must aim to strengthen its economic and social cohesion by reducing development disparities between its regions. This was going to be achieved through the coordination of the Member States' economic policies and the Community's financial support provided through the Structural Funds (Art. 159 [ex 130b]).

These dispositions created the substantive framework for major reform of the Structural Funds in 1988. The ESF was regarded as a major Community instrument for strengthening social cohesion within the common market. The Single European Act did not amend the dispositions of the EC Treaty regarding the ESF, leaving the relevant initiative to the Community institutions. The procedural framework of the Structural Funds' reform was provided for by Art. 161 [ex 130d] EC Treaty.

The 1988 reform significantly changed everything about the Funds' organization and operation. They aimed to strengthen the Community's economic and social cohesion. This aim had three aspects: political, financial and legal. Politically, the

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[26] European Commission, Vade Mecum on the Reform of the European Community's Structural Funds, Brussels, 1989, p. 9.

[27] For more details see E. Szyszczak, EC Labour Law, Longman Publications, 2000, p. 9-12.

principle of solidarity among the Member States and the purpose of the common market required a reduction of the differences in the level of development between the various regions.[28] Financially, there was not only a need for assistance to the underdeveloped regions, but also a need to assure better financial management of the Community's resources which are a direct burden on European citizens.[29] Legally, the basis was Art. 161 [ex 130d] EC Treaty, as amended by the Single European Act, which provided for an amendment of the Funds' structure and operational rules.[30] In 1987 the Commission submitted its relevant opinion (based on this provision) to the Council.[31]

Three main reasons made the Structural Funds' reform imperative.[32] First, there was a general and increasing doubt that the Funds' resources were being used as effectively as possible. Second, the enlargement of the Community (with the accession of Spain and Portugal) increased the extent and diversity of structural problems facing the Community. Third, the Funds had to be capable of functioning effectively because the underlying policies were essential to the successful achievement of the large market.

The reform was effected by several Council Regulations. Regulation 88/2052/EEC[33] provided the general terms of the Funds' reform, including setting new objectives and tasks, new operating procedures, general financial analysis of the assistance granted by the Funds, etc. Regulation 88/4253/EEC[34] provided details of the coordination of the Funds' activities between themselves as well as between them and the European Investment Bank and other existing financial instruments. There were also specific Regulations adopted for each of the Structural Funds. Regulation 88/4255/EEC provided the specific details for the implementation of Regulation 88/2052/EEC concerning the ESF.[35]

For systematic reasons, the substantive content of this reform will be presented along with analysis of the current provisions regarding the Structural Funds. It suffices to

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[28] European Commission, Vade Mecum on the Reform..., op. cit., p. 11.
[29] Ibid, p. 11.
[30] Ibid, p. 11-12.
[31] European Commission, Reform of the Structural Funds: 1) Commission Communication, 2) Comprehensive Proposal pursuant to Art. 130d of the EEC Treaty, COM (87) 376 final, OJ 1987, C 245/3.
[32] Ph. Lowe, The Reform of the Community's Structural Funds, CMLRev. 25, 1988, p. 503-521 at 509.
[33] OJ 1988, L 185/9.
[34] OJ 1988, L 374/1.
[35] OJ 1988, L 374/21. The Regulations regarding the EAGGF-Guidance Section and the ERDF were Regulation 88/4256/EEC (OJ 1988, L 374/25) and Regulation 88/4254/EEC (OJ 1988, L 374/15) respectively.

say at this stage that the 1988 reform was based on five principles, which were reflected by the Regulations' dispositions.[36] These were:

- the establishment of five priority Objectives for the Funds' activities;
- the establishment of the principle of Partnership between the Commission and the national authorities regarding the planning and implementation of structural measures;
- the integration of Community Structural action with national economic polices;
- better financial management of the Structural Funds;
- the simplification, monitoring, flexibility of Community Structural action.

1.1.6. The Treaty of Maastricht and the 1993 reform of the Structural Funds

The amendments made by the Treaty of Maastricht (EU Treaty) in 1992 to the EC Treaty's dispositions regarding the ESF attempted to adjust the context of these dispositions to take account of the 1988 reform. So, according to the current wording of Art. 146 [ex 123], the aim of the ESF is not only to render workers' employment easier and increase their geographical and occupational mobility, but also to promote vocational training and retraining in order to facilitate the workers' adaptation to changes in production systems caused by the industrialization of several sectors of the economy. These amendments aimed to make the ESF more effective in tackling the increasing unemployment in the Community.

Art. 148 [ex 125] was also amended. From 1992, the decisions concerning the ESF would be adopted by the Council, acting in accordance with the procedure referred to in Article 252 [ex 189c]. This is the so called "Cooperation Procedure", which aimed to give the European Parliament a stronger role in the Community's legislative procedure.[37]

The 1993 reform of the Structural Funds was based on a Protocol on Economic and Social Cohesion (Protocol No 15) annexed to the EU Treaty. According to this document, the Member States wanted greater flexibility in the arrangements for allocations from the Structural Funds in order to meet specific needs not covered by the

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[36] European Commission, Vade Mecum..., op. cit., p.13.
[37] Kl.-D. Borchardt, The ABC of Community Law, Office for Official Publications of the European Communities, 1994, p. 45.

structural Objectives. They also approved the modulation of the Community's participation in the context of Structural Funds' programmes and projects, with a view to avoiding excessive increases in budgetary expenditure in the less prosperous Member States. It has been said, however, that this Protocol is not covered by Art. 311 [ex 239] EC Treaty, which states that the protocols to the EC Treaty form an integral part thereof but does not refer to protocols annexed to the EU Treaty.[38] Therefore Protocol No 15 of the EU Treaty is merely an important political declaration, having no supplementing, amending or modifying effects on the EU Treaty.[39]

Subsequently, the 1988 Regulations were amended.[40] Regulation 88/2052/EEC was amended by Regulation 93/2081/EEC.[41] Regulation 88/4253/EEC was amended by Regulation 93/2082/EEC[42] and Regulation 88/4255/EEC, which contained provisions specifically concerning the ESF with regard to the 1988 reform, was also amended by Regulation 93/2084/EEC.[43] The new Regulations maintained the five principles of the 1988 reform by adding a new structural Objective and improving the management procedures of the structural operations. Again, for systematic reasons, their provisions will be presented during the analysis of the current provisions regarding the Structural Funds.

1.1.7. Appraisal of the 1988 and 1993 reforms

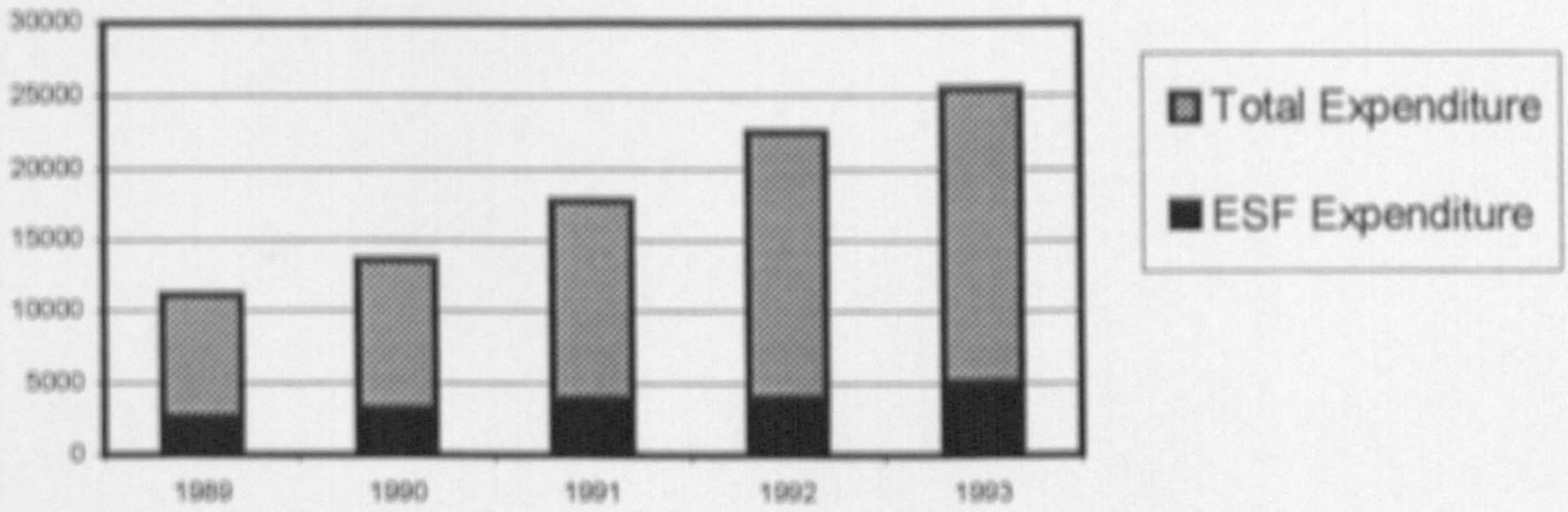
These reforms were an ambitious attempt to make the Structural interventions of the Community more effective. The European Court of Auditors has pointed out that they enabled the Commission to secure more appropriations and support more structural measures with the same human resources.[44] According to the Commission, from period 1989 to 1993, the total expenditure regarding Structural measures amounted to 71,511.1

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[38] T. Frazer, The New Structural Funds, State Aids and Interventions on the Single Market, (1995) 20 E.L.Rev., p. 3-19 at 14-15.
[39] Ibid, p. 15.
[40] The 1993 amendments changed the contents of the 1988 Regulations but not their numbering and titles. So, according to the practice followed after 1993, reference was again made to the 1988 Regulations, meaning, however, the amended versions.
[41] OJ 1993, L 193/5.
[42] OJ 1993, L 193/20.
[43] OJ 1993, L 193/39.
[44] European Court of Auditors, Sound Financial Management in the European Union Budget, Luxembourg 1997, p. 43, European Court of Auditors, Annual Report for the Financial Year 1990, OJ 1991, C 324/1 at 98-105.

mil. ECU, 26.6% of which (19,010.7 mil. ECU) was given by ESF (see chart below for the breakdown).[45]

Structural Expenditure 1989-1993 in mil. ECU



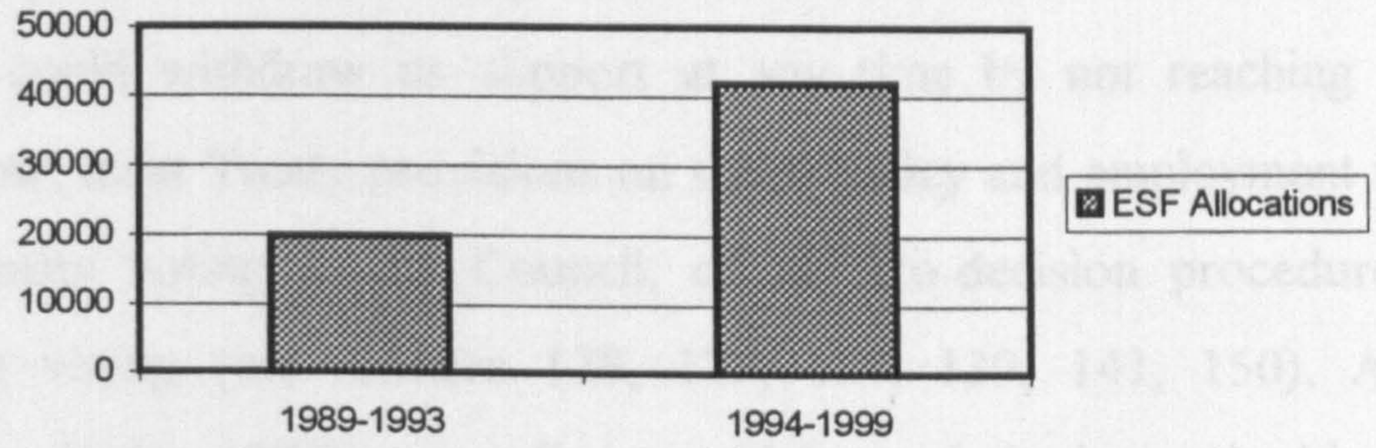
If this figure is compared with the 9,786.2 mil. ECU given by the ESF for the period 1984-1987,[46] an increase of about 100% is obvious. It has been noted[47] that the ESF has benefited from the especially sharp focus on human resources priorities arising from the adoption of the Community Charter of Fundamental Social Rights in 1989.[48] Art. 15 of the Charter provides for workers to have access to vocational training and to benefit therefrom throughout their working lives. This Charter is not legally binding but a rather symbolic declaration. Nevertheless, it influenced the interpretation of Community's legislative acts[49] concerning social policy.

With regard to the 1993 reform, this focused mainly on procedural issues rather than substantive ones. The revised Regulations were considered to have three objectives.[50] First, they aimed to achieve more transparency by involving the social partners more closely in the operations, thereby improving the partnership principle, and by using additionality to evaluate the effectiveness of the structural operations. Second, to establish simpler and more flexible procedures. Third, to allow for more rigorous

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[45] See the Commission's revenue and expenditure accounts cit. in European Court of Auditors, Sound Financial....., op. cit., p. 42.
[46] See European Commission, Vade Mecum..., op. cit., p. 56.
[47] J. Kenner, Economic and Social Cohesion-The rocky road ahead, LIEI (1994/1), p. 1-37 at 16.
[48] COM (1989)471 final.
[49] P. Craig, G. De Burca, EU Law, Texts, Cases and Materials, Oxford University Press, 1998, p. 332, D. Swann, The Economics of the Common Market, Penguin Books Publications, 1995, p. 316-318, X. Kontiades, G. Amitsis, The implementation of the Community Charter of Fundamental Social Rights in Greece, Hellenic Review of Human Rights, issue 1/1999, pp. 4-71.
[50] J. Kenner, op. cit., p. 26, T. Frazer, op. cit., p. 5.

financial control in light of the additional resources involved. Also, the 1993 Regulations demonstrated a preference for subsidiarity, by making national and regional authorities more active in administrating the operations financed by the Structural Funds and sometimes in allocating the relevant resources.[51] The substantive alterations were limited to the introduction of a new Objective and the corresponding adjustment of procedures. Also, there was an increase of more than 100% in the ESF allocations (see chart):[52]



Consequently, the needs for more effective monitoring and more precise financial control were also increased. The detailed dispositions regarding all the procedures of monitoring and control of measures funded by the ESF are presented and analyzed in subsequent Chapters.

1.2. Current Provisions regarding the European Social Fund

1.2.1. The Treaty of Amsterdam

During the 1996 Intergovernmental Conference, preceding the Treaty of Amsterdam of 1997, one of the most popular objectives was to simplify and clarify the Union's ways of producing legislation.[53] One of the solutions adopted was largely to abolish the Cooperation procedure, maintaining it only for certain aspects of Economic and Monetary Union.[54] Art. 148 was again amended and now refers to the so called Co-decision procedure established in Art. 251. A schematic presentation of this procedure can be found in Annex I. The Co-decision procedure, as established by the EU Treaty,

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[51] T. Frazer, op. cit., p. 5.
[52] European Commission, The European Social Fund, an overview of the programming period 1994-1999, op. cit., p. 20.
[53] A. Duff (Ed.), The Treaty of Amsterdam, Federal Trust, Sweet & Maxwell, 1997, p. 142.
[54] Ibid, p. 142.

was very complicated. The Amsterdam Treaty modified Art. 251 EC Treaty in order to simplify it by abolishing some proceedings (see Annex I).

The choice of the Co-decision procedure must be examined in a broader context. It has always been considered necessary to create a legal basis in the Treaty, allowing the adoption of programmes regarding social and employment policy by majority vote in the Council.[55] The previous regime, and most pre-Maastricht provisions, used as base for such programmes (e.g. Art. 308), required unanimity within of the Council. The Commission's position in introducing measures in these areas was therefore precarious. The Council could withdraw its support at any time by not reaching a unanimous decision.[56] Now, most Treaty provisions on social policy and employment issues require qualified majority voting in the Council, or the Co-decision procedure which also involves such voting (see Articles 128, 129, 137, 139, 141, 150). An interesting exception exists in Art. 137(3), according to which unanimity is required in certain cases, such as cases regarding financial contributions to promote employment and job-creation. Such wording would certainly cover operations financed by the ESF, but in that disposition there is a clause which states that the unanimity exception applies *"without prejudice to the provisions relating to the Social Fund"*. Consequently, decisions regarding programmes financed by the ESF are adopted using the Co-decision procedure and simply require qualified majority voting.

The Co-decision procedure is complicated enough to have both positive and negative aspects. It is regarded as a step in the right direction, especially with regard to reinforcing the Parliament and reducing the democratic deficit in the Union.[57] All three major Community legislative institutions are involved in the procedure leading to a regulation, directive or decision concerning the ESF. The combination of their ideas is always useful, especially concerning delicate issues such as promoting employment, tackling unemployment, financing from the ESF etc. The more people are involved, the more aspects of the issue are likely to be covered by the legislative instrument in question. However, a structural instrument like the ESF needs speed and flexibility not only with regard to its operation and interventions, but also with regard to the

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[55] See T. Hervey, Case note on the case C-106/96, *United Kingdom v. Commission of the European Communities (re Poverty 4)*, [1998] ECR I-2729, CMLRev 36, 1999, pp. 1079-1090 at 1088-1089.
[56] T. Hervey, Case note...., op. cit. p. 1088.
[57] A. Duff, op. cit., p. 150.

production of its governing rules. The existing procedure may last for many months.[58] The ESF sometimes deals with issues requiring immediate legislative measures (expansion of aims, means of intervention, etc.). In these cases the delay that might be caused by the length of the Co-decision procedure could create problems that subsequent ESF intervention will not be able to solve. The trade-off in the use of the Co-decision procedure for ESF-related legislation is dangerous. A possible solution would be to reduce the time given to the institutions in order to produce the necessary proposals, reports, resolutions, common positions, decisions, etc, especially when the legislative measure in question concerns the ESF.

1.2.2. The 1999 Regulations regarding the Structural Funds

Given the prospect of the European Union's enlargement in the 21st century, in 1997 the Commission presented its "Agenda 2000".[59] This contained proposals for the reform of the European Union's policies. Two factors called for reform. The first was the enlargement of the European Union to the East and the second was the consolidation of developments within the Union, namely the realization of Economic and Monetary Union and the new provisions of the Treaty of Amsterdam. In Agenda 2000, the Commission outlined new objectives for the Union's policies, including: increasing competitiveness of European enterprises, the modernization of employment systems, a high quality of life, a cohesive society based on solidarity, a sound environment, freedom, security and justice. It is obvious from these objectives that economic and social cohesion remain a political priority. The Commission identified the need to address the unequal abilities of the regions of the Union to generate sustainable development and their difficulties in adapting to new labour market conditions, which require a more forward-looking adaptation of the skills of working men and women. In the Commission's opinion, the Structural Funds should aim to foster competitive development and sustainable and job-creating growth throughout the Union and the promotion of a skilled, trained and adaptable workforce.

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[58] During the latest reform of the Structural Funds (1998-1999) the Commission submitted its initial proposals in March 1998, but the new regulations were only adopted in June 1999.
[59] European Commission, Agenda 2000: For a Stronger and Wider Union, Doc 97/6, Strasbourg, 15 July 1997.

Given this political background, the Commission, using the legislative framework provided by Articles 161 and 162, introduced its proposals for the reform of the Structural Funds in order to meet these goals.[60] These proposals aimed to affect the Funds' three main areas of assistance: infrastructure, development of human resources, and support for the productive sector. In the short term, assistance will stimulate demand for goods and services. In the long term, it will improve the links connecting human and physical resources with the productive environment and the operation of the labour market.[61]

The European Parliament examined these proposals carefully and expressed its views in a series of reports and resolutions,[62] reference to which will be made alongside the analysis of the new Regulations.

The European Council examined the Agenda 2000 during a summit in Berlin in March 1999, and adopted several conclusions which were incorporated in the new Regulations on the Structural Funds (new definitions, Objectives, financial breakdown etc).[63]A new financial perspective was established, covering the period 2000-2006. According to this, the overall amount for structural operations within the EU should total 213 billion Euros. This was deemed sufficient to enable the Union to maintain the present average aid intensity levels, thereby consolidating previous efforts.[64] For the Structural Funds, there should be 195 billion Euro. Tables showing the annual breakdown of allocations for structural operations for the period 2000-2006 are in Annex II.

In order to simplify the legislation regarding the Structural Funds, the Commission proposed to amalgamate the two general regulations, to keep the separate regulations for each Fund and to introduce a clear distinction between the single general regulation and the regulation for each Fund.[65] This was accepted. Regulation 99/1260/EC now lays down general provisions concerning the Structural Funds.[66] Regulation 99/1783/EC concerns the European Regional Development Fund,[67]

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[60] European Commission, Reform of the Structural Funds, COM(1998)131 final.
[61] Ibid, p. 6-7.
[62] See European Parliament, Doc A4-0380/98-Kellett-Bowman, Doc A4-0391/98-McCarthy, Hatzidakis, Doc A4-0393/98-Varela Suanzes-Carpegna, Doc A4-0395/98-Collins, Doc A4-0398/98-Jöns.
[63] European Council, Presidency Conclusions, Berlin 24-25 March 1999, Doc 100/99.
[64] Ibid, p. 10.
[65] European Commission, Reform of the Structural Funds, op. cit., p. 13.
[66] OJ 1999, L 161/1.
[67] OJ 1999, L 213/1.

Regulation 99/1784/EC concerns the European Social Fund,[68] Regulation 99/1263/EC concerns the Financial Instrument for Fisheries Guidance,[69] Regulation 99/1257/EC concerns support for rural development from the European Agricultural Guidance and Guarantee Fund,[70] and Regulation 99/1264/EC has amended Regulation 94/1164/EC establishing a Cohesion Fund.[71]

1.2.3. Regulation 99/1260/EC

This Regulation defines the Funds' general principles. The main principles introduced by previous Regulations, have been maintained, with some amendments. It must be noted that, for the first time, Art. 9 of the Regulation defines the key words and concepts used within the framework of the Structural Funds, such as Community Support Framework, development plan, operational programme, single programming document, global grant, managing authority, paying authority, final beneficiaries, etc.[72]

1.2.3.1. Structural Objectives

The 1988 and 1993 Regulations provided for five Objectives (Art.1 Council Reg. 88/2052/EEC):

- Objective 1: to promote the development and structural adjustment of the regions whose development lags behind (Art. 8 of Regulation 88/2052/EEC specified that these would be regions whose per capita GDP, for the last three years, had been less than 75% of the Community average-that included *inter alia* the whole of Greece);
- Objective 2: to convert the regions, frontier regions or parts of regions (including employment areas and urban communities) seriously affected by industrial decline;[73]

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[68] OJ 1999, L 213/5.
[69] OJ 1999, L 161/54.
[70] OJ 1999, L 160/80.
[71] OJ 1999, L 161/57.
[72] Under the previous regime (1988 and 1993 Regulations), such definitions were provided by subsequent decisions of the Commission. See for instance Commission Decision 97/326/EC modifying the decisions approving the Community Support Framework, the single programming documents and the Community initiative programmes in respect of Greece, OJ 1997, L 146/19, which provided the definitions of final beneficiaries and eligible expenditure.
[73] Art. 9 of Regulation 88/2052/EEC set the criteria about declining industrial areas. Using these criteria the Commission drew up a list of declining industrial territories, presented in Commission Decision 94/169/EC (OJ 1994, L 81/1) and subsequently amended repeatedly. See Commission Decision 95/47/EC (OJ 1995, L 51/17), Commission Decision 95/189/EC (OJ 1995, L 123/18, Commission

- Objective 3: to combat long term unemployment;
- Objective 4: to facilitate the occupational integration of young people;
- Objective 5: to reform the common agricultural policy by a) speeding up the adjustment of agricultural structures and b) promoting the development of rural areas.

In 1993 the original definitions of Objectives 3 and 4 were amalgamated. A new Objective 4 was introduced and Objective 5 was amended. The new Objectives were:

- Objective 3: to combat long term unemployment and to facilitate the integration into working life of young people and of persons exposed to exclusion from the labour market;
- Objective 4: to facilitate the adaptation of workers of either sex to industrial changes and to changes in production systems;
- Objective 5: to promote rural development by a) speeding up the adjustment of agricultural structures in the framework of the reform of the common agricultural policy and b) facilitating the development and structural adjustment of rural areas.[74]

The Act of Accession for Austria, Finland and Sweden in 1995 added a sixth Objective:

- Objective 6: to promote the development of regions with an extremely low population density.

In 1999, these Objectives were reduced to three, in order to increase the visibility and effectiveness of the Structural Funds.[75] According to Articles 1-5 of Regulation 99/1260/EC the three new Objectives are:

- Objective 1: promoting the development and structural adjustment of regions whose development is lagging behind (the regions covered by this Objective must correspond to level II of the NUTS[76] and their per capita GDP is less than 75% of the Community average).

Decision 96/472/EC (OJ 1996, L 193/54), Commission Decision 96/634/EC (OJ 1996, L 284/19), Commission Decision 97/237/EC (OJ 1997, L 94/20), Commission Decision 97/349/EC (OJ 1997, L 148/29), Commission Decision 97/352/EC (OJ 1997, L 151/39).

[74] Art. 11a of Regulation 88/2052/EEC, added by Regulation 93/2081/EEC, presented a list of criteria that would enable rural areas to be eligible for funding under Objective 5b. In Commission Decision 94/197/EC (OJ 1994, L 96/1) there is a list of rural areas, prepared by the Commission and based on these criteria.

[75] European Commission, Reform of the Structural Funds, op. cit., p. 14.

[76] NUTS is the acronym for Nomenclature of Territorial Units for Statistics. For the purposes of the Structural Funds (and other Community operations) the territories of the Member States are divided into three interrelated levels of regions, defined according to the NUTS. NUTS I includes 77 regions of the Community, NUTS II includes 206 basic administrative peripheries and NUTS III includes 1031 sub-divisions of the peripheries of the NUTS II level. The criteria for these divisions are mostly normative

- Objective 2: supporting the economic and social conversion of areas facing structural difficulties[77] (in particular areas undergoing socio-economic change in the industrial and service sectors, declining rural areas, urban areas in difficulty and depressed areas depended on fisheries).
- Objective 3: supporting the adaptation and modernization of policies and systems of education, training and employment.

The new Objective 1 includes regions covered by the previous Objectives 1, 5a and 6, the new Objective 2 brings together the previous Objectives 2 and 5b and the new Objective 3 includes measures covered by the previous Objectives 3 and 4.[78] Obviously, the first two Objectives are regional-based while the third is horizontal, meaning that it provides a policy frame of reference for all measures promoting human resources in a national territory without prejudice to the specific features of each region.[79] The ESF will contribute to the attainment of all three Objectives (Art. 2). It must be noted that if an area is covered by any one Objective, it cannot receive assistance under the other two Objectives.

A novelty introduced by this new Regulation concerns the breakdown of budgetary resources between Objectives according to Art. 7(2) (see table):

Structural Objectives	Amounts (billion Euros)	%
Objective 1	135.9	69.7
Objective 2	22.5	11.5
Objective 3	24.05	12.3

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but analytical criteria are also used. The normative criteria include the administrative allocation of tasks to the territorial communities according to national political will and legislation (ie the institutional divisions currently in force in the Member States), the size of population necessary to carry out these tasks efficiently, and historical/cultural factors. The analytical criteria include geographical elements (e.g. altitude or type of soil) as well as socio-economic elements (e.g. homogeneity, complementarity or polarity of regional economies). For more details see European Commission, Regions: Nomenclature of Territorial Units for Statistics, Office for Official Publications of the European Communities, 1995.

[77] Art. 4 of Regulation 99/1260/EC contains a very detailed account of the method used in order to establish the areas eligible for assistance under Objective 2. This method, entailing the use of NUTS as well as other social and economic criteria, is very complicated and its analysis is beyond the scope of this thesis. For an indicative implementation of this method see Commission Decision 99/503/EC establishing a population ceiling for each Member State under Objective 2 of the Structural Funds for the period 2000 to 2006, OJ 1999, L 194/58.

[78] European Commission, Comparative Analysis of the Reform of the Structural Funds 2000-2006, June 1999, p. 5.

[79] European Commission, Reform of the Structural Funds, op. cit., p. 14.

Such a breakdown did not exist under the previous Regulations. This breakdown aims to concentrate resources on Objective 1 regions, something that the Parliament has also accepted.[80] Art. 7 also includes the criteria according to which assistance will be allocated to each Member State. For Objectives 1 and 2 these are the eligible population, regional and national prosperity, and the severity of structural problems, especially unemployment. For Objective 3 the criteria are the eligible population, the employment situation, and the severity of problems like social exclusion, education and training levels, participation of women in the labour market etc.

Article 6 notably provides that the regions covered by Objective 1 under the regime of the previous Regulations shall continue to receive support from the Funds on a transitional basis, until 2005. This transitional support was also endorsed by the European Parliament, to cushion the blow for those regions not covered by the new Objectives.[81]

1.2.3.2. Partnership

Regulation 88/2052/EEC defined partnership in Art. 4(1) as

> *"....Close consultations between the Commission, the Member State concerned and the competent authorities designated by the latter at national, regional, local, or other level, with each party acting as a partner in pursuit of a common goal. The partnership shall cover the preparation, financing, monitoring and assessment of operations. "*

At the core of the partnership concept lay the principle of subsidiarity. Based on this, the Commission thought that Community structural activities had to complement corresponding national operations.[82] Decentralizing Community structural action was another aim pursued through the partnership principle, since it would help adjusting this action to best fit the "on-the-spot reality", with regard to evaluating needs and to implementing operations.[83] It was true that the central Community administrative institutions and bodies, chiefly the Commission, could not know the precise problems faced in the various regions of the Member States. Neither could the Commission be

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[80] European Parliament, Doc. A4-0391/98-McCarthy, Hatzidakis.
[81] Ibid.
[82] European Commission, Vade Mecum..., op. cit., p. 15.
[83] Ibid, p. 16.

familiar with the legislation or the practices adopted in each Member State regarding the implementation of structural operations. So allowing the Member States to participate in the preparation and implementation of structural policies would make those policies more effective in terms of meeting needs, and more assessable in terms of implementation.

In general, the principles of partnership and subsidiarity have influenced the very nature of the Union's financing operations. These aimed to go beyond the usual extent of the corresponding operations of other international organizations (World Bank, International Monetary Funds, etc) by affecting individuals and groups within the Member States directly, without intervention by national administrators. However, after the establishment of these principles the practical management of the Union's structural resources was devolved to national, and sometimes regional, levels.[84]

Art. 8 of Regulation 99/1260/EC provides for the principle of partnership. The basic concept of this principle remains the same, but the new provisions seek a clearer division of responsibilities between the Member States and the Commission. The partnership should be deeper and broader. Deepening the partnership means that the partners should be involved throughout the process of financing from the Funds: from the design of strategies to the *ex post* evaluation of assistance.[85] Broadening the partnership means that other authorities should be involved, especially local and regional authorities, as well as bodies operating at local level (i.e. the social partners, local voluntary associations, non-governmental bodies, etc).[86]

These aims are reflected in the wording of Art. 8. All the aforementioned authorities and bodies are to be included in the partnership. The Member States must create a wide and effective association of all the relevant bodies, considering of course the respective institutional, legal and financial powers of each. The partnership will continue to cover the preparation, financing, monitoring and evaluation of the use of structural assistance.

The principle of subsidiarity, substantively linked with the principle of partnership, is also considered. The implementation of assistance shall be the responsibility of the Member States, at the appropriate territorial level, without prejudice

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[84] T. Hervey, European Social Law and Policy, Longman Publications, 1998, p. 39.
[85] European Commission, Reform of the Structural Funds, op. cit., p. 9
[86] Ibid, p. 10.

to the powers of the Commission with regard to the implementation of the Union's budget according to Art. 274 EC Treaty (Art. 8(3)).

This provision creates a very complicated framework of cooperation. The Commission itself has recognized that its own political responsibility has two aspects.[87] First, it must realize the objectives of economic and social cohesion, included in Art. 158 EC Treaty. Second, it has the general and exclusive power to implement the Union's budget under Art. 274 EC Treaty. These two responsibilities can be linked only through strategic programming, respect for the Communities' priorities and verification of results through monitoring, evaluation and financial control. The Commission acknowledges that on these points there can be no discussion about joint management with the Member States.[88] The Commission therefore retains all decisive powers regarding planning and approving structural assistance and the other partners may only be consulted. The Member States must implement the Commission's decisions. The Commission will then verify the results of the measures through evaluation and financial control. The evaluation and financial control, however, cannot be performed by the Commission alone, mainly because it lacks the necessary human resources. The Member States will be asked to assist and the Commission will supervise their activities. Such a complicated framework can create many problems, despite the experience of the previous Regulations. In such complicated schemes, irregularities and fraud tend to appear.

The European Parliament approved the reform of the partnership principle, requesting more involvement of the local authorities in the decision making process and close coordination between the competent bodies.[89] It also expressed concern about the growing number of irregularities in the use of the Funds.[90]

1.2.3.3. Integration of Community Structural action with national policies

This was to be achieved within the framework originally laid down by Regulation 88/4253/EEC regarding the coordination of the various activities of the Structural Funds, the European Investment Bank and other financial instruments. A new mechanism regarding the implementation of structural operations was established. This included the

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[87] Ibid, p. 10.
[88] Ibid, p. 10.
[89] European Parliament, Doc. A4-0391/98-McCarthy, Hatzidakis.
[90] European Parliament, Doc. A4-0380/98-Kellett-Bowman.

setting of criteria to determine priorities for structural action, such as the seriousness of the problems to be tackled, the financial capacity of the Member State concerned, and the importance of the action at Community and regional level (Art. 13 of Regulation 88/2052/EEC).

The main instruments of coordination during implementation were the Community Support Frameworks (CSFs). These involved four operational phases:[91]

- Preparation and submission of multiannual plans by the Member States or the competent authorities at a national, regional or local level;[92]
- Commission approval for these plans and the priorities therein (this leads to the adoption of the CSFs);
- Implementation of the CSFs via the appropriate forms of intervention;
- Monitoring and evaluation of the CSFs' implementation.

The CSFs contained operational programmes which a) involved financing by more than one structural instrument, b) contained mutually reinforcing measures and c) provided for appropriate administrative structures at national, regional and local level in the interests of the programme's integrated implementation.

These means for achieving integration of structural action with national policies, have been maintained under Regulation 99/1260/EC. They will be discussed further below.

1.2.3.4. Better financial management of the Structural Funds

The main points of this principle also remain unchanged. The means for better management are still multiannual financial programming, increased transparency,[93] additionality of the Community resources with regard to the other public contributions,

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[91] European Commission, Vade Mecum..., op. cit., p. 27.

[92] These plans had to be drawn up at the geographical level deemed to be most appropriate. Analyzing regional socio-economic problems requires a definition of the regions which includes, as clearly as possible, the problems encountered at Community level. NUTS is used for these purposes. See European Commission, Vade Mecum..., op. cit., p. 29.

[93] With regard to transparency, Art. 46 of Regulation 99/1260/EC requires information to be provided and publicity concerning the activities financed by the Structural Funds. For this purpose Commission Regulation 2000/1159/EC (OJ 2000, L130/30) includes detailed provisions about the duty of the managing authorities, the Monitoring Committees and any other body involved to inform any potential or final beneficiaries, as well as the general public, about the assistance offered by the European Union and the role played by the Union and the Member States in structural operations.

avoiding overlapping of assistance provided by the Funds, financial discipline, and *ex ante* and *ex post* systematic evaluation.

The concept of management by programmes instead of individual projects was introduced in 1988. It has been seen as a means of enhancing the compatibility of Community mechanisms with the principle of subsidiarity: the Commission maintains a strategic role through its competence to dispose of resources, while responsibility for implementation of the operations is decentralised towards the Member States.[94] However, there are fundamental variations between Member States in their use of this type of management. Some initiate new measures to be carried out while the programme is implemented and others incorporate existing investment into the programme.[95] These approaches have different consequences. In the first, the programmes' implementation deadlines are longer. The second enables Community financing to be used more quickly. The impact of the programmes is also affected. In the case of project incorporation, this is more indirect.[96]

Art. 10 of Regulation 99/1260/EC includes provisions about the coordination of structural activities. This coordination will be effected through various measures (Community Support Frameworks, Operational Programmes, Single Programming Documents), and monitoring and evaluation of structural assistance, as well as the relevant Guidelines of the Commission. The Commission issued a Communication providing broad indicative guidelines in order to help national authorities to draw up the plans they must submit in order to receive structural assistance.[97] This draws attention to the five areas of ESF activity according to Regulation 99/1784/EC (see below). It also advocates measures having an indirect effect on labour markets, e.g. developing more competitive enterprises, providing business support services, and supporting local and urban development.

It is interesting to focus on additionality. This was introduced officially in 1993 although it was implied by the 1988 Regulations. The Commission and the Member States should ensure that the increase in appropriations for the Structural Funds had a genuine additional economic impact in the regions concerned and resulted in at least an

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[94] J. Scott, Regional Policy: An Evolutionary Perspective, in P. Graig, G. De Búrca, The Evolution of EU Law, Oxford University Press, 1999, p. 625-652 at 632.
[95] European Court of Auditors, Annual Report for the Financial Year 1998, OJ 1999, C 349, para 3.49.
[96] Ibid, para 3.50.
[97] European Commission, Communication on the Structural Funds and their Coordination with the Cohesion Fund: Guidelines for programmes in the period 2000-2006, COM(1999) 344 final.

equivalent increase in the total volume of official or similar (Community and national) structural aid in the Member State concerned. This meant that the assistance granted by the Structural Funds would be additional to the public expenditure of the Member States in their structural operations. In order to achieve a genuine economic impact, the appropriations allocated by the Structural Funds to the Member States were not to replace public expenditure on structural measures undertaken by the Member States within the framework of their own budget. For this reason the Member States were to maintain their national structural expenditure at least at the same level as in the previous programming period. Naturally, macro-economic circumstances, other economic developments (i.e. privatizations), and the business cycles in the national economy had to be taken into account. By requiring the Member States to keep their structural expenditure stable, the Community was able to assess the real effect of its own structural expenditure and consequently to locate sectors where more structural action needed to be taken on its behalf.

Art. 11 of Regulation 99/1260/EC maintains the basic concepts of the previous Regulations regarding additionality. It also establishes three methods for verifying additionality: ex-ante verification, mid-term verification (this may lead to revision of the levels set by the Commission and the Member State) and *ex post* verification. An element of negotiation between the Member State concerned and the Commission is introduced into the ex ante verification, regarding the level of public expenditure to be achieved as a frame of reference for the whole programming period. Also, during subsequent verifications, it is possible to revise the initial levels set but only if developments affecting public revenue differ significantly from estimates made during the ex ante verification.[98]

1.2.3.5. Simplification, Monitoring, Flexibility of Community Structural action

The 1999 reform aimed to simplify the action of the Structural Funds. It is now estimated that this will be achieved through the concentration of structural assistance. The new Objectives are a very important step in this direction. There are three other types of concentration of assistance: a) concentration on areas of priority assistance,

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[98] The verification of additionality is a very complicated technical procedure, the analysis of which falls beyond the scope of this thesis. For more details and some criticism regarding this verification see European Court of Auditors, Special Report 6/1999 concerning the principle of additionality, OJ 2000,

which encourage an integrated approach rather than a fragmentation of operations; b) geographical concentration (by 2006 only 35% of the Community population will be covered by structural assistance, compared to 51% at present); c) financial concentration giving priority to less-developed regions.[99] Art. 13 provides more details concerning the geographical coverage and distribution of structural assistance.

1.2.3.6. Community Support Frameworks

The Member States must submit development plans to the Commission. According to the definition in Art. 9 of the Regulation, these documents must analyse the situation in light of the structural objectives and the priority needs for attaining those objectives, and contain the strategy, planned action priorities, their specific goals and the related indicative financial resources. The proceedings and contents of these plans are described in detail in Articles 15 and 16 of Regulation 99/1260/EC. In this thesis, it suffices to note that the partnership principle is fully applicable during the preparation of the plan. All interested local and regional authorities and public/private bodies should be consulted.

The Commission studies the plan and draws up the CSF in agreement with the Member State concerned (Art. 15(4)). A CSF, according to Art. 9, details the strategy and priorities for action of the Funds and the Member State, their specific objectives, the contribution of the Funds and other financial measures. This document is implemented by means of one or more operational programmes. Each CSF covers a period of seven years (Art. 14(1)). Art. 17 specifies the exact content of a CSF:

a) a statement of the strategy and priorities for joint Community and national action as well as their specific objectives (quantified if possible), an evaluation of the expected impact, an indication of how the selected strategy has taken into account the economic policies, the development of employment through improving the adaptability and skills of people and the regional policies and of the Member state concerned;

b) an indication of the nature and the duration of operational programmes not decided at the same time as the CSF;

C 68/1, European Commission, Working Paper 5: The verification of additionality for Objective 1, in The New Programming period 2000-2006: methodological working papers, 2000.

[99] European Commission, Reform of the Structural Funds, op. cit., p. 11.

c) an indicative financing plan specifying the allocation envisaged for the allocation of each Fund for each priority and each year;

d) designation of a managing authority and the involvement of partners in the Monitoring Committee;

e) information on the appropriations required for preparing, monitoring and evaluating assistance.

It is anticipated that given the experience gained so far, the implementation of programming documents with such complete and specific contents will be more effective than before.

1.2.3.7. Operational programmes

As stated, CSFs will be implemented through operational programmes. These documents, according to Art. 9, contain a consistent set of priorities comprising multiannual measures, which may be implemented through recourse to one or more Funds or other financing instruments. An integrated operational programme is financed by more than one Fund. This definition is identical to that in previous Regulations. An operational programme can last seven years (14(1)). Its contents are described in Art. 18:

a) the priorities of the programme, their consistency with the relevant CSF, their specific targets (quantified if possible) and an evaluation of the impact expected;

b) a summary of the measures planned to implement the priorities and those required to prepare, monitor and evaluate the operational programme;

c) an indicative financing plan specifying the allocation envisaged for each Fund for each priority and each year;

d) designation of a managing authority by the Member State, description of arrangements for managing the programme, description of the system for monitoring and evaluation, definition of the procedures for the mobilization and circulation of financial flows to ensure transparency.

When the Commission approves an operational programme, the Member State must send the programme complement to the Commission (Art. 15(6)). This document, according to Art. 9, implements the assistance strategy and priorities and contains detailed information for each measure. Art. 18(3) stipulates its contents:

a) the measures implementing the corresponding priorities in the operational programme;

b) the definition of the types of final beneficiary of the measures;

c) the financing plan specifying the allocation envisaged for each Fund for each priority and each year;

d) the measures intended to publicize the operational programme;

e) a description of arrangements agreed between the Commission and the Member State concerned for the computerized exchange of data required for management, monitoring and evaluation.

1.2.3.8. Single Programming Documents

According to Art. 15(1), in cases where the Community assistance requested by the Member States for Objective 1 does not exceed 1,000 million Euros, this assistance will not be given through CSFs but through Single Programming Documents (SPDs). For Objectives 2 and 3, SPDs shall normally be employed, although CSFs can be used if the Member States prefer. An SPD is equivalent to a CSF or operational programme (see Art. 19 of Regulation 99/1260/EC). Each SPD will be supplemented by a programme complement, as described above.

1.2.3.9. Community Initiatives

Art. 11 of Regulation 88/4253/EEC, granting the Commission competence to propose that the Member States should submit applications for assistance for measures not already covered by the plans submitted for the CSFs, was the legal basis for the so called "Community Initiatives".

The Community Initiatives scheme has been preserved under the new Regulation. With regard to their management, the Commission has a more central role in preparing and implementing them, simply being assisted by the Member States, whereas operational measures under the Structural Objectives are implemented by the Member States.[100]

Within the framework of the attempt to concentrate structural actions in certain specific areas, Art. 20 of Regulation 99/1260/EC stipulates that there will only be four

[100] Ibid, p. 24.

Initiatives, covering specific fields. The first is INTERREG, focusing on cross border, transnational and interregional cooperation intended to encourage the harmonious, balanced and sustainable development of the whole Community. The second is URBAN, focusing on economic and social regeneration of cities and of urban neighbourhoods in crisis, thus aiming to promote a sustainable urban development. The third is LEADER, focusing on rural development. The fourth is EQUAL, focusing on transnational cooperation to promote new means of combating all forms of discrimination and inequalities in connection with the labour market. INTERREG and URBAN will be financed by the ERDF, LEADER will be financed by the EAGGF-Guidance Section and EQUAL will by financed by the ESF. These initiatives will cover a period of seven years.

It is noteworthy that a Regulation concerning the Structural Funds directly refers to specific Community initiatives. The European Parliament welcomed this as an indication that no new initiatives were likely during the next seven years, thus harmonising all relevant activities.[101]

1.2.3.10. Other provisions

Regulation 99/1260/EC contains other very detailed provisions. Articles 22-24 provide for the financing of innovative actions (studies, pilot projects and exchanges of experience) as well as technical assistance for the implementation of structural operations. The Berlin European Council allocated 1% of the total Structural Funds allocation to these activities.[102] Art. 25 specifically provides for the so called major projects. These comprise an economically indivisible series of works fulfilling a precise technical function, having clearly identified aims and whose total cost exceeds 50 million Euros. There is a special procedure for such projects, described in Art. 26. Another special procedure in Art. 27 refers to the global grants, i.e. those parts of the structural assistance, the implementation and management of which has been entrusted to one or more intermediaries, selected according to Art. 27. This method is prefered to assist local development initiatives and the intermediaries are local authorities or other bodies with local interests.

Another novelty introduced by Regulation 99/1260/EC is the performance reserve. According to Articles 7(5) and 44, 4% of the commitment appropriations

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[101] European Parliament, Doc. A4-0391/98-McCarthy, Hatzidakis.

allocated to each Member State at the initial approval of their CSFs or SPDs will be reserved until the mid-term evaluation of the implementation of the structural operations (no later than 2003). After that evaluation (and no later than March 2004), the Commission will allocate this reserve, to those operational programmes and SPDs, whose implementation is considered successful. The aim of this reserve is to encourage the best utilisation of national and Community resources. The Commission regards it as an incentive to improve the efficiency and effectiveness of the management and the financial implementation of the structural operations.[103]

Specific provisions have been made with regard to the coordination of the financing activities as well as the criteria of differentiation of assistance. Art. 28 clearly stipulates that a measure may benefit from a contribution by the Funds under only one Objective. An operation cannot be simultaneously financed under an Objective and a Community initiative. Neither may an operation be simultaneously financed by the Guarantee Section of EAGGF and one of the Objectives or a Community initiative. Art. 29 contains the criteria of differentiation of structural assistance. These are: the gravity of the problems to be tackled; the financial capacity of the Member State concerned; the Community priorities; the regional and national priorities, the needs to met especially with regard to human resources and employment; the combination of public and private resources. The contribution of a Fund for Objective 1 will not normally exceed 75% of the total eligible cost, but there are exceptions, especially for the outermost regions. The corresponding percentage for Objectives 2 and 3 is 50%.

Finally, there is a series of dispositions in the Regulation referring to the Committees that must be established in order to help the Commission and the Member States to implement the structural operations. These are the Monitoring Committee, the Committee on the Development and Conversion of Regions, the Committee of Art. 147 EC Treaty regarding the ESF, the Committee on Agricultural Structures and Rural Development, and the Committee on Structures for Fisheries and Aquaculture. The analysis of these provisions is beyond the scope of this thesis. There are also some transitional and final provisions of a purely procedural nature. The provisions of

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[102] European Council, Presidency Conclusions, Berlin 24-25 March 1999, Doc 100/99, p. 14.

[103] European Commission, Reform of the Structural Funds, op. cit., p. 27. For more details regarding the evaluation of the implemented operations and the techniques of allocating the performance reserve (i.e. setting performance indicators, monitoring and identifying successful operations, methods of payment of the reserve, etc) see European Commission, Working Paper 4: Implementation of the performance reserve, in The New Programming period 2000-2006: methodological working papers, 2000.

Regulation 99/1260/EC regarding the management and the financial control of the structural operations will be analyzed in Chapter 4.

1.2.4. Regulation 99/1784/EC

This replaced Regulation 88/4255/EEC (as amended by Regulation 93/2084/EEC) regarding the structural operations financed by the ESF. According to these Regulations, the operations eligible for ESF funding were those focusing on vocational training, vocational guidance, subsidies towards recruitment in newly created stable jobs, and the creation of self-employed activities. Innovative activities in these areas and technical support for such operations were also eligible. Special attention was paid to the integration of the long term unemployed, the young unemployed, those excluded from the labour market and to the promotion of equal opportunities between men and women. The adaptation of workers of both sexes to industrial change by anticipating labour market trends was a major aim. Vocational training was seen as the means to achieve these aims.[104]

Regulation 99/1784/EC, in accordance with the new legislative "architecture" of the Structural Funds, focuses on the scope of the interventions financed by the ESF. The Fund shall support measures to prevent and combat unemployment and to develop human resources and social integration in the labour market. The aims are to promote a high level of employment, equality between men and women, sustainable development and economic and social cohesion (Art.1).

Within the political and legislative framework established by the Treaty of Amsterdam, the new employment strategy and process initiated by the Luxembourg European Council (see Chapter 2) requires the ESF to have a more important role than before. The policy fields supported by the Fund, according to Art.2, include: a) active labour market policies, b) promoting equal opportunities for all in accessing the labour market, c) promoting and improving training, education, counselling, and lifelong learning policies d) promoting a skilled, trained and adaptable workforce, innovation in work organization, conditions facilitating job creation, e) specific measures to improve women's access and participation in the labour market. Local initiatives concerning

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[104] For more details about the importance attributed to vocational training by the 1988 Regulations see B. Kolotourou, The European Social Fund within the framework of the new rules of operation of the Structural Funds, Rev. of Eur. Com., 1989 (issue 6), p. 189-201, at 198-199.

employment and the impact of the information society on the labour market will also be taken into consideration. The activities financed by the ESF will be (Art.3): education, vocational training (initial and continuing), counselling, aids for self-employment, postgraduate training and training of managers and technicians in enterprises, research activities in the area of science and technology, and development of new sources of employment (social economy/third system – see Chapter 2). Assistance for the structural background of these activities, in terms of facilities (buildings), human resources (trainers), links between education-training and labour market, awareness, information and publicity will be provided as well. ESF assistance will be concentrated on a limited number of areas or themes and directed towards the most important needs and the most effective operations, in order to maximize its effectiveness (Art. 4). Art. 5 provides that the ESF shall finance projects under the Community initiative EQUAL. Finally, Art. 6 provides for ESF financing innovative measures and the technical assistance required for the implementation of structural operations. This latter provision virtually repeats the corresponding provision of the previous Regulation concerning the ESF and establishing, *inter alia*, the Article 6 pilot projects (see Chapter 2). The main target groups of these activities will be the long term unemployed, young people and women.

The European Parliament[105] endorsed most of the Commission's opinions, and asked, *inter alia*, for attention to be drawn towards the need to help older workers, for support for local employment initiatives and for projects promoting transnational exchanges of experience.

1.2.5. Appraisal of the 1999 reform

It is really too early to attempt a complete appraisal of the 1999 reform. However, there has already been some criticism, based mainly on the Commission's proposals and not on the Regulations themselves. The geographical concentration of structural assistance introduced by the reform has been found to have little explicit justification: since relative disadvantage is widely spread throughout the European Union, there is no obvious reason not to spread the structural resources appropriately.[106] It has also been pointed out that while under the 1988 and 1993 Regulations the

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[105] See European Parliament, Doc. A4-0398/98-Jöns.

[106] J. Hough, The Reform of the European Structural Funds and the Cohesion Funds, Research Paper 98/92, November 1998, Economic Policy and Statistics Section, House of Commons Library, p. 21.

territories eligible for assistance under Objective 1 were determined by the Council and the relevant list was included as an annex to the Regulations regarding the Structural Funds, the 1999 Regulations grant the Commission the task of selecting the eligible regions. The Member States are therefore excluded from the selection process, which appears mechanical but is of vital importance since it determines the recipients of structural assistance.[107] With regard to partnership, it has been noted that Art. 8 of Regulation 99/1260/EC contains expressions such as "where appropriate", "according to its [the Member State's] national rules and practices" making it so flexible that it could undermine the obligatory nature of the concept of partnership.[108]

However, the new Regulations are more comprehensible than the previous ones. The details included in the general Regulation 99/1260/EC seem confusing at first. Nevertheless, given their experience from the previous schemes, the authorities implementing these new provisions should meet no difficulties. Several of the provisions are self-explanatory, and Art.9 of Regulation 99/1260/EC, defining the most important concepts used in the Structural Funds system, is very useful. Maintaining the same structures for the financing of structural operations will enable the better management of resources given by the Funds. The involvement of both local and regional authorities and private organizations, if performed as described in the new Regulations, will be beneficial. Nevertheless, all this is mere speculation. Only experience of the scheme in practice will determine whether the reform of the Structural Funds Regulations has been a much-needed success, or a disappointing failure.

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[107] J. Scott, op. cit., p. 630.
[108] Ibid, p. 640.

Chapter Two: European and National Employment Policies financed by the European Social Fund in Greece

The Member States, either acting individually or as the Council, face a double challenge when it comes to combating unemployment.[1] They must get their populations gainfully employed without undermining benefits and support systems, which have represented the backbone of social Europe for several decades. Despite attempts to coordinate their employment policies, vast differences remain, reflecting political traditions, varied macroeconomic circumstances and the political beliefs of the parties in government.[2] These differences are often reflected in the political choices with regard to employment made at European level: the Council and the Parliament are by nature susceptible to political influences.[3] Nevertheless, despite all political differences, it is commonly acknowledged that the ultimate source of paid employment is demand for goods and services.[4] Accordingly the growth of employment will depend on the difference between the growth of demand for general output and the growth of labour productivity, that is output per worker. So, in order to prevent increases in unemployment, additional employment must be created at roughly the same rate as increases in the labour force.[5] This chapter examines the relevant policies as financed by the ESF in Greece.

2.1. The Legislative, Institutional and Political Framework of European Employment Policies

Many dispositions of the EC Treaty demonstrate the European Union's interest in promoting employment. Perhaps the most fundamental is Art 2 according to which

> *"The Community shall ..... promote .... a high level of employment and of social protection...."*

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[1] European Commission, Modernising and Improving Social Protection in the European Union, COM(97) 102 final, p. 6.

[2] Variety abounds in Member State employment policies, European Dialogue, Nov-Dec 1997, issue 6 available on line at http://europa.eu.int./en/comm/dg10/infcom/eur_dial/97i6a7s3.html.

[3] For a concise account of the political background regarding the development of European Employment Policy, see D. Howarth, The Development of a European Employment Policy, available on line at http://www.britcoun.org/european/ioni1.htm on 15.09.1999.

[4] N. Adnett, European Labour Markets: Analysis and Policy, Longman Publishing, 1996, p. 2.

This provision was added by the EU Treaty to the very first chapter of the EC Treaty. It therefore constitutes a basic principle of Community action. From its wording, the Community is clearly obliged to promote employment and social protection. Nevertheless, the institutions (mainly the Commission, Council and Parliament) cannot be forced to initiate and adopt measures in order to promote employment. It is true that according to Art. 232 EC Treaty, if an institution omits to act in order to promote employment, the other institutions, Member States and any other natural and legal person within the established limitations about standing[6] may institute proceedings before the European Court of Justice (ECJ). However, that would now be pointless, because the institutions have already taken political and legislative action to promote employment. Also, the content of their action lies within the framework of their discretion. Therefore its substance cannot be reviewed by the ECJ, only its legality and compatibility with primary and secondary Community legislation. Art 232 has been held to refer to the failure to adopt a measure, not to the adoption of a measure different to that desired by the applicant.[7] Furthermore, it must be noted that even if there are commitment appropriations in the budget regarding actions to promote employment, these do not bind the Council and Commission as legislative authorities.[8]

The Treaty of Amsterdam added a new subparagraph to Art. 3 EC Treaty:

> *"For the purposes set out in Article 2, the activities of the Community shall include.....(i) the promotion of coordination between employment policies of the Member States with a view to enhancing their effectiveness by developing a coordinated strategy for employment...."*

The new wording of Art. 140 EC Treaty is very similar, thus leading to the characterization of the new subparagraph of Art. 3 as "fairly cosmetic" since it does not set the European Union any new task.[9] The Treaty of Amsterdam added a new section (Articles 125 – 130 EC Treaty), focusing specifically on employment. The content of employment policies supported by the Union will be based on the promotion of a skilled,

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[5] Ibid, p. 2.

[6] For a detailed analysis of the issue of *locus standi* in cases of Art. 232 see A. G. Toth, The Law as it Stands on the Appeal for Failure to Act, LIEI (1975/2), pp. 65-93.

[7] Joined Cases C-166/86, C-220/86, *Irish Cement v. Commission of the European Communities,* [1988] ECR 6473, T-387/94, *Asia Motor France SA v. Commission of the European Communities,* [1996] ECR II-961.

[8] Joined Cases C-87/77, C-130/77, C-22/83, C-9/84, C-10/84, *Salerno and others v. Commission of the European Communities and Council of European Communities,* [1985] ECR 2523 at 2541-2542 para 56.

trained and adaptable workforce and of labour markets responsive to economic change. So, vocational training and flexible labour markets are the objectives to be achieved.[10]

Promoting employment in the European Union through the financing schemes supported by the Structural Funds is a delicate issue. Such measures encourage certain activities, thereby operating indirectly to regulate employment matters. The Union must respect the Member States' competences regarding employment.[11] The Member States and the Community (after Amsterdam) now have joint competence to develop an employment strategy.[12] Nevertheless, it is still argued that all social policy issues, including employment, remain principally within the competence of the Member States,[13] so all European initiatives and activities in that area are seen as supplementary to the Member States' national social policies.[14] It has been noted that the Commission uses the programmes financed by the Structural Funds in order to claim an interest in the field of employment, although it has no formal competence.[15]

The new provisions maintain the subordination of the social aspects of employment to its economic aspects. Even the employment guidelines adopted by the Council (Art. 128) must be consistent with the broad guidelines regarding economic policy and adopted according to Art. 99(2) EC Treaty.[16] Furthermore, the Council cannot sanction the Member States for not following its guidelines. It may only make recommendations, which have no legal impact.[17] The institutions may therefore try to influence Member States' employment policies substantively through their guidelines, but

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[9] A. Duff (Ed.), The Treaty of Amsterdam, Federal Trust, Sweet & Maxwell, 1997, p. 65.
[10] See also European Commission, White Paper on Growth, Competitiveness and Employment - The challenges and ways forward into the 21st century, COM (93) 700 final.
[11] See Art. 127 of the EC Treaty.
[12] See Art. 125 of the EC Treaty.
[13] T. Hervey, European Social Law and Policy, Longman Publications, 1998, p. 4.
[14] P. Tsakloglou, op. cit., p. 211.
[15] T. Hervey, op. cit., p. 52.
[16] Calls for greater synergy between the employment guidelines and the broad economic guidelines have been made in order to direct the macroeconomic policies of the Member States towards stability and employment-creating growth. See European Commission, Communication on Community Policies in Support of Employment, available on line at http://www.europa.eu.int/comm/dg05/empl&esf/docs/art127_en.pdf on 23.10.1999, p. 3. See also Council Doc 12641/99 (Presse 343) and Doc 13457/99 (Presse 382), European Council, Helsinki 10 and 11 December 1999, Presidency Conclusions, Doc 300/99: However, this only refers to the coordination of economic, employment and structural policies and to the complementarity between the Broad Economic Policy Guidelines and the Employment Guidelines, without further specifications.
[17] Art. 249 EC Treaty. However, these recommendations are seen as very important political sanctions. They could place a national government into great difficulty as regards national public opinion. See M. Biagi, The Implementation of the Amsterdam Treaty with regard to Employment: Coordination or Convergence?, International Journal of Comparative Labour Law and Industrial Relations, Volume 14/4, 1998, pp. 325-336 at 327.

they cannot legally force the States to follow these. Naturally, they can apply "political pressures" but no legislative measures can be enacted, nor actions brought before the ECJ.

Moreover, the Council is precluded from attempting to harmonise laws. Art. 129 clearly establishes that the Member States are at least competent to adopt legislative measures to promote employment. The content of these measures must however be in accordance with the Council's guidelines. So, the Community attempts to harmonise legislative measures promoting employment indirectly, by means of its guidelines.

One proposal considered by the 1996 Intergovernmental Conference concerned the amendment of Art. 99 EC Treaty, to enable political orientations in the field of employment to be incorporated into the general overall orientations of the Member States' economic policies.[18] That would simply have meant that issues and ideas regarding employment should be incorporated in the broad economic guidelines recommended by the European Council according to Art. 99(2). However, since this proposal was not adopted, the economic guidelines are more concerned with issues of inflation, deficits, currency etc. The European Council, attempting to balance the content of future broad economic guidelines, adopted a Resolution on growth and employment in June 1996,[19] declaring that more attention will be given to improving competitiveness as a prerequisite for growth and employment, in order to create more jobs in the Union. So, the Council did not want to bind itself or the Member States legally, but preferred to declare politically its wish to include employment issues in the broad economic guidelines of Art. 99(2). It is true that, while social policy issues like employment are traditionally addressed on the basis of the political aspiration of social justice, in the EU context the dominant explanation for the "social provisions" tends to be economic, focusing on the creation of an integrated and efficient common market. The main focus of the Union therefore concerns economic activities and objectives, the social aspects being expressed as additional implications and consequences to those.[20] Nevertheless, the ECJ has

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[18] K. I. Hatzidakis, Greece and Europe: What Welfare State?, I. Sideris Publications, 1998, p. 63.
[19] OJ 1997, C 236/3.
[20] T. Hervey, op. cit., p. 1, 3 and 174-175. See also the new Art. 2 EU Treaty which addresses employment as a consequence of a successfully established common market through economic and monetary union. Even unemployment in the European Union is viewed by the Commission from an economic perspective. The Commission admits that unemployment is a social hazard and the source of large social cost, but it argues that the capacity to create jobs because of unemployment gives the Union has a competitive edge over the United States and Japan. See E. Szyszczak, EC Labour Law, Longman Publications, 2000, p. 17 and the references therein.

adopted a different approach by interpretating Articles 2 and 3 EC Treaty as treating the economic and social objectives of the Treaty as equivalent.[21]

Another relevant suggestion was to include employment in the convergence criteria for economic and monetary union. More specifically the idea was that unemployment should not exceed the average unemployment rates of the three Member States having the lowest unemployment by more than 1.5%-2%.[22] This suggestion was not adopted either, showing once more that the Member States' economic policies only concentrate on factors with economic substance, like inflation or interest rates, and ignore important social factors like employment.

The operational framework of all current European employment policies was established in 1997. A series of events and documents, the analysis of which is beyond the scope of this thesis, created a new basic political perspective according to which the Community institutions and the Member States had to become more active in their interventions in the labour markets.[23] In November 1997, the European Council decided[24] to activate the EC Treaty's new chapter on employment. The fact that the institutions did not wait for the Amsterdam amendments to be ratified[25] by the Member States shows their determination to tackle unemployment. However this generated a legal controversy.[26] According to the Council, the coordination provided by the employment guidelines would resemble that achieved through the convergence procedure implemented in establishing economic and monetary union.[27] Since that

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[21] C-67/96, *Albany International BV v. Stichting Bedrijfspensioenfonds Textielindustrie*, judgement delivered on 21.9.1999, not yet reported, para 54.

[22] K. I. Hatzidakis, op. cit., p. 93.

[23] These events include the negotiations leading to the Treaty of Amsterdam and the adoption of several relevant important documents such as the following: European Commission, Communication on Modernising and Improving Social Protection in the European Union, COM(97) 102 final, European Parliament, Resolution on the Commission's Communication on Modernising and Improving Social Protection in the European Union, OJ 1997, C 358/51, European Council, Resolution on growth and employment, OJ 1997, C 236/3, European Commission, Report on Employment in Europe 1997, COM (97) 479 final. The issues raised in these documents included the job creating prospects of the services sector and small and medium sized enterprises, the shift from passive to active employment policies, and the need to develop a skilled, trained and adaptable workforce through vocational training (initial and continuing).

[24] Extraordinary European Council Meeting on Employment, Luxembourg, 20-21 November 1997, Presidency Conclusions, Doc 300/97.

[25] The Treaty of Amsterdam entered into force only on 1 May 1999.

[26] M. Weiss, Il Trattato di Amsterdam e la politica sociale, Diritto delle relazioni industrialli, vol. VIII, issue 1, 1998, pp. 7-10 at 9.

[27] According to the procedure established by Art. 98 - 104 EC Treaty, the Member States had to draw up and implement Convergence Programmes regarding their economic policies, with a view to meeting the criteria for economic and monetary union. Greece submitted its Convergence Programme in 1994, covering the 1994-1999 period. This was amended in 1997 and in 1998, taking into consideration

procedure succeeded in its aim, which was to establish a common currency, it is also possible for the aim of having coordinated employment policies throughout the Union to be fulfilled.[28] This innovatory method, however, is based on the principle of subsidiarity. Consequently, the employment guidelines would be incorporated into national employment action plans, drawn up by the Member States from a multi-annual perspective and submitted to the European Institutions according to the new employment provisions of the EC Treaty.

The European Council focused on four pillars on which the employment policies should be based: employability, entrerpreneurship, adaptability and equal opportunities.[29]

The first pillar, to improve employability, includes policies seeking to tackle youth unemployment and long-term unemployment. The Member States will have to develop strategies focusing on the early identification of individual needs and offering young and adult unemployed persons (especially long-term unemployed) a new start through training, retraining, work practice, individual vocational guidance and eventually (if possible) a job.

The second pillar, to develop enterpreneurship, asks the Member States to promote measures enabling new businesses to be established more easily by simplifying administrative procedures and reducing tax and social security burdens on small and medium-sized enterprises, especially when hiring additional workers.

The third pillar focuses on encouraging adaptability in businesses and their employees. The social partners are encouraged to use the dispositions of the Social Protocol (now incorporated into the EC Treaty[30]) and negotiate agreements concerning

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economic developments and the establishment of the monetary union. The current Greek Convergence Programme covers the period 1999-2002. It provides a good indication of Greek employment policies. For more details see The Convergence Programme of the Greek Economy 1999-2002, as published in Oikonomikos Tachydromos, 16 March 2000.

[28] It has been noted that this convergence strategy for the promotion of employment is quite different from the coordination strategy mentioned in Art. 125 EC Treaty. The criteria (established through the guidelines of the Council) of convergence regarding employment are: a) to offer every young person, before reaching 6 months of unemployment, the possibility of entering the labour market by way of training or other employability measures; b) to offer every adult, before reaching 12 months of unemployment, an equal opportunity to work; c) to increase the number of people who benefit from active employment policies to at least 20% of the unemployed. The reward for achieving these criteria would be not the entry to a group of countries such as the Euro-club but the consolidation of the credibility of employment policy and avoidance of political pressure for failing to achieve the criteria. See more details in E. Szyszczak, op. cit., p. 20-22 and M. Biagi, op. cit., p. 329-330. It is noteworthy the rewards do not refer to the possibility of reducing unemployment!

[29] European Council, Resolution of 15 December 1997 on the 1998 Employment Guidelines, OJ 1998, C 30/1.

[30] According to Art. 138 and 139 EC Treaty, the social partners must be consulted regarding social policy. They can even reach binding Community-wide collective agreements. They are therefore elevated

modernisation at sectoral and enterprise level. These must focus on flexible working arrangements like reduction of working hours, reduction of overtime, lifelong training within the enterprises, or expressing working time as an annual figure. The Member States will examine the possibility of incorporating into their law more adaptable types of contract.

The fourth pillar stands for strengthening the policies for equal opportunities. The aim is to increase employment rates for women and to eliminate the imbalance in the representation between men and women in certain economic sectors. The implementation of national and Community legislation on parental leave, part-time working and career breaks must be accelerated and monitored, in an attempt to reconcile work and family life. Good quality care for children and other dependents must be provided. The Member States will give special attention to the integration of people with disabilities into working life.

In 1998 the Member States submitted and implemented their national action plans for employment. The European Council at Cardiff (June 1998) and at Vienna (December 1998) acknowledged their efforts and adopted the Employment Guidelines for 1999.[31] The Member States were asked to focus, *inter alia*, on the employability of older workers (through life-long learning), the promotion of equal opportunities policies for women, the disabled and ethnic minorities, the reviewing of tax and benefits systems in order to make them more employment-friendly, the growth of smaller businesses, and the employment potential of the services sector.[32] The same aims were also identified in the

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to the role of political and institutional actors in the Community decision-making process. However, these provisions have been criticised for merely introducing a "civic dialogue" alongside the "social dialogue" and adding nothing more substantive. See E. Szyszczak, op. cit., p. 4 and the references therein.

[31] European Council, Cardiff 15-16 June 1998, Presidency Conclusions, Doc 150/98, European Council, Vienna 11-12 December 1998, Presidency Conclusions, Doc 300/98, and European Council, Resolution on the 1999 Employment Guidelines, OJ 1999, C 69/2-8.

[32] A classic example of the employment potential of the services sector is tourism. It is estimated that tourism offers the prospects for the creation of more than 3.3 million jobs over the next decade. See European Commission, Communication on Community Policies in Support of Employment, op. cit., p. 17. Furthermore, with regard to Greece, it must be said that the services sector is very important with regard to employment. In 1981, employment in economic activities was divided as follows: 30.7% in the primary sector (agriculture, fisheries, etc), 29% in the secondary sector (industry, mining, etc) and 40.3% in the tertiary sector (services, commerce, banking, health, transport, education, etc). In 1998 the corresponding figures were 17.7% for the primary sector, 23% for the secondary sector and 59.3% for the tertiary sector (data available in Oikonomikos Tachydromos, 30.3.2000, p. 103). Obviously the services sector generates most employment in Greece.

Employment Guidelines for 2000 as adopted by the European Council in December 1999.[33]

Interestingly, in June 1999, given the reform of the Structural Funds and the setting of new financial perspectives for 2000-2006, the European Council took the initiative for a European Employment Pact aimed at a sustainable reduction of unemployment.[34] This was an attempt to amalgamate all Union's employment policy measures. According to the European Council the Pact would have three pillars.[35] The first was the coordination of economic policy and improvement of the interaction between wage developments and monetary, budget and fiscal policies through macro-economic dialogue (Cologne process). The second was the further development and better implementation of the coordinated employment strategy in order to improve the efficiency of labour markets by improving employability, entrepreneurship, adaptability of business and employees and equal opportunities for both sexes (Luxembourg process). The third was the comprehensive structural reform and the modernization in order to improve the innovative capacity and efficiency of both the labour market and the market in goods, services and capital (Cardiff process). These pillars were considered indispensable to the European Employment Strategy of the 21st century.

The most recent attempt to orientate European employment policy resulted from the European Councils of March[36] and June 2000.[37] There it was decided that in light of the prospective enlargement of the European Union, and the fact that, despite the various measures implemented so far in order to combat unemployment, the employment rate is still too low, a new strategy is required. This strategy will aim to make the European Union the most competitive and dynamic knowledge based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion. The policies promoted will focus on the information society,[38] because of its

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[33] European Council, Helsinki 10 and 11 December 1999, Presidency Conclusions, Doc 300/99.
[34] European Council, Cologne 3-4 June 1999, Presidency Conclusions, Doc 150/99.
[35] Ibid, p. 3-4.
[36] European Council, Lisbon 23-24 March 2000, Presidency Conclusions, Doc 100/00.
[37] European Council, Santa Maria da Feira 19-20 June 2000, Presidency Conclusions, Doc 200/00.
[38] This term is used to describe the new, still evolving, conditions of production organization, as well as changes wrought by the evolution of new technologies, to the provision of services and to administrative operation. In general, the rapid development of the information society is regarded as a fundamental societal change having great impact on the nature of employment. New jobs and industries are expected to be created. At the moment there is a "skills gap" in this area which has resulted in 500,000 unfilled vacancies. It is possible that this figure will grow to over one million by 2002. See European Commission, Communication on Community policies in Support of Employment, op. cit., p. 17-18. It is noteworthy that the cornerstone of the information society, the communication services, account for only

potential for growth, competitiveness, job creation, improving citizens' quality of life by making them able, in terms of training and equipment, to live and work in this new (information) society. An e-Europe Action Plan was therefore endorsed. Furthermore, the European Charter for Small and Medium-sized Enterprises has been adopted because of the importance of these enterprises to job creation. Also, education and lifelong learning must be made available to all. Finally, the creation of a European Social Agenda providing a multi-annual framework of action in social matters has been suggested.

2.2. Measures for the promotion of Employment financed by the European Social Fund in Greece

As seen above, the task of promoting employment belongs not only to the European Institutions, but also to the Member States. The Greek Constitution also imposes the same obligation upon the Greek State. Under Art. 22(1) of the Constitution, the State has a double legal obligation: to seek to create conditions of employment for all citizens and to pursue the moral and material advancement of the rural and urban working population. The State is not obliged to find work for all citizens because this is possible only in a centrally programmed economy, not in the liberal economy established by the Constitution.[39] Art. 22(1) of the Constitution obliges the State to create conditions of employment, meaning to draw and implement a policy of full employment. This obligation covers all kinds of employees and employers (especially those in small and medium sized enterprises[40]) as well as the self-employed.[41] But this obligation cannot be enforced judicially. Nobody, relying only on this specific provision, can demand that the State find him a job or maintain his position in work or enable him to participate in vocational training schemes.[42] As in the European Union, Greek courts cannot review the substance of any State legislative action based on Art. 22(1) of the Constitution.

The main documents presenting the relevant policies are the Community Support Frameworks and the National Action Plans for Employment submitted by Greece and

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1.7% of total employment in the European Union. See Eurostat, Communication services account for only 1.7% of total EU employment, Memo 2/99, 15 April 1999.

[39] P. D. Dagtoglou, Constitutional Law/Human Rights, A. N. Sakkoulas, Vol. 2, 1991, p. 833.

[40] This category of enterprises is crucial for the promotion of employment in Greece since 56.6% of the total employment is generated in small (having less than 9 employees) enterprises. See Eurostat, Small and Medium Firms play decisive role in EU, Memo no 01/99, 10 March 1999.

[41] P. D. Dagtoglou, op. cit., p. 833.

[42] Ibid, p. 834.

approved by the Commission. Other more independent measures, including the Community initiatives, will also be referred to.

2.2.1. Resources given to Greece by the European Social Fund: An Overview

From 1981 (year of Greece's accession to the European Communities) to 1997, Greece has received about 40 trillion drachmas of financial assistance from the Communities.[43]

Before the 1988 reform of the Structural Funds the amounts given to Greece by these Funds were as follows (in million drachmas):[44]

Year	All Funds	ESF
1981	7,925.5	406.7
1982	12,230	1,489
1983	19,987	1,540
1984	26,897.8	3,229.1
1985	40,214.8	4,022.5
1986	79,392	10,247
1987	91,580.2	20,410.8
1988	115,023.9	26,587.9
Total	416,694.9	67,933

In the above calculation, and all following calculations in this section, the "All Funds" column includes all the Structural Funds, including resources given under the Integrated Mediterranean Programmes scheme (see below) but excluding the Guarantee Section of the European Agricultural Fund for Guidance and Guarantee.

After the 1988 reform, the amounts given by the Structural Funds to Greece were increased dramatically. More specifically for the programming period 1989-1993 (first Greek Community Support Framework) these amounts were (in million drachmas):[45]

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[43] Oikonomikos Tachydromos, 10.12.1998, p. 20, EE, issue 11, 1999, p. 26.
[44] Oikonomikos Tachydromos, 10.12.1998, p. 20.
[45] Ibid, p. 20.

Year	All Funds	ESF
1989	169,300.2	39,913.5
1990	215,178.5	56,368.5
1991	304,254.7	63,505
1992	464,566.7	69,971.9
1993	606,990.6	109,393.7
Total	1,760,290.7	339,152.6

The total amounts in ECUs were 7,528 million for all the Funds and 1,714 million for the ESF only.[46] The increase in these amounts, compared with those of the period 1981-1988, is obvious.

The estimates for the overall assistance given to Greece by the Structural Funds during the programming period 1994-1999 (second Greek Community Support Framework) are 14,152.93 million Euros. The ESF's share was 2,634.07 million Euros (18.6%).[47] Again, the increase compared with the previous programming period is obvious.

2.2.2. Greek Community Support Frameworks

So far Greece, taking advantage of the provisions of the Regulations regarding the Structural Funds, has implemented two Community Support Frameworks (CFSs). The first was approved in 1990.[48] According to Art. 1 of the approving Decision it provided structural assistance to the Greek regions covered by Objective 1 of the Structural Funds (promoting the development and structural adjustment of the regions whose development is lagging behind). The CSF covered the period 1989-1993. The main priorities were to upgrade the country's basic economic infrastructure, to develop the primary sector of the economy and rural areas, to improve the competitiveness of

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[46] European Commission, The European Social Fund, an overview of the programming period 1994-1999, March 1998, Available on line at http://www.europa.eu.int/comm/dg05/esf/en/public/overview, on 15.10.1998.

[47] European Commission, 10th Annual Report on the Structural Funds, available on line at www.inforegio.cec.eu.int/wbdoc/docoffic/official/rastru98/rastru_en.htm on 8.12.1999, p. 30.

[48] Commission Decision 90/203/EEC, OJ 1990, L 106/26.

Greek firms, to achieve a balanced development of tourism and to develop human resources. The total cost of meeting these priorities was estimated at 14,342 mil. ECU, 52.5% of which was paid by the Structural Funds (see previous section).

The second CSF was approved in 1994.[49] It was better prepared than the first CSF, containing much more information about the financed programmes.[50] It sought to provide structural assistance in the Greek regions covered by Objective 1. The whole of Greece was eligible for such assistance.[51] The CSF covered the period 1994-1999. Given that the final accounts for the second Greek CSF have not yet been prepared, the figures used for this instrument are the allocations in the Community budget. According to Art. 2(2) of the approving Decision, the total cost of the actions undertaken within this CSF was estimated at 29,721.3 million ECU. The Structural Funds would cover about 47.6% of this amount (see previous section).

The second CSF for Greece had five main axes.[52] Only one is relevant to this thesis. It was called "Investment in developing human resources and strengthening the structures of the labour market in order to improve employment perspectives". It included two basic aims. The first was the adoption of measures regarding the quality and the multiformity of vocational training. The second concerned the encouragement of investment in human resources and satisfaction of the employment needs created by economic and technological changes.

Accordingly the main efforts had to focus on the following strategic priorities:[53]

1) Facilitating access to vocational training and improving its quality along with the quality of basic education (the ESF allocation for this priority was 1,200 million ECU, i.e. 45.4% of the total ESF assistance),

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[49] Commission Decision 94/627/EC, OJ 1994, L 250/15.

[50] The adoption of the first Greek CSF was not in any case a pleasant experience. The Commission had allocated about 36,200 mil. ECU to all the CSFs of the Member States for the period 1989-1993. However, while all other CSFs were approved in 1989 (OJ 1989, L 370), the Greek CSF was only approved in March 1990, because the Greek government significantly delayed the establishment of the CFS's priorities. For more details see European Commission, General Report on the Activities of the European Communities 1989, Office for official publications of the European Communities, 1989, p. 210.

[51] See the Annex of Regulation 93/2081/EEC, OJ 1993, L 193/19.

[52] European Commission, Greece-Community Support Framework for the development and structural adjustment of the regions whose development is lagging behind (Objective 1) 1994-1999, COM(94) 1716, p. 22. Unless stated otherwise, this document is the source of information for the matters discussed about the second Greek CSF. A detailed table including the ESF allocations for each axis of the second Greek CSF can be found in the Annex.

[53] See European Commission, The European Social Fund, an overview of the programming period 1994-1999, March 1998, op. cit. and European Commission, Greece and the European Social Fund, available on line at http://www.europa.eu.int/comm/dg05/esf/en/public/leafs/gr-en.htm on 7.7.1998.

2) Improving the competitiveness by adjusting the work force to the development of production systems. Continuing training must be drawn up according to the demands of the labour market (the ESF allocation for this priority was 730.9 million ECU, a little more that 28% of the total ESF assistance),

3) Improving the employment potentiality of the unemployed, the disabled and other categories facing potential exclusion from the labour market, through financing employment organizations as well as guidance and advisory schemes (the ESF allocation for this priority was 236 million ECU, 9.2% of the total ESF assistance),

4) Strengthening and enlarging the effort to modernize public administration through exploiting human resources, by providing initial and continuing vocational training of high quality (the ESF allocation for this priority was 44.7 million ECU, 1.9% of the total ESF assistance).

Each of these priorities corresponded to an operational programme. More details about the contents of these programmes and their implementation can be found in Chapter 8.

2.2.3. National Action Plans for Employment

In accordance with the conclusions adopted by the 1997 Luxembourg Extraordinary European Council about Employment, Greece submitted National Action Plans for Employment for 1998, 1999 and 2000.[54]

The overall aim of these Plans was to provide a persuasive reply to the problems of restructuring and development, and the participation of the entire labour force in the benefits of development while preserving the elements of solidarity and social cohesion in the implementation of the policies. The ESF is regarded as a basic tool for the development of structures and activities for the promotion of training and employment in Greece.

The action axes on which the Greek Plans for Employment were based included:

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[54] Greek Ministry of Labour and Social Security, National Action Plan for Employment Greece-1998, March 1998. Greek Ministry of Labour and Social Security, National Action Plan for Employment Greece-1999, June 1999, Greek Ministry of Labour and Social Security, National Action Plan for Employment Greece-2000, May 2000. Unless stated otherwise, these documents are the source of information for the matters discussed in the section about the Greek National Action Plans for employment.

-the promotion of public and private investment supporting the creation of new opportunities in production and employment,
-the creation of attractive conditions for importing and evaluating new technology and new forms of work organization,
-the implementation of an integrated policy affecting employment positively without shrinking workers' income,
-the support of active policies for employment through implementing measures against unemployment, creating new institutional structures for more effective interventions in the labour market, certifying the educational ability of training institutions according to a set of criteria,
-the identification of special target groups which are vulnerable to the changes of the labour market (young, long-term unemployed, women, disabled),
-the support of activities promoting equal opportunities for training and employment among the sexes.

The relevant ESF appropriations, amounting to 2,583 million ECU, were allocated as follows: 30.5% for continuous training for workers and employment programmes, 50.5% for education and initial vocational training, 10.1% for fighting exclusion from the labour market and 8.9% for reinforcing human resources at regional level.

The National Action Plans are structured according to guidelines identifying the objectives of the various actions included therein. There are 21 guidelines, divided into four groups, corresponding to the four pillars for the promotion of employment identified by the Luxembourg European Council of 1997. There are several projects implementing these guidelines. It is beyond the scope of this thesis to provide a detailed account of these, however some are discussed below. It must be noted that most projects included in the National Action Plans are also incorporated in the second Greek CSF or the Community Initiatives.

2.2.3.1. Measures improving employability

One of the most interesting programmes is called "Young People in Active Life". Its provides every young person between 18 and 29 with the opportunity to participate in a 12-22 month work experience programme or a 16-30 month self employment

programme. Young people who have not completed six months of unemployment and have been registered for one month in the unemployment records of the Greek Manpower Employment Organization are eligible. They will be offered the possibility of training/retraining, or acquiring working experience, or employment, or self-employment. The overall cost of the programme is estimated at 350 billion drachmas. The ESF will support mainly training activities (initial and continuous vocational training). A stage programme is also implemented, subsidising unemployed University graduates up to the age of 30 for 11 months of work experience in their field of studies. Its overall cost is estimated at 8 billion drachmas.

Another programme, called "Back to Work", aims to help the long-term unemployed aged 30-64. It is similar to the "Young People in Active Life" programme as it provides the target group with the opportunity to participate in a 12-22 month work experience programme or a 16-30 month self employment programme. The intervention is intended to be carried out before twelve months of unemployment are completed, thus preventing long-term unemployment. Those registered with the Greek Manpower Employment Organization for one or two months, depending on the sub-programme, are eligible. The unemployed will have re-training possibilities, and will be able to gain working experience in private enterprises, in social services institutions or local government institutions.

In order to reinforce the employability of the work force, the Greek Manpower Employment Organization established an Integrated Information Management System. This was included in Art. 3 of Law 2434/1996 on Measures about employment and vocational training,[55] and in the National Action Plans for Employment. It urges the unemployed to register with the Greek Manpower Employment Organization and provides incentives for them to actively seek training and jobs. It also provides incentives for employers by financing employment for the unemployed. This System requires the active involvement of the social partners in order to succeed, thereby encouraging a partnership approach.

The transition from passive to active measures in Greece has been realized through vocational training schemes and programmes. Initial vocational training includes the operation of the public Institutes of Vocational Training, monitored by the Ministry of Education. They provide for young adults, graduates from mandatory or secondary

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[55] Journal of the Government of the Hellenic Republic 1996, No A 188, 20.08.1996, p. 3333.

education, who nevertheless lack qualifications that can be immediately used in the labour market. Re-structuring and improving the programs of study and other educational tools of these institutes, as well as providing them with the necessary technological infrastructure are the main objectives of the National Action Plans.

The National Action Plans regard continuous training a basic tool for the development/specialization or conversion of the work force. The structures for providing such training include the Vocational Training Centers and the Greek Manpower Employment Organization. Their training programmes focus on skill areas where labour will be in high demand. The provision of practical training within a working environment is also an essential element of the continuous training system.

The National Action Plans also incorporate programmes of alternative learning through apprenticeship schemes. There are Apprenticeship Schools, managed by the Greek Manpower Employment Organization. These programmes are addressed to young graduates of mandatory education. They combine theoretical training in school with practical training in companies. The work placements are handled by the Greek Manpower Organization. A similar apprenticeship scheme, focusing on agricultural education, is operated by the Technical Vocational Schools of the Ministry of Agriculture.

2.2.3.2. Measures developing enterpreneurship

The main measure is the Operational Programme for Industry, implemented by the Ministry of Development. One of the main interventions concerns small and medium sized enterprises. This aims to facilitate:

-the start-up process by supporting new businessmen in developing of viable enterprises,

-the management of such enterprises, by promoting partnerships and subsidizing the interest rates on capital borrowed,

-access to financial institutions by establishing Mutual Warranty Companies to provide small and medium sized enterprises with the necessary guarantees in order to obtain loans from credit institutions, and Holding Companies with Participating Interests

supporting such enterprises through capital (that project is linked with the 1998 Community initiative for small and medium-sized enterprises[56]).

In an attempt to exploit new opportunities for job creation, the National Action Plans for Employment introduced the novel Territorial Employment Pacts.[57] These are special pacts of cooperation between the social partners and local production agents, with a view to reinforcing employment in conjunction with local development. They include plans for supporting employment in medium-sized enterprises, training the unemployed (utilising programmes from the Greek Manpower Employment Organization), creating new positions of social work to improve welfare services. The participating institutions include Local Government Authorities (prefectures, municipalities, communities and local development companies). The participation of private corporations is anticipated. This effort will cost 3.4 billion drachmas.[58]

2.2.3.3. Measures encouraging adaptability of businesses enterprises and their employees

New models of work organization are pursued through legislative interventions. The main relevant legislative instrument is Law 2639/1998, concerning *inter alia* the regulation of informal forms of employment (telework, piece work, work at home), the codification and enactment of a series of measures on part-time employment,[59] the introduction of new working arrangements based upon collective negotiation as their core and the establishment of private employment agencies.

Furthermore, programmes for in-house training have been designed for those employed either in the public or the private sector. They aim to adapt employees to the requirements of new technologies and new methods of work organization. Several

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[56] Decision 98/347/EC on measures of financial assistance for innovative and job-creating small and medium-sized enterprises (Growth and Employment Initiative) OJ 1998, L 155/43.

[57] For the relevant legislative provisions see Art. 4 of the Law 2639/1998, Journal of the Government of the Hellenic Republic 1998, No A 205, 02.09.1998, p. 3101.

[58] For more details on the Territorial Employment Pacts see National Labour Institute, Territorial Employment Pacts, Athens, 1998. An indicative list of such Pacts that have been implemented in Greece was available on line at http://www.europa.eu.int/comm/pacts/en/index.htm on 17.1.2000.

[59] It is true that part-time employment is not established in Greece. For instance during the period 1995-1997 only 5% of the total employment was part-time while the corresponding figure for the European Union exceeded 16%. See Eurostat, 16% of EU workers are part-time, News Release No 65/97, 18 September 1997, Eurostat, Eurostat, Yearbook 1998/1999: A statistical eye on Europe 1987-1997, Office for official publications of the European Communities, 1999, p. 136-137.

similar programmes have been implemented under the Community Initiative ADAPT.

2.2.3.4. Measures on strengthening equal opportunities policies for women and men

The Greek National Action Plans also include interventions aimed at eliminating discrimination between men and women in employment. One of them is to strengthen the Information and Women's Entrepreneurship Centres by providing for their regional presence throughout Greece and by connecting them to the Information and Documentation Unit of the Greek Research Centre on Matters of Equality. An integrated and effective infrastructure will thereby be created, proving support and information to women entering the labour market for the first time as well as to long-term unemployed women. Entrepreneurship is also supported by the "Structures for Female Entrepreneurship" programme, included in the Community Initiative EMPLOYMENT-NOW. These structures provide consultative support and information to both unemployed and employed women. Reconciling family and work is another major objective. Nursery Schools and Centres for Creative Play for Children are being created. Daylong Kindergarten and Daylong Elementary School schemes are being implemented. In parallel, the project "Social Welfare for the Care of Elderly" is being introduced. These projects aim to help children and the elderly while simultaneously helping those members of their families who are responsible for their care (usually women) to gain access to the labour market.

2.2.3.5. Measures of horizontal effect

The promotion of employment by exploiting the possibilities offered by the information society is a high priority. The new technologies will be used in various schemes focusing on the upgrading of the computer industry, support for small and medium-sized enterprises, the promotion of new forms of employment such as distance working, the implementation of tele-medicine, the documentation, protection, promotion and economic exploitation of the Greek culture, the development of the national telecommunications infrastructure, etc.

According to the National Action Plans, several Employment Promotion Centres will be created throughout Greece in an attempt to establish new support structures for the employment policies. These centres will provide information, advisory support, and vocational guidance and will place the unemployed into vacant job. It is estimated that these centres will contribute to the development of the EURES Network in Greece.[60] Their overall aim is to achieve fast job placement of the unemployed. The overall cost of these Centres is 9 billion drachmas, of which the ERDF provides 4,6 billion drachmas and the ESF 2.9 billion drachmas.

2.2.4. Other Measures

Other sources of funding have been made available to Greece by the Community regarding either employment itself or for more general purposes. The main sources of this funding were the exceptional financial support in favour of Greece in the social field, the Integrated Mediterranean Programmes, the Article 6 projects and the Third System and Employment projects.

2.2.4.1. Exceptional financial support in favour of Greece in the social field

This financial support was provided under Regulation 84/815/EEC,[61] which was amended by Regulation 88/4130/EEC.[62] The assistance initially covered the period 1984-1988 but the amendment extended this period to 1991 (Art.1 of Regulation 84/815/EEC as amended). The objectives of the programmes financed under this scheme were a) the construction, adaptation and equipment of vocational training centres and b) the construction, adaptation and equipment of vocational rehabilitation centres for the mentally ill and mentally handicapped (Art. 1 of Regulation 84/815/EEC). The scheme's overall budget was 120 million ECU for five years (Art. 4 of Regulation 84/815/EEC). The financial support would cover the construction of new centres or adaptation of existing buildings, the centres' equipment, projects demonstrating methods for achieving

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[60] EURES was introduced by Regulation 68/1612/EEC establishing a mechanism for clearing vacancies and applications for employment throughout the Community (EURES), OJ 1968, L 257/2, as amended by Regulation 76/312/EEC, OJ 1976, L 39/2 and Regulation 92/2434/EEC, OJ 1992, L 245/1. It aims to create a data bank of all vacancies throughout the European Union and to inform the unemployed about these through the participating national authorities.

[61] OJ 1984, L 88/1.

[62] OJ 1988, L 362/1.

vocational rehabilitation of mentally disabled people, and on-the-job training for the centres' personnel (medical and paramedical staff, and social workers) (Art 5(1) of Regulation 84/815/EEC). Art. 11a (added by Regulation 88/4130/EEC) added the cost of technical assistance to the eligible expenses. Support would be granted at a rate of 55% of eligible public expenditure, but technical assistance would be covered at a rate of 100%. It will not exceed 2% of the scheme's overall budget (Art. 5(2) and 11a(3) of Regulation 84/815/EEC as amended).

2.2.4.2. Integrated Mediterranean Programmes

These were established by Regulation 85/2088/EEC.[63] They aimed to improve the socio-economic structures of the Community's southern regions, especially Greece. They consisted of multiannual programmes, relating in particular to investments in the productive sector, the creation of infrastructures and better use of human resources. Although the Integrated Mediterranean Programmes (IMPs) concerned activities like agriculture, energy, crafts, industry, and services (mainly tourism), employment was promoted indirectly by the job-creating impact and growth consequences of these activities. According to Annex II of Regulation 85/2088/EEC the operations eligible for funding under the IMPs included measures aimed at enhancing the value of human resources (especially for young people and women). Such measures were: strengthening Community assistance for additional vocational training operations capable of promoting and providing vocational support for IMPs activities; promoting local employment initiatives in the fields covered by the IMPs; providing for services integrated with the various stages of vocational training measures (ie. surveys of the local labour markets, encouraging traineeships etc). The Structural Funds (including the ESF) were the major source of financing these programmes, contributing 2.500 million ECU. Another 1,600 million ECU was to provided by an additional budgetary allocation titled "Integrated Mediterranean Programmes".[64] Specific provision was made for IMPs submitted by Greece, according to which such IMPs would qualify for 2,000 million ECU. The rate of

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[63] OJ 1985, L 197/1.

[64] However, the resources for IMPs mainly came from the Structural Funds and rarely through special allocations in the Community Budgets. This was deemed hazardous for the Mediterranean Member States (Greece included) because the northern Member States tried to limit the resources of the Structural Funds (used mostly by the Mediterranean Member States), claiming that these resources were already increased through the IMPs scheme. See P. Roumeliotis, Unification of EEC: Problems and Perspectives, Papazisis Publications, 1987, p. 64-65.

Community participation in these programmes would not exceed 70% of the total cost of the projects but exceptionally, for IMPs submitted by Greece, this limit could be exceeded.

Greece took advantage of these provisions and submitted a series of IMPs proposals. The Commission approved most of them. These programmes contributed over 1.5 billion ECUs to Greece overall, of which the ESF's share was about 89.4 million ECU (see Annex VII).

2.2.4.3. Article 6 Pilot Projects

Another action programme was based on the Regulations of the Structural Funds, in particular Regulation 88/4255/EEC (as amended by Regulation 93/2084/EEC) concerning the ESF. It includes the so called "Article 6 pilot projects", based on Art. 6 of Regulation 88/4255/EEC, as amended. These are innovative projects assisting in the development of future policies by exploring new approaches to the content, methods and organization of employment promotion and vocational training. They are divided into three broad categories:[65]

a) those focusing on new forms of training or training in new skills/professions, on creating jobs in new areas and on organizing work differently.

b) those focusing on (inter-) regional information society initiatives, investigating ways of integrating information society into the development and employment policies of less favoured regions of the European Union.[66]

c) those encouraging the social partners at regional, national and European level to examine issues like new forms of work organization, modernization of production methods etc.

The budget for these projects is 1% of the entire ESF budget. They are not included in the CSFs. In 1994, 32 projects were financed under this scheme at an average funding rate of 56.4%, in 1995, 54 projects were financed at an average rate of 49.6% and in

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[65] See K. Hatzidakis, op. cit., p. 229-232 and Creating innovative solutions - Article 6 pilot projects, available on line at http://europa.eu.int/comm/dg05/esf/en/about/esfaction.htm#3 on 14.02.2000.

[66] More information about these initiatives is available on line at http://www.ispo.cec.be/risi/internal/EC/gen-inf/gen-inf.htm.

1996, 52 projects were financed at an average rate of 61.8%.[67] The overall expenditure for such measures from 1994-1998 was 291.7 million Euros.[68]

In Greece, from 1994-1996, 8 projects were implemented under the first category, as follows:[69]

Year	Number of Projects	Total Cost in ECUs	ESF Contribution in ECUs
1994	4	2,013,668	1,514,000
1995	3	1,145,219	858,914
1996	1	750,800	600,640
Total	8	3,914,687	2,973,554

More details regarding these eight projects are included in Annex VIII.

Under the second category three projects have been implemented in Greece. The first (called ATHINA) focused on the region of Attica, the second on the region of Central Macedonia and the third on the region of Epirus.[70] They aimed to raise awareness about the information society, and to promote the use of Information Technology in education (IT infrastructure in schools), health, and the provision of public administrative services. Support for small and medium-sized enterprises and the development of electronic commerce were also covered. All these would help to promote employment in the information society.

2.2.4.4. Projects on Third System and Employment

In a quest to find new ways of promoting employment, the Budgetary Authority (Commission, Council, Parliament) introduced a new pilot action in 1997, called "Third system and employment".[71] The term "third system" (otherwise known as "social economy") refers to economic and social fields represented by cooperatives, mutual

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[67] Available on line at http://www.europa.eu.int/comm/dg05/esf/en/about/art6/art6tab.htm on 19.11.1999.

[68] European Commission, 10th Annual Report on the Structural Funds, op. cit., p. 48.

[69] Ibid.

[70] Relevant information about these three projects was available online at the following web sites: Athina project at http://www.di.uoa.gr/~athina/ en/index.html on 19.11.1999, Central Macedonia project at http://www.rcm.gr/html/en/ee/iris/summary.html on 19.11.1999, Epirus project at http://medlab.cs.uoi.gr/rise/RISEoffice/projecte.htm on 23.11.1999.

[71] See K. Hatzidakis, op. cit., p. 276-281and Third system and Employment, available on line at http://europa.eu.int/comm/dg05/empl&esf/3syst/index_en.htm.

companies, associations and foundations along with all local job creation initiatives intended to respond to needs that neither the market nor the public sector appear to cover. This action intends to explore the employment potential of the third system, particularly in areas of social services, neighbourhood services, environment and arts and to communicate the results throughout the Union. In the 1997 Community budget an appropriation of 7.5 million ECU was included. So far 67 action research projects and 14 research communication projects have been launched under this scheme.[72]

One action research project, EPIRUS, has been implemented in Greece, by the Greek Economic Chamber.[73] It aimed to use the experience acquired by the implementation of a third system strategy in Metsovo (a town in Epirus) to identify factors that might stimulate local communities to generate third system initiatives aimed at increasing employment and quality of life in the wider area of Epirus (and other mountainous localities in Greece). The target group included third system organizations, local authorities and the population of the wider area. The overall aim was to create new professions and increase employment.

Another action research project, "Environment-Territory Enterprises Network: promoting the implementation of local environment initiative programmes in disadvantaged rural areas", implemented by the Mediterranean Centre of Environment, included the Greek area of Evritania.[74] It aimed to set up a network to implement Programmes of Initiatives for Employment in the Environment Sector. These were based on the idea of a public-private partnership in the employment/environment sector. A genuine programme for job creation in the environment sector was defined, and contractual tools were negotiated and finalized jointly by the public and private partners so as to enable their implementation. Its overall aim was to develop an original job creation process based on natural/environmental wealth.

2.2.5. The Community Initiatives

The Commission, based on Art. 5(5) of Regulation 88/2052/EEC (as amended by Regulation 93/2081/EEC) and on Art. 11 of Regulation 88/4253/EEC (as amended by Regulation 93/2082/EEC), adopted some initiatives aimed at introducing a framework to

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[72] Ibid.

[73] Available on line at http://www.europa.eu.int/comm/dg05/empl&esf/3syst/en/epirus.htm on 19.11.1999.

promote structural changes in the labour markets. These initiatives, whilst adopted within the framework of the Structural Funds, are completely independent from the CSFs submitted by the Member States. They absorb about 10% of ESF resources. The remaining 90% is dedicated to CSFs and other independent projects submitted by the Member States.[75] Two of the most important initiatives, also activated in Greece, were EMPLOYMENT and ADAPT. After the 1999 reform of the Structural Funds, a new Initiative was established, called EQUAL.

2.2.5.1. The EMPLOYMENT Initiative

The EMPLOYMENT Initiative (full title: Initiative on employment and development of human resources) was adopted in 1994.[76] This initially had three strands but an amendment of 1996 added a fourth strand.[77] These four interconnected strands were:

-to promote equal employment opportunities for women (EMPLOYMENT-NOW),

-to improve the employment prospects of the disabled (EMPLOYMENT-HORIZON),

-to promote labour market integration of young people (EMPLOYMENT-YOUTHSTART),

-to promote measures to improve access to the labour market and the employability of vulnerable groups excluded or at risk of being excluded from it (EMPLOYMENT-INTEGRA).

The first strand, EMPLOYMENT-NOW, aimed to reduce unemployment among women and improve the position of those already employed. The EMPLOYMENT-HORIZON strand aimed to tackle the employability problems of the disabled by improving the quality of vocational training given to them and by providing new job-creating actions and new forms of work organization adapted to the needs of disabled people. The third strand, EMPLOYMENT-YOUTHSTART, aimed to guarantee to

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[74] Available on line at http://www.europa.eu.int/comm/dg05/empl&esf/3syst/en/eten.htm on 19.11.1999.
[75] Iro Nicolacopoulou-Stefanou, Employment Policies in the European Union, Papazissis Publishers, 1997, p. 266.
[76] European Commission, Communication to the Member States laying down guidelines for operational programmes or global grants which Member States are invited to propose within the framework of a Community initiative on employment and development of human resources, OJ 1994, C-180/36. See also Commission document COM(94) 3935 final.
[77] European Commission, Communication to the Member States laying down amended guidelines for operational programmes or global grants which Member States are invited to propose within the

young persons aged below 20, access to either full-time employment or to a recognized form of education/training. The latest strand, EMPLOYMENT-INTEGRA, aimed to improve access to the labour market for excluded groups. These target groups included not only disabled people covered by EMPLOYMENT-HORIZON, but also long-term unemployed, jobless single parents, the homeless, gypsies, prisoners and ex prisoners etc. Particular emphasis was given to migrant workers and refugees facing greater discrimination resulting from social tensions, racism, and xenophobia.

The EMPLOYMENT initiative was financed by the Community (Structural Funds), the Member States and other bodies where appropriate. It was in place for five years. The overall budget was estimated at 1,835 million ECU, divided as follows:

-EMPLOYMENT-NOW: 496 million ECU

-EMPLOYMENT-HORIZON: 513 million ECU

-EMPLOYMENT-YOUTHSTART: 441 million ECU

-EMPLOYMENT-INTEGRA: 385 million ECU.

All payments were made according to the provisions of the Structural Funds.

The main document regarding its implementation in Greece is Ministerial Circular 180367/1997[78] (Ministry of Labour and Social Security). The overall amount given to the Greek Operational Programme, which implemented EMPLOYMENT, was 70,175,000 ECU. According to the Circular the bodies that could participate in the Initiative's implementation were national, regional and local authorities, non-governmental organizations, Universities and Research Centres, legal persons established within the framework of relevant Community initiatives, and Centres of Vocational Training which were to be certified through a relevant system. The Circular states that all Integrated Programmes had to include numerous multidimensional and inter-complementary actions, necessary for the realization of the Initiative's main aim, and actions which could be included in at least three strands of the Initiative. A partnership had to be established, via contract, including at least two partners which would implement actions within the framework of the strands NOW, HORIZON, YOUTHSTART, INTEGRA. The partnership contract had to establish the body responsible for the management and control of the actions and the competences of every partner within the various actions. The actions also had to involve at least one body from

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framework of a Community initiative on employment and development of human resources, OJ 1996, C 200/13. See also Commission document SEC(96) 851.

[78] Not published in the Journal of Government of the Hellenic Republic.

another Member State. These transnational partners had to be included in the original proposals, or the proposing bodies had to state their willingness to cooperate with other bodies on a transnational basis. The actions had to be innovatory and provide vocational training so as to create employment prospects. Their method had to include the mobilization of experienced and specialized bodies, capable of understanding local, regional and sectoral problems and employment needs. The financial support for job-creating activities (financing new job placements and new enterprises) was to be carried out by the Greek Manpower Employment Organization. The distribution of funds among the various strands of the EMPLOYMENT initiative was to have been made as follows:

-Actions on vocational training: 20% to NOW, HORIZON and INTEGRA, 30% to YOUTHSTART,

-Actions on establishing vocational training, guidance, and employment systems: 40% to NOW, 35% to HORIZON, INTEGRA and YOUTHSTART,

-Actions on employment: 30% to NOW, 35% to HORIZON and INTEGRA, 25% to YOUTHSTART,

-Actions on information dissemination and awareness: 10% to each strand.

The actions were to be financed at a 75% rate by the Community resources and at a 25% by national resources. From this 25% of the national resources, at least 10% had to be private contributions.

2.2.5.2. The ADAPT Initiative

The other main initiative, ADAPT (full title: Community initiative on adaptation of the workforce to industrial change), was also originally introduced in 1994,[79] and was also amended in 1996.[80] It was regarded as a direct follow-up of the 1993 Commission White Paper[81] and had four main objectives:

-to accelerate the adaptation of the workforce to industrial change,

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[79] European Commission, Communication to the Member States laying down guidelines for operational programmes or global grants which Member States are invited to propose within the framework of a Community initiative on adaptation of the workforce to industrial change, OJ 1994, C 180/30. See also Commission document COM (95) 106, final.

[80] European Commission, Communication to the Member States laying down amended guidelines for operational programmes or global grants which Member States are invited to propose within the framework of a Community initiative on adaptation of the workforce to industrial change, OJ 1996, C 200/7. See also Commission document SEC(96) 851.

[81] European Commission, White Paper on Growth, Competitiveness and Employment - The challenges and ways forward into the 21st century, COM (93) 700 final

-to increase the competitiveness of industry, services and commerce,

-to tackle unemployment by improving the workforce's qualifications and ensuring greater occupational mobility,

-to accelerate the development of new jobs, particularly labour-intensive ones including exploiting the potential of small and medium sized enterprises.

The ADAPT initiative also had a five-year duration. The actions within its framework were financed by the Member States, the Community (Structural Funds) and other bodies where appropriate. The original overall budget was 1,630 million ECU, and there was an additional budget of 162 million ECU after the 1996 amendments. All payments were made according to the Structural Funds' Regulations.

The implementation of ADAPT in Greece was regulated by Ministerial Circular 180368/1997[82] (Ministry of Labour and Social Security). The overall amount provided for this implementation was 33,527,000 ECU. The structure and contents of this Circular are almost the same as those of the Circular regarding the EMPLOYMENT Initiative. The implementing bodies were identical as were the concept of partnership and the relevant contract, and the actions had to have transnational aspects etc. The objectives of the actions were of course different, reflecting the overall aims of ADAPT. Funds were distributed among the various actions as follows:

-Actions on vocational training and guidance: 30%,

-Actions on promoting new employment opportunities: 35%,

-Actions on the adaptation of support systems and structures to industrial change: 25%,

-Actions on providing information and raising awareness: 10%.

Finally, the percentages regarding the sources of funding are also identical (75% Community funding, 25% national funding, including 10% of private contributions).

2.2.5.3. The EQUAL Initiative

Promoting equal opportunities between men and women in the area of employment is a central element of all European employment policies. The relevant legislative instrument is Council Dir. 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational

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[82] Not published in the Journal of Government of the Hellenic Republic.

training and promotion, and working conditions.[83] The legal basis for this instrument is Art. 308 EC Treaty, allowing the Council to adopt measures in order to attain Community objectives. This is significant because it demonstrates that the attainment of equal treatment is a Community objective.[84]

According to the 1999 Regulations regarding the Structural Funds, EQUAL is the only new Initiative financed by the ESF.[85] This initiative focuses on promoting new means to combat all forms of discrimination and inequalities in connection with the labour market, through transnational co-operation. The EQUAL Initiative builds – with regard to both substance and management - on lessons learned from programmes implemented under the EMPLOYMENT and ADAPT Initiatives.

A new form of co-operation is thereby established, called Development Partnership. The partners are public authorities (including local and regional authorities), the public employment service, relevant non-governmental organizations, interested members of the business sector (in particular small and medium-sized enterprises) and the social partners. Development partnerships may be geographically based ("geographical partnerships"), which reflects the attempt to coordinate this Initiative with measures financed under the new Regulations on the Structural Funds through the CSFs, which favour the geographical concentration of structural assistance. Alternative forms of partnership are possible, if these might be more effective, such as those covering specific areas of the economy or industry ("sectoral partnerships"). A new principle of empowerment is also introduced, according to which all those involved in the implementation of activities will also participate in the decision-making process.

The thematic fields of EQUAL include the four pillars of the European Employment Strategy mentioned above: employability, entrepreneurship, adaptability, and equal opportunities. The focus will be on a) facilitating access to the labour market to those facing difficulty in being integrated, b) combating racism and xenophobia in the labour market, c) taking advantage of the employment potential of the social economy, especially the community services, d) opening up the business creation process, e) promoting lifelong learning and inclusive work practices, f) supporting the adaptability of

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[83] OJ 1976, L 39/40.

[84] N. Burrows, J. Mair, European Social Law, John Wiley and Sons Publications, 1996, p. 48.

[85] All necessary information about EQUAL can be found in European Commission, Communication to the Member States establishing the guidelines for the Community Initiative EQUAL concerning transnational co-operation to promote new means of combating all forms of discrimination and inequalities in connection with the labour market, COM (2000) 853 final.

firms and workers to new technologies, g) reconciling family and professional life, h) reducing gender gaps.

The actions funded under EQUAL will be the establishment of the Development Partnerships and transnational cooperation, the implementation of their work programmes, thematic networking, dissemination of good practice and provision of technical assistance for these actions. For these purposes the overall budget of EQUAL for the period 2000-2006 is 2,847 million Euros, of which Greece will receive 98 million Euros.[86] Given that Greece is still implementing the programmes financed under EMPLOYMENT and ADAPT Initiatives, there are not yet any official documents relating to the implementation and management of EQUAL in Greece.

[86] See European Commisiom Doc IP/00/380 of 14 April 2000.

Chapter Three: The Community Legal Framework on controlling the financial management of ESF resources in Greece - Dispositions of the Treaties

Like every organization, the Community has a system to control the financial management of its resources. It is vital to distinguish between the concepts involved: monitoring, financial control, audit and evaluation.[1] Monitoring entails a methodical observation of data in order to determine whether the material and financial means are sufficient, whether the persons responsible have the necessary technical and personal capacities, whether the activities conform to the working plans, whether these plans have been followed and whether the initial objectives have been attained. Financial control aims to verify that the financial and accounting documents are exact, that the expenses have been authorized and that they conform to the rules and commitments. Audit is a similar concept. This serves to assess the conformity of the measures, procedures, guidelines and organizational procedures of the providing party (in this case the Commission) and those of its missions in the beneficiary parties (in this case States, legal persons, etc) to established rules and criteria. In simpler terms, financial control involves an assessment of transactions, whereas an audit also involves the assessment of the financial control itself. Finally, evaluation describes an examination, as systematic and objective as possible, of a project or programme which is being or has been implemented, of its elaboration, its implementation and its results, in order to determine its effectiveness, efficiency, impact, viability and the relevance of its objectives. This thesis focuses mainly on financial control and audit.

The finances of the Communities have developed dramatically during the last fifteen years. As demonstrated in the previous chapters, the employment policies alone absorb large amounts, mostly paid by the ESF, through complicated programmes and projects, the financial control of which presents an interesting challenge.

Currently, there are four levels of financial control in the European Union.

First, there is the internal control of the institutions actually performing the financial activities, namely the Commission (more specifically the Directorate General of Financial Control). The Commission is also responsible for the *ex ante* examination of

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[1] All definitions mentioned here can be found in European Institute of Public Administration, Glossaire-Terminologie de gestion et contrôle financiers, Maastricht , 1990, p. 1-3.

actions in order to examine that their funding has been secured, within the framework of the Union's budgetary discipline.

Secondly, there is the external audit performed by the European Court of Auditors (ECA).

Thirdly, the parliamentary audit is performed by the European Parliament. A parliamentary committee is charged with the control of the implementation of the Union's budget. The Parliament also discharges the Commission in respect of the budget's implementation.

The fourth level of audit includes the controls and audits performed by the audit institutions of the Member States with regard to the revenue and expenditure of the Union. This audit, although performed at national level, is interesting for the Union because national audit institutions are familiar with the European resources' management in their respective countries. It could, therefore, be characterized as "decentralized audit" of the European Union's financial management. After all, the Member States's audit institutions have developed a good working relationship with their European counterparts.

The audit procedure usually starts with the decentralized audit in the Member States, followed by the internal financial control and external audit. The parliamentary control (discharge procedure) constitutes the final stage. Financial control is therefore performed at an *ex ante*, an ongoing (intermediate) and an *ex post* level.

3.1. Internal Financial Control

The Commission is responsible for implementing the general budget of the Community according to Art. 274 EC Treaty. Also, according to Art. 275 EC Treaty, it submits the annual accounts relating to the budget's implementation to the Council and Parliament, and a financial statement of the Communities' assets and liabilities.

These provisions must be read alongside Art. 147 under which the Commission administers the ESF. The net effect of these three Articles is that the Commission is competent to perform internal financial control on the budget's implementation with regard to the ESF. There are no detailed provisions regarding internal financial control in the EC Treaty. The Treaty simply provides for the adoption by the Council of legislative instruments, namely financial regulations (Art. 279) or decisions (Art. 148). It is suggested that the term "decisions" used in Art. 148 EC Treaty should be interpreted

broadly to cover all legislative measures (regulations, directives, decisions *stricto sensu*). Such an interpretation would provide an additional legislative basis to the Structural Funds Regulations adopted by the Council according to Art. 161 EC Treaty.

The only indirect guideline about internal financial control provided by the Treaty is that the Commission must implement the budget having regard to the principle of sound financial management (Art. 275). This principle is regarded as an additional basic budgetary rule of the Community.[2] Its context will be presented in detail further below. Obviously, according to this principle, the Commission must determine, during the internal financial control, whether the financial management of the budget, and consequently of the ESF resources, is sound or not.

Also, originally, in Art. 279(c) EC Treaty, only the Authorizing Officers and the Accounting Officers[3] were considered responsible, within the Commission, for the implementation of the budget, including the management of ESF resources. After the Maastricht amendments, the disposition also included the Financial Controllers. However, there is nothing in the Treaties about the content of the duties of these officials.

3.2. External Audit

It is commonly accepted that external audit is essential in a public organization because it ensures the effective management of public money and the accountability of those who make decisions about it.[4] The external audit of the Union is performed by the ECA, established by the Second Budget Treaty in 1975. Before that, the external audit of accounts was carried out within each Community.[5]

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[2] D. Strasser, The Finances of Europe, Office for Official Publications of the European Communities, 1991, p. 69-70.

[3] According to Art. 21 of the Financial Regulation the Authorizing Officer and the Accounting Officer are different individuals. The Authorizing Officer administers the budget's appropriations and he is empowered to enter into commitments regarding expenditure, establish entitlements to be collected and issue recovery orders and payment orders. The Accounting Officer carries out the operations of collecting revenue or paying expenditure.

[4] I. Harden, F. White, K. Donnelly, The Court of Auditors and Financial Control and Accountability in the European Community, EurPL, Vol. 1, pp. 599-632 at 626.

[5] D. O' Keeffe, The Court of Auditors, in D. Curtin, T. Heukels, (ed.), Institutional Dynamics of European Integration-Essays in Honour of H. G. Schermers, Vol. II, Martinus Nijhoff, 1994, p. 177-194, (177). For a detailed analysis of the situation before the establishment of the ECA see G. Isaac, La renovation des institutions financieres des Communautes Europeenes depuis 1970, Vol. 13, Rev. Trim. Dr. Europ., (1977), p. 736-810, F. Wooldridge, M. Sassela, Some recent legal provisions increasing the budgetary powers of the European Parliament, and establishing a European Court of Auditors, LIEI (1976/2), p. 13-52, Sir N. Price, The Court of Auditors of the European Communities, YBEL, Vol. 2,

According to Art 247(1) the ECA has fifteen members. There is no Treaty provision concerning the nationality of these members but in practice each Member State is "represented" in the ECA.[6] Art. 247 contains detailed provisions concerning the ECA members: their qualifications, appointment, independence, and the termination of their duties. The detailed analysis of these dispositions, and of those concerning the ECA's organization, is beyond the scope of this thesis.[7]

After a long debate concerning the ECA's status as a Community institution,[8] the Maastricht Treaty resolved the problem irrevocably by amending Art. 7(1) EC Treaty, acknowledging the ECA as an institution. The dispositions concerning the ECA also were moved from the Chapter concerning the Financial Provisions to that concerning the Institutions.[9] With regard to the European Union, the Amsterdam Treaty amended Art. 5 EU Treaty adding the ECA to the institutions of the Union.

Issues to be examined are: the extent of the ECA's audit over the ESF resources, the auditing methods, and the types of audit.

1982, p. 239-248, H. Aigner, The Case for a European Audit Office, European Parliament-Selected Documents, Office for Official Publications of the European Communities, 1973.

[6] G. Th. Tenekidis, Members of the Court of Auditors of the European Communities, HelRevEL, 2/1981, p. 623-624, P. D. Dagtoglou, European Community Law, A. N. Sakkoulas Publications, 1985, p. 292-293, K. Stefanou, European Integration, A. N. Sakkoulas Publications, 1991, p.71, I. Harden, F. White, K. Donnelly, op. cit., p.609, note 47, & D. O' Keeffe, op. cit., p. 179.

[7] For more details about the structure of the ECA see D. O' Keeffe, op. cit., p. 179-181, G. Isaac, Renovation des institutions...., op. cit., p. 794-796, National Audit Office, State Audit in the European Union, London 1996, p. 220, P. Graig, Gr. De Burca, EC LAW, Text, Cases and Materials, Clarendon Press, 1995, p. 88, P. D. Dagtoglou, European Community Law...., op. cit., p. 293, F. Wooldringe/M. Sassela, op. cit., p.45 & T. M. James, The Court of Auditors of the European Communities and the external audit bodies of the Member States in Honorary Volume for the 150 years of the Greek Court of Audit, Athens 1984, p. 469-486 at 471, G. D. Drisis, From the European Idea to the New Europe of Maastricht, Athens 1995, p. 95, P. Lelong, La Cour des Comptes des Communautés et le contrôle externe des finances publiques européenes, RFFP, No 4, 1983, p. 99-118 at 102, G. Isaac, Les Finances Communautaires, Rev. Trim. Dr. Europ., Vol. 16, 1980, p. 302-353.

[8] For opinions denying the ECA the status of a Community's institution see F. Wooldridge, M. Sassella, op. cit., p. 49, G. Isaac, Renovation des institutions...., op. cit., p. 792, D. Strasser, The Finances...., op. cit., p. 270, C-828/79, *Adam v Commission of the European Communities*, [1982] ECR, 269 at 290. For opinions accepting the ECA as a Community institution see H. Aigner, op. cit., p. 25, P. Lelong, op. cit., p. 100-101, T. M. James, op. cit., p. 471, D. Strasser, The Finances.....,op. cit., p. 270, G. Orsoni, La Cour des Comptes des Communautés Européenes, RFFP, No 36, 1991, p. 77-90 (78), Ch. Kok, The Court of Auditors of the European Communities: "The other European Court in Luxembourg", CMLRev, Vol. 26, 1989, p. 345-367 (347).

[9] This amendment demonstrates the importance of the ECA's role in the Communities' operational system. See I. Anastopoulos, New institutional balances of the Communities' institutions after Maastricht in Th. Christodoulidis, K. Stefanou, The Treaty of Maastricht-A Comprehensive View, Sideris Publications, 1993, p. 127-139 (134). For more details about the negotiations leading to this amendment see D. Strasser, Les dispositions financieres du Traite de Maastricht, RFFP, No 45, 1994, p. 195-205.

3.2.1. Extent of Audit

Art. 246 EC Treaty states that the ECA shall carry out the audit. This is a general provision, setting the limits of the Court's jurisdiction. It was introduced in 1993 by the EU Treaty. It adds nothing legally substantial but provides a broad specification of the ECA's competences and gives the impression of enlarging them.[10] In any case, this disposition should be regarded as introductory to the Treaties' provisions about the ECA's tasks.

According to the first sub-paragraph of Art. 248(1), the ECA's primary task is to examine the accounts of all revenue and expenditure of the Communities even those not included in the general budget. This is the core of the ECA's competence to audit the management of ESF resources. Since the Commission manages those resources, this disposition must be read alongside Art. 248(3) EC Treaty. The latter provision has been amended by the Amsterdam Treaty in order to allow the audit not only of the Community institutions but also of agencies which manage resources on behalf of the Community, and of the final beneficiaries. According to its new wording

> *"The audit shall be based on records and, if necessary, performed on the spot in the other institutions of the Community, on the premises of any body which manages revenue or expenditure on behalf of the Community and in the Member States, including on the premises of any natural or legal person in receipt of payments from the budget."*

It is common, especially in Greece, for various bodies, outside the framework of the Community institutions, to manage resources given by the Structural Funds. With regard to resources given to Greece by the ESF, the bodies usually managing these funds are the Ministry of Labour and Social Security, the Greek Manpower Employment Organization, the Ministry of Education, the Ministry of National Economy, the Ministry of Heath and Welfare, the Ministry of Development, the General Secretariat for Equality etc. The recipients of these funds vary according to the programme or project financed. As it is evident from the Greek employment policies financed by the ESF (see Chapter 2), the majority of the resources are used to finance vocational training measures. The Greek Manpower Employment Organization has its own structure of vocational training so it is one of the most important recipients. Other recipients might be local authorities, Public

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[10] D. Strasser, Les dispositions..., op. cit., p. 196-197.

and Private Institutes of Vocational Training, universities, public and private undertakings participating in programmes for the promotion of employment etc. These can all be audited by the ECA.

Art. 248(3) obliges all Community institutions (mainly the Commission) and all agents and recipients of assistance from the ESF in Greece to forward to the ECA any information and documents necessary for the audit. The ECA should therefore have a complete idea of the management of the ESF resources in Greece. In practice this is not always possible because the ECA has limited personnel and a vast number of transactions to audit. Therefore it relies on the cooperation of national audit institutions. This issue will be analyzed further below.

3.2.2. Method and types of audit

The EC Treaty also prescribes the form of audit, of the management of the resources in question, by the ECA. According to Art. 248(2), first sub-paragraph

> *"The Court of Auditors shall examine whether... all expenditure incurred in a lawful and regular manner and whether the financial management has been sound."*

So one objective is to confirm that the amounts owed by the Union have been paid. Another is to verify that the operations carried out have supporting documentation and that the available information is sufficient to enable the management and control authorities to fully perform their respective tasks.[11]

Key words in this disposition are: "legality", "regularity", and "sound financial management". The ECA's examination as to legality and regularity involves checking whether individual commitments and payment operations have been carried out in compliance with the relevant legal provisions (sectoral regulations, conventions, mandates, agreements and contracts).[12] The legality audit goes a little further by including a review of the overall management, focusing on its compatibility with the Treaties and secondary legislation (budget, Financial Regulation, internal management

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[11] European Court of Auditors, Auditing the Finances of the European Union, Office for Official Publications of the European Communities, 1996, p. 18, National Audit Office, op. cit., p. 224, N. Themelis, The European Economic Community and its Court of Auditors, in Honorary Volume for the 150 years of the Greek Court of Audit, Athens 1984, p 113-124, (122) & D. Strasser, The Finances...., op. cit., p. 279.

rules).[13] The ECA's audit also examines the adequacy of the Communities' accounting systems and their capacity to record all transactions correctly.[14] The ECA must, while performing its audit a) respect the budgetary rules, b) report any cases of fraud detected and c) respect and follow the observations concerning the auditing standards and practices.[15]

As for determining whether the financial management has been sound ("value for money" audit), it has been observed that both the internal financial control and the external audit must take this into consideration. Three inter-related aspects of management are practically examined: Economy, Efficiency and Effectiveness (the three "Es").[16] The "Economy" aspect relates planned input of resources to the actual input, determininig whether the least expensive means of achieving a given target have been used or not (examination of alternatives). The "Efficiency" aspect concerns the relationship between actual input (resources) and actual output (results achieved), determining whether the means adopted were employed in the most appropriate manner (examination of performance). "Effectiveness" is measured by comparing actual output with planned output, determining whether the purpose has been achieved or not (success rate).

It must be observed that the audit should not include the evaluation of the purpose selected, which is a question of political choice.[17] Audit institutions (internal and external) must not question policy decisions, such as the measures to be financed by the ESF in order to promote employment in Greece. They are only empowered to determine decide whether a chosen line of policy is being conducted in a cost effective way.[18] They should also distinguish between goal achievement and effectiveness, as not every goal achievement can be the result of the implemented policy.[19] Clearly, in order for the audit to be carried out, it is necessary for political authorities to set clear objectives for their selected policy.[20] All appropriations in the budget are accompanied by a commentary containing an analysis of the legal basis of the respective expenditure. This often simply

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[12] European Court of Auditors, op. cit., p. 18-19.
[13] Ibid, p. 19.
[14] National Audit Office, op. cit., p. 224.
[15] G. Orsoni, op. cit., p. 81-83.
[16] T. M. James, op. cit., p. 475 & D. Strasser, The Finances...., op. cit., p. 279.
[17] G. Orsoni, op. cit., p. 83.
[18] D. Swann, The Economics of the Common Market, Penguin Books Publications, 1995, p. 65.
[19] F. L. Leeuw, Effectiveness auditing in the Netherlands: History, Charter and case studies, EUROSAI, No 1, 1993-1994, pp. 16-20 at 17.
[20] P. Lelong, op. cit., p. 105.

consists of a statement of political aims, or reference to a political act e.g. a resolution.[21] In the case of ESF resources in Greece, usually reference is made to the Community Support Frameworks, the National Action Plans for Employment and the Convergence Programme submitted by the Greek government. The goals set in these documents will be used as criteria to determine whether the financial management has been economic, efficient and effective.

A "value for money" audit by an external audit institution is based on an assessment of the adequacy of internal systems, and takes into consideration a wide range of internal and external data to inform its views on the organisation's administration.[22] This method is called "systems-based approach of audit".[23] It was described in detail in the ECA's Annual Report for 1980:[24]

> "It is based on the idea that the internal administration, by its organisation and mode of operation, should be self controlling; this constitutes the concept of internal control. In applying this approach the Court examines all the elements of the institution's internal management which makes up the processes of authorising, recording and verifying financial transactions e.g. the organisation plan and the allocation of responsibilities for actions and decisions having financial and accounting implications. If the systems and procedures appear to be sound, the Court carries out tests of cases and transactions and such analytical checks as it deems necessary to confirm that the systems are operating as described and producing satisfactory results. If systems' weaknesses are identified, cases and transactions are examined to establish the practical consequences of weaknesses.... It is in the interests of the Communities in general that any deficiencies in management procedures should be identified and remedied."

Using this method, the ECA first examines, analyses and documents the organisation's system of internal control under audit. It then tests the compliance of the system's actual function in practice with its theoretical model made after the first examination.[25] If this test shows that the system is valid, the ECA's auditor proceeds to examine essential financial transactions, but using a limited number of samples, and concludes substantive and comparative tests. After examining a significant number of operations, the auditor gradually arrives at a judgement, as objective as possible, that enables him to form and

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[21] A. Dashwood, The limits of European Community powers, ELRev,Vol. 21, 1996, p.113-128 at 126.
[22] National Audit Office, op. cit., p. 226.
[23] N. Themelis, op. cit., p. 122.
[24] OJ 1981, C 344/8-9.
[25] Ch. Kok, op. cit. p. 354.

express an opinion as to whether the system implemented is likely to achieve the intended results.[26]

According to the remainder of Art. 248(2)

> *"....The audit of expenditure shall be carried out on the basis both of commitments undertaken and payments made.*
> *These audits may be carried out before the closure of accounts for the financial year in question."*

The ECA can perform both *ex ante* and *ex post* audits. Therefore, it may not only locate where the Communities have paid money in error, but also prevent erroneous payments. Its competence to perform *ex ante* audits is very important since this kind of audit precludes any misuse of Community funds and, consequently, damage to the Communities.[27] The provision enabling the audit to be performed before the closure of the financial year is based on the previous experience of the Audit Board (the ECA's predecessor). The Commission (in particular) had concluded that audits were only to be conducted after the closure of the financial year.[28] This created a *lacuna* undermining the Communities' entire audit system. However, under the current provisions, audits take place during the financial year and may begin as soon as the event causing the expenditure has occurred.

Practically all these provisions (about the extent and the method of audit) allow the ECA to control the resources given to Greece by the ESF before or after the actual payment to the beneficiary is made, regardless of whether the Authorising Officer and the Accounting Officer are within the Community institutional framework (Commission) or the national institutional framework.

3.3. Parliamentary Control

The European Parliament, chiefly since the early 1970s, had campaigned to be granted a greater role in the Communities' financial affairs.[29] It obtained more budgetary

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[26] European Court of Auditors, op. cit., p. 19-21.
[27] K. X. Sarantopoulos, General Principles of Public Audit, in The Audit of Public Finance in Greece and Abroad (Studies), Athens 1975, p. 11-34 (17).
[28] G. Isaac, La renovation....., op. cit., p. 797.
[29] Sir N. Price, op. cit., p. 239 & A.G. Toth, The Oxford Encyclopaedia of European Community Law, Vol I: Institutional Law, Clarendon Press, 1990, p. 144. For a detailed analysis of the Parliament's positions concerning its involvement in the budgetary proceedings and the other institutions' views see F. Wooldridge, M. Sassela, op. cit., p. 13-43, G. Isaac, op. cit., p. 737-775, M. R. Emerson/T. W. K. Scoot, The financial Mechanism in the Budget of the European Community: The hard core of the British

competences in 1975 through the Second Budget Treaty. The Parliament's advisory role with regard to the Community budget became a co-decision role.[30] Under the system established by the Second Budget Treaty (now incorporated into Art. 272 EC Treaty) the Council has decisive authority on compulsory expenditure (expenditure necessarily deriving from the Treaties or from acts adopted in accordance with them) while the Parliament has the final say on all other (non-compulsory) expenditure. The definitions of compulsory and non compulsory expenditure provided by Art. 272(4) EC Treaty are not satisfactory. According to the Parliament, only expenditure to which a third party has a legal claim may be regarded as compulsory.[31] The Council did not present a counter argument, but neither did it accept this definition. However, in their Joint Declaration of 1982 on the Community Budgetary procedure[32] the Council and Parliament defined as compulsory expenditure the Community's legal obligations towards third parties, who may be either third countries or Member States, individuals or corporations. This definition included expenditure about the Common Agricultural Policy and the institutions administrative expenditure. In the Interinstitutional Agreement of 1988 on Budgetary Discipline and Improvement of the Budgetary procedure,[33] the two institutions agreed to treat expenditure incurred for the Structural Operations (including the ESF resources given to Greece) and policies with multiannual allocations (such as the Integrated Mediterranean Programmes and the research policies) as non-compulsory expenditure (Art. 16 of the Agreement).

The other important competence of the Parliament concerns the budget's implementation. According to Art. 276(1) EC Treaty

> *"The European Parliament, acting on a recommendation from the Council which shall act by a qualified majority, shall give a discharge to the*

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re-negotiations of 1974-1975, CMLRev, Vol. 14, 1977, p. 209-225, Sir. Ch. Sopwith, Legal Aspects of the Community Budget, CMLRev, Vol. 17, 1980, p. 315-347, H. Wallace, A budget made in Strasbourg and unmade in Luxembourg, YBEL, Vol. 6, 1986, p. 263-282, P. Zangl, The interinstitutional agreement on Budgetary Discipline and improvement of the budgetary procedure, CMLRev, Vol. 26, 1989, p. 675-685, G. Isaac, L' encadrement a moyen terme des finances publiques communautaires. L' Accord interinstitutionnel sur la discipline budgetaire et l' amelioration de la procedure budgetaire. Bilan et avenir, RFFP, No 45, 1994, p. 9-49.

[30] Office of the European Parliament in Greece, European Parliament-The parliamentary institution of the European Union, Athens, 1999, p. 48.

[31] P. Dankert, The Joint Declaration by the Community institutions of 30 June 1982 on the Community Budgetary Procedure, CMLRev, Vol. 20, 1983, p. 701-712 at 705.

[32] Joint Declaration by the Community Institutions of 30 June 1982 on the Community Budgetary Procedure, OJ 1982, C 194/1.

[33] Interinstitutional Agreement on Budgetary Discipline and Improvement of the Budgetary Procedure of 29 June 1988, OJ 1988, L 185/33.

Commission in respect of the implementation of the budget. To this end, the Council and the European Parliament in turn shall examine the accounts and the financial statement referred to in Article 275, the annual report by the Court of Auditors together with the replies of the institutions under audit to the observations of the Court of Auditors, the statement of assurance referred to in Article 248(1), second subparagraph and any relevant special reports by the Court of Auditors."

3.3.1. The European Court of Auditors in the discharge procedure

The discharge procedure begins when the ECA submits its Annual Report and its Statement of Assurance to the Parliament and the Council.

According to Art. 248(4) EC Treaty the ECA draws up its Annual Report after the close of each financial year. This is published and submitted to the other institutions along with the replies of the audited institutions. The Report contains the ECA's findings and remarks concerning the implementation of the budget. The ECA has always sought to establish a fruitful cooperation between itself and the other institutions, especially the Commission.[34] It tried to achieve this by introducing innovations in its reports. The first innovation was to add, after its Annual Report, an important analysis with statistical information concerning the Communities finances. This pleased the European Parliament.[35] Secondly, in order to facilitate the authority for the budget discharge, the ECA included some comments on the institutions' responses as a rejoinder.[36] The Commission contested this intensively, claiming that the ECA lacked authority and (alternatively) that it should allow the institutions to respond again to its comments.[37] Following this inclusion of comments on the institutions' replies (mainly those of the Commission), the Commission sent a document to the Parliament expressing its opinion on the ECA's comments. The ECA has since refrained from making additional comments, but has never officially renounced this prerogative.[38] The European Parliament, in its resolution giving a discharge to the Commission for the implementation

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[34] G. Isaac, Les Finances...., op. cit., p. 351.
[35] Ibid, p. 351.
[36] See the Annual Report of the Court of Auditors for the Financial Year 1979, OJ 1980, C 342/10, 16, 25, 53, 59, 128, 132 etc.
[37] G. Isaac, Les Finances...., op. cit., p. 351, note 164, & D. Strasser, The Finances...., op. cit., p. 280
[38] G. Isaac, Les Finances...., op. cit., p. 351, note 164.

of the 1979 budget, had accepted that the ECA was entitled to add comments to the institutions' replies to its observations.[39]

The ECA's obligation to produce a Statement of Assurance was established in 1993 by the EU Treaty. According to Art. 248(1) the ECA must provide the Parliament and the Council with a Statement of Assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions. It is evident from this that the ECA has been obliged to extend its audit coverage across the whole range of Communities' expenditure.[40] With that Statement the Court must declare that, after having conducted all the necessary audits, it has reached a point of assurance that all the accounts presented reflect reality and that all underlying transactions are legal and regular.[41]

The amount of work required by the ECA to produce such a Statement is enormous (especially after the Court's decision that it needs to audit expenditure down to the level of the final recipient of the Community spending[42]). Its completion has become a major focus for the Court's financial audit. If the ECA cannot conduct all the audits that it thinks necessary in order to assure the legality and regularity of the accounts, or if during its audits it locates important anomalies affecting a substantive part of the accounts, has the right to refuse to produce the Statement of Assurance.[43] This has happened since the financial year 1994. The ECA, because of the high rates of substantial and formal errors concerning transactions and payments, and having obtained insufficient evidence to reach an opinion as to the correct use of Community funds, declined to provide a positive global assurance as to the legality and regularity of the transactions underlying the payments for the financial years 1994 to 1998.[44] The ECA therefore has a

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[39] Resolution of 18 June 1981 containing the comments accompanying the decisions granting a discharge on the implementation of the budget of the European Community for 1979, OJ 1981, C 172/80. Since 1997, Annual Reports only include summaries of the ECA's detailed audit findings on the efficiency and effectiveness of the revenue and spending programmes. The details of these findings are presented in Special Reports on individual topics, published on the same day as the Annual Report or shortly afterwards. See House of Commons, Select Committee on Public Accounts, Financial Management and Control in the European Union, 29th Report, Session 1998-1999, HC paper 690, para. 74.

[40] National Audit Office, op. cit., p. 225.

[41] D. Strasser, Les dispositions....., op. cit., p. 200.

[42] European Court of Auditors, Statement of Assurance for the Financial Year 1995, OJ 1996, C 395/19.

[43] D. Strasser, Les dispositions...., op. cit., p. 200.

[44] European Court of Auditors, Statement of Assurance for the Financial Year 1994, OJ 1995, C 303, European Court of Auditors, Statement of Assurance for the Financial Year 1995, OJ 1996, C 395, European Court of Auditors, Statement of Assurance for the Financial Year 1996, OJ 1997, C 348, European Court of Auditors, Statement of Assurance for the Financial Year 1997, OJ 1998, C 349, European Court of Auditors Statement of Assurance for the Financial Year 1998, OJ 1999, C 349.

formidable power of sanction:[45] the institution concerned would be required to make the necessary rectifications in order to avoid any qualifications in the Court's Annual Report, or its complete refusal to produce the Statement of Assurance.

The Statement of Assurance has several objectives. These include a) providing a basis for the Parliament to make a global judgment about the work of the Commission during the discharge process, b) providing an instrument for the ECA to use in getting better access to information and c) putting pressure on the ECA to adopt a more coherent approach to its work.[46] Such a statement was not required before 1993 because as European institutions were presumed to keep accurate accounts, therefore the certification of these accounts was not regarded as essential.[47] The ECA's own interpretation of the Treaties was that it was not obliged to examine the accuracy of the EC accounts as a whole.[48] This led it to be criticized for looking only in areas where it expected to find mistakes, and, for not giving praise where matters were satisfactory.[49] The Statement of Assurance, providing a global view of the Communities' financial management, has eliminated this criticism.[50]

An example of the ECA's use of the Statement of Assurance to control the management of ESF resources in Greece is the on the spot control performed in October 1998, within the framework of the preparation of the Statement of Assurance for the Financial Year 1997. This control focused on the management of some the ESF resources given to Greece. Two cases were examined in detail.[51]

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[45] D. O' Keeffe, op. cit., p. 187.
[46] I. Harden, F. White, K. Donnelly, op. cit., p. 614.
[47] D. Strasser, The Finances...., op. cit., p. 278.
[48] I. Harden, F. White, K. Donnelly, op. cit., p. 612.
[49] House of Lords, Select Committee on the European Communities, Financial Control and Fraud in the Community, Session 1993-1994, 12th Report, HL paper 75, para. 30.
[50] The method of audit used in the case of the Statement of Assurance - an exception to the usual method used by the ECA - is known as "monetary unit sampling" and involves taking individual units of account as the population and then taking a sample of 600 so-called "hits", ensuring at the same time that the samples selected are broadly representative of the total population. The transactions of which the "hit" units form part are audited down to the level of the final beneficiary. A judgement is made about the significance of any errors detected and the result from the sample is then extrapolated to the whole budget. The ECA's aim is to be able to say with 95% certainty that error in the execution of the total budget is no more than 1%. This methodology, as the ECA has admitted, is largely experimental. Ways of developing it have been examined by specialists which suggested that the ECA must increase the amount of audit work undertaken in areas considered to be of greater risk, which means an increase of sampling and a closer monitoring of transactions in these areas. This diversification of the audit procedure is a result of the aforementioned Court's position that it cannot comment on materials it has not examined. See I. Harden, F. White, K. Donnelly, op. cit., p. 612-613, National Audit Office, Report on the Annual Report of the European Court of Auditors & the Statement of Assurance for 1995, London 1997, p. 36-37.
[51] See Doc 1634/LS 264/98 (10.07.98) of the European Court of Auditors to the Greek Court of Audit.

The first concerned the Information Technology system used by the Greek Ministry of Education in order to manage ESF resources. The Court noted that the Ministry had used some erroneous economic parameters in its IT system, causing that system to state that certain expenditure was higher than it really was. The Ministry of Education consequently asked for more money in its application for final payment from the ESF. This error, according to the ECA, affected not the accuracy of the accounts (since the error was located) but the legality and regularity of the actions concerned. The ECA suggested that the additional amounts paid must be returned and that the Greek Ministry of Labour and Social Security, being the overall managing authority of ESF resources in Greece, must always verify the reliability of the IT systems used for managing ESF resources. The Ministry, in its reply to the ECA, noted that[52] it had already located the error in the IT system, that the necessary corrections had been made, and that it performs regular controls in order to verify the correctness of the financial management of ESF resources in Greece.

The second case concerned the initial vocational training and education leading to the degree of Engineering in Merchant Navy. This scheme operates in specific schools and is monitored by the Greek Ministry of Mercantile Marine. The ECA noted that the total expenditure of the central administrative service for education in one school had been regarded as eligible expenditure and claimed from the ESF. However it found that not all the operations of this service were relevant to ESF operations. The expenditure incurred for irrelevant operations were ineligible (this conclusion was based on Regulation 93/2084/EEC). The Court considered that this error did not affect the accuracy of accounts (since it was located), but the legality and regularity of the relevant actions. This error was considered to result from ignorance of the relevant Regulations. The Court suggested that the Ministry of Labour and Social Security should prepare guidelines, which would clarify, for other Greek authorities, the eligibility criteria for expenditure under the ESF Regulations, enabling them to distinguish eligible and ineligible expenditure.

The ECA, by submitting its Annual Report and Statement of Assurance to the Council and Parliament, fulfils its obligation to help these two institutions control the implementation of the budget. This form of assistance is supplemented by the special reports adopted and submitted by the ECA according to Art. 248(4) EC Treaty.

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[52] See Doc OIK.170445 (08.09.98) of the Greek Ministry of Labour and Social Security to the Greek

3.3.2. The Council in the discharge procedure

All these documents are forwarded first to the Council, which must study them before issuing its recommendation to grant or refuse to grant a discharge to the Commission. This recommendation is prepared by a subordinate committee of budgetary experts, within the framework of the Committee of Permanent Representatives (COREPER).[53] It constitutes an attempt (not always successful) to compromise between the Member States' political points of view on the issues raised in the discharge procedure by the ECA's reports,[54] which so far have not been carefully examined by the committees preparing the Council's recommendation.[55] This has been because the committees' members have been very busy and did not welcome the additional task of examining such a large, complex document as the ECA's Annual Report.[56] The ECA has advised the Council of its disappointment with this situation, and the Council has promised to improve it.[57] So, it has recently been decided that any future report from the ECA will be carefully studied by a relevant committee of the Council or a working party from COREPER.[58] Nevertheless, the Council is not obliged to take action according to the ECA's reports, and does not have to justify its choices.[59]

3.3.3. The European Parliament in the discharge procedure

Following the Council's recommendation, the Parliament must decide whether to discharge the Commission regarding the implementation of the budget. This competence is important: the European Parliament alone is competent to decide whether the Commission can be discharged with regard to the budget. Granting such competence to a parliamentary institution is traditional: in the Member States, the executive must account

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Court of Audit.

[53] I. Harden, F. White, K. Donnelly, op. cit., p. 625, Ch. Kok, op. cit., p. 352, D. O' Keeffe, op. cit., p. 183.

[54] Ch. Kok, op. cit., p. 352.

[55] I. Harden, F. White, K. Donnelly, op. cit., p. 625.

[56] Sir N. Price, op. cit., p. 242.

[57] Ibid, p. 242.

[58] I. Harden, F. White, K. Donnelly, op. cit., p. 625.

[59] D. O' Keeffe, op. cit. p. 183.

for its budgetary management to the national parliament. This tradition was first established in England, especially with regard to imposing new taxes.[60]

The European Parliament's competence to discharge the Commission is either an aspect of the Parliament's political control over the Commission, or a separate controlling function within the Parliament's budgetary powers. This second perspective seems more convincing. This is supported by the fact all means of political control over the Commission are presented in the dispositions of the Treaties regarding the institutions i.e. Art. 214 (approval of the President and other Commissioners), Art. 201 (motion of censure), Articles 200 and 212 (discussion and approval of the Commission's annual general report), Art. 197 (parliamentary written and oral questions to the Commission) etc. The discharge procedure, however, is found in the Treaties' financial provisions, along with the drawing up of the budget. A completely separate framework is thereby created, in which the Parliament plays an important role. The nature of work required in order to give a discharge to the Commission also differs substantively from the political control exercised through the parliamentary questions procedure. This is evident from the following analysis.

Before giving a discharge to the Commission, the Parliament must consider the ECA's reports and Statement of Assurance as well as the Council's recommendation. None of these documents binds the Parliament. However, in practice, the Parliament uses them all (especially the ECA's reports) in order to produce its decision (more details will be presented during the discussion of the Financial Regulation).

The Maastricht Treaty reinforced the Parliament's competence by adding the following dispositions to Art. 276:

> "2. *Before giving a discharge to the Commission, or for any other purpose in connection with the exercise of its powers over the implementation of the budget, the European Parliament may ask to hear the Commission give evidence with regard to the execution of expenditure or the operation of financial control systems. The Commission shall submit any necessary information to the European Parliament at the latter's request.*
>
> *3. The Commission shall take all appropriate steps to act on the observations in the decisions giving discharge and on other observations by the European Parliament relating to the execution of expenditure, as well as on comments accompanying the recommendations on discharge adopted by the Council.*

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[60] L. Trotabas, J.-M. Cotteret, Droit Budgétaire et Comptabilité Publique, Dalloz Publications, 1995, p. 16-19.

At the request of the European Parliament or the Council, the Commission shall report on the measures taken in the light of these observations and comments and in particular on the instructions given to the departments which are responsible for the implementation of the budget. These reports shall also be forwarded to the Court of Auditors."

These provisions improve the Parliament's effectiveness in exercising its budgetary control. The information requested by the Parliament is additional to all information provided by the Commission until that time, meaning the accounts submitted according to Art. 275. Having read the ECA's reports, the Parliament is in a position to evaluate the additional information and determine whether it is satisfactory or not. An example could be a request from the Parliament for all information concerning ESF resources given to Greece with regard to employment. The Commission would be obliged to provide all relevant information. The Parliament's decision about the discharge may very well depend on such information.

The consequences of the discharge decision are very serious. If the Parliament declines to discharge the Commission, this is politically equivalent to a motion of censure and the Commission might have to resign as a body.[61] Even if the Commission is discharged, it must take account of the remarks put forward by the Parliament. It must take measures based on these remarks and report on the progress of those measures to the Parliament, the Council and the ECA. So the Parliament can influence the Commission's implementation of the budget by pointing out defects in the Commission's management and suggesting solutions. The Commission must elaborate on these points and take the appropriate action. Since this action will be reported to the Parliament, the latter can determine whether or not its remarks have been taken into consideration, and can act accordingly, by approving or disapproving the Commission's actions and exercising its other controlling competences (ie the motion of censure procedure), or even bringing an action before the ECJ.

3.4. Decentralised Audit

This level of audit demands cooperation between the national audit institution and the Community authorities responsible for financial control. There are two reasons

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[61] Office of the European Parliament in Greece, op. cit. p. 59, D. Swann, op. cit., p. 67. The Parliament refused to give a discharge to the Commission for the first time in 1984, for the implementation of the 1982 budget. For more details see Ch. Kok, op. cit., p. 350-351.

for this audit. The first is that the volume of the Communities' finances has increased substantially throughout the years. For example, the resources involved in structural operations increased from 6,800 million ECU in 1987 to 20,700 in 1993 and the prediction for the period 1994-1999 was 147,000 million ECU.[62] The Community audit institutions (Commission's Financial Controller, ECA) have limited human resources, so it is practically impossible for them alone to monitor the management of the Communities' finances, especially as this is mostly performed by the national authorities. This is actually the second reason for having a system of decentralised audit. According to Art. 274 EC Treaty

> *"...Member States shall cooperate with the Commission to ensure that the appropriations are used in accordance with the principles of sound financial management."*

Three types of management of the Community resources have been identified:[63] a) direct management (the Commission - or other institutions as appropriate - manages the appropriations directly and completely, i.e. administrative appropriations), b) decentralised management (the Commission works through national government departments, i.e. collection of revenue based on the own resources system) and c) shared management (the Commission works alongside national government departments on a complementary basis with regard to policies jointly financed, i.e. Structural Funds-partnership principle).

The national authorities of the Member States are in a position to manage Community resources more effectively, since they are familiar with the legislation and practices on financial management in their own respective countries. That is also true of the ESF resources given to Greece regarding the promotion of employment. However, this system of "shared management" has not always been implemented correctly and has created problems during the auditing procedures, especially with regard to external audit. The ECA presented the implications of shared management in its Annual Report for 1987:

> "The consequences of sharing management responsibilities ... are felt when the time comes to audit them. The checks are carried out by and in the Member States, acting in association with the Commission. Although different in nature,

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[62] European Court of Auditors, Sound Financial Management...., op. cit., p. 42.
[63] D. Strasser, The Finances...., op. cit., p. 218-219.

these management procedures have this much in common, that they presuppose, in accordance with Art. 5 of the EEC Treaty, active cooperation between the Commission and the Member State authorities concerned, particularly as regards monitoring, exchanges of information, coordination and the follow-up to any results thus obtained.

....the Court must emphasise that the Commission has not always been sufficiently active in the matter of coordination and supervision, in particular as regards the question of ensuring that national controls are carried out on an integrated basis from the Community point of view. Serious shortcomings in this area lead not only to a yawning gap between the intentions of the legislator and the practical application of the measures at local level, but may also have by no means negligible consequences for the Community's finances."[64]

Another aspect of this wrongly implemented decentralisation policy has been noted in the Court's Annual Report for 1996. The Commission can recover erroneously used funds only by proving this error, so it is necessary for all beneficiaries and intermediary organisations to have accounting and control systems which could provide the controlling authorities with sufficient evidence regarding their management. Unfortunately, such a management information and accounting system has not been created, thus not permitting the Community authorities to exercise their overall supervisory function.[65]

3.4.1. Decentralisation in internal financial control

In order for the Community controlling authorities to be able to monitor the decentralised (or shared) management of Community resources, a decentralised audit is necessary, which demands cooperation between the Community and national audit institutions. In Greece, with regard to internal controls, these authorities are the Ministry of Finance and the directorates of control established in the authorities managing the ESF resources, mainly the Ministry of Labour and Social Security and the Greek Manpower Employment Organisation. The EC Treaty includes no provisions regarding cooperation between the Financial Controller of the Commission and these national authorities, leaving everything to be regulated by secondary legislation. Only the aforementioned provision of Art. 274 can be used as an indirect guideline. National authorities should work with the Commission in order to control the transactions and to ensure that the

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[64] OJ 1988, C 316/17-18.

[65] Annual Report of the Court of Auditors for the financial year 1996, OJ 1997, C 348/8.

financial management of Community resources in the Member States is sound. Art. 10 EC Treaty, on the Member States's duty to fulfil their obligations under EC Law by facilitating the achievement of the Community's tasks, could also constitute a basis for establishing such cooperation. Since auditing is an activity performed by Community authorities, in this case the Commission's Financial Controller, it is possible to argue that national auditing authorities are obliged to cooperate with the Financial Controller in order to ensure the sound financial management of Community resources.

3.4.2. Decentralisation in external audit

With regard to external audit however, the EC Treaty has more detailed provisions. Art. 248(3) provides that

> *"The audit shall be based on records and, if necessary, performed on the spot... in the Member States. In the Member States the audit shall be carried out in liaison with the national audit bodies or, if these do not have the necessary powers, with the competent national departments. These bodies or departments shall inform the Court of Auditors whether they intend to take part in the audit.*
> *.... the national audit bodies or, if they do not have the necessary powers, the competent national departments, shall forward to the Court of Auditors, at its request, any document or information necessary to carry out its task."*

The Greek authority responsible for external audit is the Greek Court of Audit. Since the accession of Greece in 1981, the ECA has taken advantage of these provisions and tried to develop its relationship with this national audit authority. Each member of the ECA, within the sector allocated to him/her, notifies the Greek Court of Audit of the date and nature of the audits planned, at least two months in advance, using a so called "letter of notification".[66] The audit areas covered by this liaison do not only include cases of direct Member State responsibility for the implementation of the Community budget and the production of accounts for Community funds (EAGGF-Guarantee Section, Own Resources system).[67] Cases of national administration handling aid applications and payment requests for the ultimate beneficiaries (especially from the Structural Funds) are also examined.[68] The frequency of these contacts depends on the ECA's annual

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[66] D. Strasser, The Finances....., op. cit., p. 281.
[67] T. M. James, op. cit., p. 481.
[68] Ibid, p. 481.

programme of work and the organisation of audits in each sector.[69] With regard to the ESF resources given to Greece, there have been practically two audits per year, for the last five years.

Contacts at high level are also made. In the Contact Committee of Heads of Supreme Audit Institutions, the presidents of the national audit institutions and the ECA meet in order to discuss technical issues and matters of coordination.[70] The objective of these contacts is to establish an operational link between the ECA and national audit institutions.[71]

As already noted, the ECA's objectives in every audit are to determine whether transactions have been legal and correct (regular) and whether the financial management has been sound. So far, not all national audit institutions have been familiar with this latter objective. The Greek Court of Audit has no such competence under its statute (see Chapters 5 and 7). Techniques and auditing standards used to establish the soundness of financial management may thereby be unknown to the national audit institution and difficult to understand. All these problems may be solved if the national audit institution is well informed and the ECA cooperates with it during the audit.[72] National audit institutions, through these contacts, familiarise themselves with the context of national expenses financed by the Communities' budget, transcend the simple legality and regularity audit, and come to appreciate the effectiveness and efficiency of the Union's financial policies and management.[73] The Greek Court of Audit's competence when establishing whether the financial management of Community resources has been sound is not based on Greek legislation, but on the dispositions of Art. 248. Since the ECA has such competence and the Greek Court of Audit must assist the ECA effectively, it is only proper for the Greek audit institution to be able to reach conclusions legislatively on whether the management of the resources given to Greece has been sound. Also, it must not be forgotten that in the Member States there is a variety of audit systems, sometimes completely different from each other. Consequently, it is difficult for the ECA auditing staff to keep track of all these systems in order to perform their audit tasks, without any assistance from the national audit authorities. Through the liaison, the ECA is constantly being informed on the audit systems of the Member States.

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[69] D. Strasser, The Finances....., op. cit., p. 281.
[70] Ibid, p. 281 & T. M. James, op. cit., p. 481-482.
[71] European Court of Auditors, op. cit., p. 24.
[72] Sir N. Price, op. cit., p. 243-244.
[73] P. Lelong, op. cit., p 111.

Under Art. 248(3), it is possible for national audit institutions to take part in audits performed by the ECA in the Member States. This is a more advanced form of cooperation between the ECA and national audit institutions, known as "Joint Audit", and defined as

> "an audit carried out jointly by a national audit institution and the European Court of Auditors on Community revenue and expenditure on the basis of a common plan and approach by a joint team with a view to reaching joint conclusions which may lead to a joint or separate report."[74]

Joint audit therefore demands an audit team consisting of auditors from the ECA and the national audit institution, which must have a common plan and approach to the objective, the method of audit, and the conditions of collaboration between the ECA and national audit institutions as described above. The audit must have joint conclusions but the necessary reports may be separated. The distinction between the conclusions and the reports in which they will be presented, creates some doubts about their homogeneity. It is always possible that in one report the conclusions may be presented in a different way than in the other, thus creating different impressions and confusion concerning the audited transactions. In order to avoid such a situation, the only solution is to abolish this distinction and to present the conclusions in one joint report. In Greece, joint audits have not yet been developed. Given the limited resources (human and economic) of the Greek Court of Audit, when the auditors of the ECA perform on the spot audits in Greece, the auditors of the Greek Court of Audit are usually present only as observers. The reports adopted are based on the findings of the Community auditors and the Greek Court of Audit is satisfied to simply acknowledge them.

3.4.3. The Amsterdam Treaty amendments

The important and yet delicate issue of cooperation between national audit institutions and the ECA was considered by the 1996 Intergovernmental Conference. According to the new Art. 248(3) EC Treaty

> *".... The Court of Auditors and the national audit bodies of the Member States shall co-operate in a spirit of trust while maintaining their independence..."*

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[74] D. Strasser, The Finances....., op. cit., p.. 281-282.

Trust in a joint audit is vital. When there are many transactions to be audited, it is impossible for each auditor to check all the respective accounts. Therefore there is a division of labour within the auditing group. Smaller teams undertake the audit of certain accounts. In these teams there are both ECA and national auditors. Each team has confidence that the others perform their duties equally well. The European auditors trust that the national auditors will do their job correctly and vice versa. Within this auditing scheme there is no hierarchy between the ECA and the national audit institutions. The auditors are independent from each other and cooperate on equal terms. This equilibrium is based on the following: European auditors are more accustomed to ECA audit methods and requirements, whereas national auditors are familiar with the national financial systems and auditing requirements. Each side therefore contributes its knowledge and experience to the joint audit.

Another proposal, which was not adopted, was to eliminate the option for national audit authorities to refuse to cooperate with the ECA.[75] This was obviously rejected for political reasons rather than legal or even financial reasons. The elimination of this option would be taken signify a quasi-hierarchy between the national audit institutions and the ECA, giving precedence to the latter. Given that the joint audit procedures and methods have not yet been standardised, this option to refuse to participate is necessary. However, when standard procedures and methods of joint audits, adopted to each Member State's financial system, are established, any refusal by the national audit institutions to take part in the audit will not be justified. Given the increase of the operations financed by the European Union, such joint audit procedures will be the rule and not the exception in the European Union's financial management scheme. It is interesting to note that this proposal was put forward by the UK, which is usually very sceptical about granting any authority to the European institutions. This exception is probably justified by the nature of the ECA's duties. Sound financial management is a concept well established in countries like the UK, especially with regard to the control of the management of public funds. Therefore it is logical for this Member State to want to fortify all the mechanisms required to control the management of Community Funds. Given also the mistrust of the internal and external controlling schemes of the southern Member States,[76] the need for a strong European audit

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[75] A. Duff (Ed.), op. cit., p. 170.

[76] Recently for instance in Greece the President of the ECA sent a letter to the Prime Minister explaining that the Greek Court of Audit cannot adequately control the management of the resources given to

institution is great. It is regarded as an additional safeguard of the soundness, legality and regularity of the management of Community funds.

Another aspect of decentralisation has been developed by the amendment of Art. 280 EC Treaty, according to which the protection of the Community's financial interests is now a shared responsibility of the Member States and the Community (the latter being completely responsible under the previous regime). This provision requires the Community authorities to cooperate closely and regularly with all the relevant national authorities in their action to combat fraud. Art. 280 is regarded as a new specific legal base for the adoption of measures to counter fraud (see Chapter 4).

3.5. Appraisal of the dispositions of the Treaties

The first remark that can be made about the dispositions of the Treaties regarding the Communities' financial control system is that they include no direct provision regarding internal financial control. The indirect references noted above are insufficient. The fact that these dispositions must be generously interpreted in order to create a Treaty legal basis for internal financial control proves that this is a very significant omission. The internal financial control system is therefore downgraded. All three other levels of audit have a more or less direct legal basis in the EC Treaty. A new provision referring to the establishment of the internal financial control system should be included in the EC Treaty.

Since the dispositions about internal financial control can be found only in secondary legislation, it is not easy to detect the existence of such a level of control, or of the provisions governing this system. This is not compatible with transparency within the Community, a principle much advocated by the Commission.[77] According to Declaration no 17 annexed to the EU Treaty

> *"...transparency of the decision-making process strengthens the democratic nature of the institutions and the public's confidence in the administration..."*

Greece by the European Union. The reasons given for this were the lack of human resources, means and authority. See To Vima, 21.03.1999, p. A52.

[77] See for instance the Commission Report for the Reflection Group on the Intergovernmental Conference of 1996, SEC (95)731 final, p. 37.

The internal financial control system is located in the core of the decision making process as it deals directly with decisions taken about one of the Community's most important administrative function, the implementation of the budget. If the public knows that such a internal financial control procedure exists, its confidence in the Commission will be much greater. Knowledge of the basic characteristics of such a system will allow a more complete evaluation of the Commission's whole financial management system. Placing the dispositions on the internal financial control system placed somewhere in the vast volume of Community secondary legislation is not the solution.

The counter-argument usually offered by the Commission is that internal financial control procedure is an issue of Community interest (a so-called public interest argument) and therefore not accessible to the public. This is not convincing. The Commission manages a budget financed by a system which, although called "own resources",[78] is based on money paid by European taxpayers through, *inter alia*, custom duties, agricultural duties/charges, VAT, Member States contribution according to their Gross National Product, etc. It is only right that these taxpayers have the right to know how their money is spent and how the financial management is monitored. A further step in that direction would be to oblige, legislatively, the organs responsible for internal financial control to publish an annual report. This, along with the Annual Report of the ECA, would create a basis for establishing a system for public accountability of the Commission. The most appropriate method would be to add a relevant provision to the Financial Regulation. The addition to the Treaties of provisions governing internal financial control would require the lengthy, hazardous procedure of an Intergovernmental Conference. However, in the long term, such an amendment of the Treaties is necessary.

This issue of the Commission's public accountability is very important. The dispositions concerning the publication of these auditing reports could simultaneously establish a right and an obligation for all European audit authorities to publish the results of their audits.[79] The recipients of this information include the so-called "European Public Opinion" and the media that sometimes form this opinion. It has been correctly

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[78] This system was established by the European Council Decision of the 21 April 1970 on the replacement of financial contributions from the Member States by the European Communities own resources, OJ 1970, L 94.

[79] C. Mayenobe, The Court and Information in Democracy, in Minutes of the Convention "Historical Development of the institution of the Court of Audit in Greece and France", Athens 1993, p. 153-157 at

observed that publication in the Official Journal does not automatically imply bringing to public attention or publicising.[80] The citizens of the Member States must know the results of the financial management of the Union's resources. The media, in order to provide such information, organise debates between specialists or ask journalists to analyse the technical and sometimes incomprehensible information provided by Community audit authorities (usually the ECA). But there lies the danger of distortion of this information by journalists in order to produce an important piece of news.[81] Another danger is the premature spreading of information concerning some audits before their completion.[82] Such "leaks" may have disastrous effects since any information provided is incomplete and therefore inaccurate. The ECA, for instance, faces increased publication of information, which it started itself, by publishing its reports.[83] It must have a very good understanding of these dangers. Its place in the democratic regime of the European Union requires a flawless performance. Its members and staff must perform their auditing duties as seriously and accurately as possible, in order for the audits' results to be accepted and respected by the auditees and the public.[84] Information provided to European taxpayers can make them appreciate the existing "scandalous" situation regarding the fraudulent flow of their own money.[85] This will mobilise the European public opinion, and the taxpayers' reaction to the extent of the scandal will create the necessary political pressure to compel the competent institutions (national and European, mainly the Council) to act more effectively in order to combat fraud.[86] This argument is strengthened by the events, which led to the resignation of the Commission under Jacques Santer in March 1999. Allegations of mismanagement, irregularities and fraud, were put forward and several programmes were examined by a Committee of Independent Experts having a mandate to examine the way in which the Commission detected and dealt with fraud and mismanagement.[87] This Committee presented its findings in March 1999. Its report revealed numerous cases of fraud, mismanagement

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153. This author focuses mainly on the French Court of Audit, but the dispositions in question could be considered as guidelines for all audit authorities.

[80] Ch. Kok, op. cit., p. 348.

[81] C. Mayenobe, op. cit., p. 156.

[82] Ibid, p. 157.

[83] Ibid, p. 156.

[84] Ibid, p. 156.

[85] House of Lords, Select Committee on the European Communities, Financial Control and Fraud in the Community....., op. cit., para. 52.

[86] Ibid, para. 52.

[87] See also European Parliament, Resolution on improving the financial management of the Commission, Doc B4-0065, 0109 and 0110/99 of 14 January 1999.

and nepotism in the Commission, which resigned on 16 March 1999. This clearly demonstrate the importance of transparency in the financial management of Community resources.

Another observation concerns the Parliament's role and the discharge procedure established by the Treaties. The decision to discharge the Commission is the only positive decisive power reserved exclusively for the Parliament.[88] Its involvement in the legislative process or the enactment of the budget is always combined with the Council's authority. The discharge procedure should not be seen as a technicality but as a means for the Parliament to express its confidence in or criticism of the Commission's financial management.[89] Art. 276 gives the Parliament the power of eliminating, with regard to budgetary issues, the democratic deficit noted in the Communities' institutional balance. The responsibility for making good use of the discharge procedure lies exclusively with the Parliament.

It is indisputable that the Communities' founders wanted to have an accountability framework. This explains the existence of the external audit of the Communities. The use of this framework has not been however, satisfactory so far. Limited human and financial resources have prevented the auditing mechanisms from being more effective in their duties. Therefore it is necessary to reinforce them with personnel, adequately trained, in order to meet the demands of the task imposed upon them by the Treaties.

The mere existence in the European Union of a financial control system poses another interesting question: why is such a system necessary? From a practical point of view it is necessary for an organization like the European Union to audit its financial management. Accounting mistakes (deliberate or not) are sometimes discovered, concerning the collection of revenue or the payment of expenditure.[90] A more complex theoretical answer can also be put forward, involving some political analysis.

According to the Preamble to the EU Treaty, the Member States decided to establish the European Union

> *"...CONFIRMING their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law,...*

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[88] A. Perron, Le droit budgétaire des Communautés Européenes, RFFP, No 4, 1983, p. 77-98 at 90.
[89] Ibid, p. 90.
[90] K. Stefanou, European Integration, A. N. Sakkoulas Publications, 1991, p. 71.

...DESIRING to enhance further the democratic and efficient functioning of the institutions so as to enable them better to carry out, within a single institutional framework, the tasks entrusted to them,...".

This is a clear demonstration of the Member States' will to establish a democratic regime within all three pillars of the European Union. One of the most basic elements of democracy is the notion of controlling the Executive. This control has three dimensions: Legality Control, Political Control and Financial Control (Audit).[91] The context of financial control is that the Executive must justify its choices. Resources must spent for purposes approved by the Legislature in the most efficient and effective way possible.[92] This control is performed by an independent audit institution, established for the purpose of examining all kinds of expenditure thoroughly and professionally.[93] The ECA is that institution for the European Union. In its task of auditing all financial activity within the three pillars of the Union (external audit), it is joined by the Commission's Financial Controller (internal financial control), the Parliament (parliamentary control) and the national audit institutions (decentralised audit). This system's existence in the institutional scheme of the Union is required by its democratic context. It guarantees the financial control of the Union's Executive, the Commission. This guarantee is incorporated mainly in the Statement of Assurance provided by the ECA to the Council and the Parliament and in the discharge given to the Commission by the Parliament.

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[91] D. Beetham, K. Boyle, Democracy - 80 questions and answers, UNESCO 1995, p. 86-87.
[92] Ibid, p. 87.
[93] Ibid, p. 87-88.

Chapter Four: The Community Legal Framework on controlling the financial management of ESF resources in Greece-Secondary Legislation

The main Community legislative documents controlling the financial management of the Structural Funds include the Financial Regulation of 1977, the Regulations concerning the Structural Funds and any other legislative instrument regulating the control and evaluation of the financial management of Community resources.

4.1. Financial Regulation of 1977 applicable to the general budget of the European Communities[1]

This Regulation contains detailed dispositions about all levels of financial control and audit. A very important general principle is established in Art. 2:

> *"The budget appropriations must be used in accordance with the principles of sound financial management and in particular those of economy and cost-effectiveness. Quantified objectives must be identified and the progress of their realization monitored. To this end, the mobilization of Community resources must be preceded by an evaluation to ensure that the resultant benefits are in proportion to the resources applied. All operations must be subject to regular review, in particular within the budgetary procedure, so that their justification may be verified."*

This provision reitarates that the principle of sound financial management must be the guideline for the use of all budget appropriations. In order to ensure that, the Community authorities must monitor the realization of the objectives described in the budget. They must review all operations (including of course those financed by the ESF in Greece) in order to verify their justification. The mobilization of Community resources must be preceded by an evaluation to ensure that the resultant benefits are in proportion to the

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[1] OJ 1977, L 356/1, amended by Regulation 79/1252/EEC, OJ 1979, L 160/1, Financial Regulation 80/1176/EEC, OJ 1980, L 345/23, Regulation 88/1600/EEC, OJ 1988, L 143/1, Regulation 88/2049/EEC, OJ 1988, L 185/3, Regulation 90/610/EEC, OJ 1990, L 70/1, Regulation 94/1923/EC, OJ 1994, L 198/4, Regulation 94/2730/EC, OJ 1994, L 293/7, Regulation 95/2333/EC, OJ 1995, L 240/1, Regulation 95/2334/EC, OJ 1995, L 240/9, Regulation 95/2335/EC, OJ 1995, L 240/12, Regulation 97/2444/EC, OJ 1997, L 340/1, Regulation 98/2548/EC, OJ 1998, L 320/1, Regulation 98/2779/EC, OJ 1998, L 347/3.

resources applied. This evaluation was added to the Financial Regulation's provisions only in 1995.[2] It provides the basis for the development of all evaluation proceedings.[3]

An equally important provision is included in Art. 22(1) of the Financial Regulation according to which

> *"The implementation of appropriation entered for significant Community action shall require a basic act, in accordance with the procedure and the provisions laid down in paragraph 3c of Section IV of the Joint Declaration of 30 June 1982."*

The procedure established by the Joint Declaration of 30 June 1982[4] provides for the Commission to propose a basic act for adoption by the Parliament and the Council. Otherwise the appropriations in question will be transferred and used in other activities. These provisions are one of the bases for the legality control of the management of the Union's budget. Any use of appropriations entered in the budget for significant action

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[2] See Regulation 95/2333/EC, OJ 1995, L 240/12.

[3] The evaluation of the structural programmes financed by the European Union is based on a system called MEANS (Methodes d' Evaluation des Actions de Nature Structurelle). For more details see European Court of Auditors, Special Report 15/1998 on the assessment of Structural Fund intervention for the 1989-1993 and 1994-1999 periods, OJ 1998, C 347/1 at 6-7. The main provisions about evaluation can be found in non-legislative documents, namely certain Commission's Communications. These documents express mainly political guidelines. In this case however, the relevant documents seem more to concern administrative practice. They are the Commission's Communication on the second phase of a three-phase programme on Sound and Efficient Management ("SEM 2000"), SEC (95)1301(4), the Communication titled "Evaluation: Concrete steps towards best practice across the Commission", SEC (96)659 final, and the Communication titled "Spending more wisely: Implementation of the Commission's evaluation policy", SEC (1999)69/4. The analysis of these documents is beyond the scope of this thesis. However, a point made in the 1999 Communication is worth analyzing. According to this document, the use of evaluation findings in budgetary decision making is not yet systematic: frequently, the proposals include no reference to evaluation. This conclusion is worrying given that it practically acknowledges a systematic violation of Art. 2 of the Financial Regulation, which stipulates that all decisions about budgetary allocations must be based on *ex ante* evaluations of the proposed programmes. Given that there is no specific provision about this violation, it is apparent that the use of *ex ante* evaluations is reduced to an unacceptable minimum while the system of budgetary allocations is not improved. The solution to this problem could be to combine Articles 2 of the Financial Regulation and 253 EC Treaty. This latter disposition provides that all EC legislative measures must state the reasons on which they are based and must to refer to any opinions and proposals necessary for their adoption. The violation of this provision is an infringement of an essential procedural requirement according to Art. 230 EC Treaty, leading to the annulment of the measure in question (C-24/62, *Germany v. Commission of the European Communities*, [1963] ECR 63, C-5/67, *Beus GmbH & Co. v. Hauptzollant München*, [1968] ECR 83, C-143/95P, *Commission of the European Communities v. Socurte-Sociedade de Curtumes a Sul do Tejo, Lda and Others*, [1997] ECR I-1). Budgetary allocations are not only made during the enactment of the Community budget (for which there is a specific procedure described in Art. 272 EC Treaty), but also when the Commission approves applications for programmes like the structural operations (ie Community Support Frameworks, Operational Programmes, etc). These allocating acts can therefore be judicially reviewed and annulled for failure to take into consideration the *ex ante* evaluations, which is a procedural requirement under Art.2 of the Financial Regulation.

must be based on a legislative act, which act authorises the implementation of the relevant expenditure. Consequently, the lack of such an act will lead the ECJ to annul any decisions relating to such appropriations.[5] The major issue in these provisions is the identification of "significant Community action" because only such action must be authorised by a legislative act.[6] The distinction between significant and non-significant action is very unclear because no definition is provided in any Community legislative text. In an attempt to resolve this problem it has been suggested that

> "...the formulation of legislative proposals presupposes the espousal by the proposing authority of a particular policy, which will have to be adjusted also in response to the foreseeable effects of the proposed legislation on the social situation it is sought to remedy. This inevitably entails study and research, as well as experimentation on a reduced scale with the legislation to be proposed. The funding of such action cannot...depend on a basic act which has yet to be adopted and which presupposes the accomplishment of such action."[7]

According to this assessment, only Community activities such as pilot projects and preparatory actions would be characterized as non-significant action.[8] Criteria such as the amounts involved in the action or the limited duration of an action cannot establish its nature as non-significant.[9] Furthermore, the implementation of expenditure on the basis of a mere entry of the relevant appropriations in the budget is an exception to the general rule that for such an implementation an authorizing legislative act must be adopted. Therefore non-significant action is an exception and as such, it must be subject to narrow interpretation.[10] There is a presumption in favour of significant action. This presumption is refutable: the Commission must prove that the measure in question is not a significant action requiring legislative authorisation.[11]

4.1.1. Internal Financial Control

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[4] Joint Declaration of 30 June 1982 by the European Parliament, the Council and the Commission on various measures to improve the budgetary procedure, OJ 1982, C 194/1.
[5] This happened to the Poverty 4 programme, which was annulled because the Commission implemented the relevant expenditure without an authorizing decision from the Council. See C-106/96, *United Kingdom v. Commission of the European Communities (re Poverty 4)*, [1998] ECR I-2729.
[6] C-106/96, op. cit., p. I-2755, para 26.
[7] Opinion of Advocate General Tesauro in C-106/96, op. cit., p. I-2738, para 18.
[8] Ibid, p. I-2738, para 19.
[9] C-106/96, op. cit., p. I-2758, para 36.
[10] Opinion of the Advocate General Tesauro in C-106/96, op. cit., p. I-2739, para 19.
[11] C-106/96, op. cit., p. I-2756, para 30.

It has been mentioned above that the implementation of the budget requires an Authorizing Officer and an Accounting Officer. According to the system established in Art. 21 of the Financial Regulation, the Authorizing Officer orders a sum to be paid or collected (Articles 28 and 43 of the Financial Regulation) and the Accounting Officer pays or receives the sum in question (Articles 29 and 51 of the Financial Regulation). The Authorizing Officer is the institution itself (i.e. the Commission) which may delegate its authorizing powers to its members (i.e. a Commissioner, a Director General etc).[12] The Authorizing Officer, although mainly a decision making officer, is also a controller. His control is a physical check (before the expenditure is cleared) to determine whether the beneficiaries of Community assistance have actually used it for the purpose stated.[13]

The Commission, in managing the budget, must take all appropriate measures, in terms of organization and follow up, to ensure the achievement of the objectives set (Art. 22(3) of the Financial Regulation). Therefore it is obliged - like any other Community body participating in the management of the budget - to appoint a Financial Controller under Art. 24 of the Financial Regulation. That person is the "internal auditor" of the Commission, having the rank of Director-General. The competences of the Financial Controller are monitoring and advisory. The Financial Controller monitors, *inter alia*, the commitment and authorization of all expenditure. This person must also be consulted on the establishment of the Commission's accounting systems. Monitoring is carried out by means of inspecting the files relating to expenditure. If the Financial Controller considers it necessary, the control is performed on the spot. All documents and information considered by the Financial Controller necessary for the performance of his duties are supplied to him. The Financial Controller must be independent in the performance of his duties. Any decision regarding appointment, promotion, transfer, disciplinary rules, termination of appointment of this official should be reasoned and forwarded to the Parliament, the Council and the ECJ. Furthermore, the Financial Controller may institute proceedings before the ECJ to protect his independence. In addition, a recent amendment by Regulation 98/2548/EC[14] to Art. 24 of the Financial Regulation, made the Financial Controller explicitly responsible for the internal audit of the Commission. The Financial Controller's audit now includes an assessment of the effectiveness of all control and verification systems. Consequently this official has the right to assess the evaluation

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[12] D. Strasser, The Finances...., op. cit., p. 229.
[13] Ibid, p. 229.
[14] OJ 1998, L 320/1-5.

procedures established within the Commission (including of course those to the management of ESF resources). This amendment aimed to improve the Commission's evaluation framework. However, it also created some problems, as will be analysed below.

Art. 24 of the Financial Regulation evidently aims to allow the Financial Controller to perform his/her duties as more impartially and objectively as possible. His/Her investigating powers are practically unlimited: he/she has access to every document he/she considers necessary. He/She can perform both *ex ante* and *ex post* controls. An *ex ante* control with regard to expenditure, such as the ESF resources given to Greece, amounts to prior approval of the expenditure in question (Art. 37-38 of the Finacial Regulation): All proposals for commitments, together with supporting documents, must be sent to the Financial Controller, who examines the proposal to establish a) whether it involves any expenditure chargeable to the budget, b) whether the expenditure has been charged to the correct item of the budget, c) whether the appropriations are available, d) whether the expenditure is in order and conforms to all regulations applicable, and e) whether the principle of sound financial management has been applied. Art. 47 stipulates that all payment orders issued by the Authorizing Officer are subject to prior approval by the Financial Controller. This approval establishes that a) the payment order was properly issued, b) the payment order agrees with the commitment of expenditure and the amount mentioned is correct, c) the expenditure is charged to the correct item of the budget, d) the appropriations are available, e) the supporting documents are in order and f) the payee is correctly named and described. According to Art. 39, the Financial Controller may not approve the expenditure proposal or the payment order, but must justify that decision. If however the Authorizing Officer insists on the proposed expenditure, the Controller's refusal is referred to the superior authority (usually the Commission) which may override this refusal by a reasoned decision. There is, however, one exception. If the Financial Controller bases the refusal on the unavailability of appropriations, it cannot be overridden. Given the quantity of transaction to be audited (over half a million per year) and the limited staff of the Financial Controller, expenditure proposals are studied on a sample basis (10% in 1999). The majority therefore receives automatic approval. Nevertheless, the Financial Controller has managed to reduce the time taken to process transactions submitted for *ex*

ante control from an average of 4.4 days in 1998 to 3.5 days in 1999,[15] thus increasing the capacity to control more transactions.

According to Art. 40 of Commission Regulation 93/3418/EC laying down detailed rules about the implementation of the Financial Regulation,[16] the Financial Controller may also perform *ex post* audits. He/She can present reports on any subject having financial implications, especially where sound financial management is concerned. Thus there is a complete framework of internal control for the Commission's financial management of the budget.

The Financial Controller is evidently very important to the financial management procedure, as noted by the ECA when it assessed the Commission's internal financial control.[17] The ECA observed that the Financial Controller is a safeguard, especially with regard to controlling the regularity and the legality of transactions. With regard to sound financial management, the controlling task is much more difficult. It also said that it was physically impossible for the Financial Controller, when approving *ex ante* to assess whether each transaction offered value for money since there were thousands of transactions to be controlled.[18] But perhaps the most important remark was that the "prior approval system" might endanger the Authorizing Officer's work:[19] since it covers all transactions and therefore protects the Authorizing Officer against mistakes, it encourages him to rely unduly on the Financial Controller's approval instead of fully assuming his own responsibilities to check the commitments and payment orders. A final remark was that the Financial Controller's *ex post* audits might be undermined by his/her own *ex ante* controls, because he/she will not easily draw attention at a later date to management errors which he/she endorsed when granting prior approval.[20]

4.1.2. External Audit

Given the detailed dispositions of the EC Treaty about the legislative and institutional framework of external audit, the Financial Regulation is supplementary in nature.

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[15] European Commission, Doc IP/00/648, 21.6.2000.
[16] OJ 1993, L 315/1.
[17] Annual Report of the Court of Auditors for the financial year 1988, OJ 1989, C 312/37.
[18] Ibid, p. 39.
[19] Ibid, p. 39.
[20] Ibid, p. 40.

Art. 83 of the Financial Regulation provides that all institutions must transmit to the ECA any rules of procedure adopted in respect of financial matters. Also the ECA must be always informed about the occupational status of Authorizing Officers, Accounting Officers and Financial Controllers and any delegations of financial authority. Art 84 obliges the institutions to forward to the ECA, every three months, documents supporting their accounts regarding the implementation of the budget. Art. 85 reiterates that the ECA's task is to control the regularity/legality of transactions and to establish whether the financial management has been sound. It also obliges the institutions to comply with the ECA's requests during the audit, especially by providing any document deemed necessary. Importantly, it also provides that the ECA may be present during operations carried out by the Commission within the framework of every Fund established by the Communities. So the ECA may inspect the ongoing operations with regard to the ESF resources given to Greece. This is even more effective than an on-the-spot audit, which is usually performed after the operation is completed, since it can lead to a very thorough examination of the system of financial management in practice and prevent any mismanagement on time. It clearly requires that the auditors involved should have a good knowledge of the management system of the Structural Funds, as well as, in the case of the ESF resources given to Greece, a background of the structural operations performed in Greece, and the practices and methods used.

Art. 87 contains a very detailed account of the assistance that the institutions must give the ECA in its auditing task, such as the documents that should be placed at the ECA's disposal. These include documents regarding the conclusion and implementation of contracts, accounts of cash and materials, inventories, lists of posts in the various departments, accounting records, correspondence relating to financial and accounting issues etc. The ECA's examining competence is practically unlimited since all documents can be evidently examined. The last subparagraph of Art. 87 also confirs the ECA's auditing power:

> *"The grant of Community funds to beneficiaries outside the institutions shall be subject to the agreement in writing by the recipients to an audit being carried out by the Court of Auditors on the utilization of the amounts granted."*

This sets a condition to all those, outside the institutions, who receive Community assistance within every framework established by the Communities, including the

Structural Funds. This condition, although seeming to require a written agreement to be implemented, must be considered to apply even in the absence of such an agreement. The aim of legislation is to ensure that the management of all Community resources is controlled, as indicated by the amended dispositions of Art. 248 EC Treaty. So, even in the absence of a written agreement, the ECA is entitled to control the use of the assistance by every beneficiary.

Art. 88 provides for the procedure according to which the ECA draws up its Annual Report. As noted in Chapter 3, the ECA and the Commission disagreed on certain issues regarding this procedure. The current content of Art. 88 results from an agreement reached by the two institutions in 1982, establishing a procedure characterized as "preliminary".[21] The ECA sends the Commission the observations to be included in its Annual Report, before 15 July. The Commission prepares a draft reply even suggesting amendments to the Court's observations. This is sent to the ECA unofficially by the end of September. In early October the services of the ECA and the Commission meet to examine any points of conflict between the two institutions. In practice, since 1995, these meetings have also involved Commissioners and ECA Members. After the Commission's submission of proposals on 31 October, the ECA prepares its Annual Report, taking into account the findings of its collaboration with the Commission and refraining from including in the Report issues that have not been elaborated during this procedure.[22] The ECA must transmit, by 30 November, to the authorities responsible for giving discharge, its Annual Report accompanied by the institutions' responses and must also ensure their publication in the Official Journal (Art. 88(4) of the Fin. Regulation). The responses of each institution are published immediately following the ECA's comments (Art. 88(3)). Art. 88a provides for the Statement of Assurance, but adds nothing to the dispositions of the Treaties.

Art. 90 of the Financial Regulation provides for the special reports and opinions adopted by the ECA (see also Art. 248(4) EC Treaty). Special reports shall be transmitted to the institution or body concerned, which has two and a half months to make any comments. Should the ECA decide to publish a report in the Official Journal then, it must also publish the comments of the institution or body concerned. The special

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[21] Sir N. Price, op. cit., p. 241.

[22] G. Vitalis, Hearing of the Auditee, in Honorary Volume for the 150 years of the Greek Court of Audit, Athens 1984, p 125-132 (131), I. Harden, F. White, K. Donnelly, op. cit., p. 617, T. M. James, op. cit., p. 480, P. Lelong, op. cit., p. 112-113 & Sir N. Price, op. cit., p. 241.

reports give the ECA the opportunity to express itself, comparable to that provided by the annual report, but with a greater degree of flexibility in time and space.[23] They generally consist of the treatment in depth, outside the framework of the Annual Report timetable, of a particular group of related activities. They are completely independent of the Annual Report's calendar year. Therefore they may, when appropriate, be completed and issued relatively rapidly and thus with greater immediacy draw the attention of the budgetary authorities and the EC financial managers to particular weaknesses, which come to light in the course of these major audit inquiries.[24] In any event, the flexibility of format and the homogeneity of subject matter mean that the special reports are, despite the sometimes complex nature of their contents, more easily handled by the authorities to whom they are addressed that the Annual Report, which of necessity contains a somewhat dense assemblage of very varied material.[25] As is obvious from the context of these dispositions, special reports can be issued at the ECA's own discretion or upon request from another institution. The Commission has recognized the importance of these reports, by noticing their usefulness in the discharge procedure and by acknowledging the recommendation of the European Council at Essen concerning the taking of action based upon these reports.[26]

If the opinions issued by the ECA not related to legislative proposals or drafts concerning which the ECA has been consulted, the Court can publish them in the Official Journal, after consulting the institutions that requested the opinion or the institution concerned by its analysis, the replies of which must be published along with the opinion. These opinions must be included in the so called "Consultative Competence"[27] of this institution. They are not obligatory in a sense that the institutions are not obliged to ask for them and they certainly do not have to follow them. But the practice followed so far, fortified also by a written unofficial agreement between the ECA and the Commission, is for the institutions to systematically consult the ECA when taking action that having budgetary or financial aspect or effect.[28]

A final issue is the relation between the Financial Controller and the ECA. As noted, the ECA's method of audit is based on the reliability of the system of internal

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[23] D. Strasser, The Finances...., op. cit., p. 276.
[24] T. M. James, op. cit., p. 479.
[25] Ibid, p. 479.
[26] European Commission, Report on the function of the Treaty for the European Union, SEC (95) 731 final, p. 27, point 65.
[27] P. Lelong, op. cit., p. 108 & T. M. James, op. cit., p. 480.

control. The ECA has noted that the Financial Controller has been reluctant to provide all information it requires, especially when he/she has withheld prior approval for an expense: he/she forwards only cases in which his denial has been overruled by the Commission.[29] The ECA observed that all information concerning internal control is vital for its task and that the Financial Controller is bound by the Financial Regulation to forward all documents requested.[30] In a comparison between these two levels of audit, it has been noted that the Financial Controller is better equipped - in terms of authority given by legislation - to control the legality and regularity of transactions, while the ECA may control the soundness of financial management more adequately.[31] This opinion, based on the assumption that the ECA takes the view that the previous internal control check should be repeated,[32] may lead to doubtful conclusions. It is true that the ECA focuses on the system of internal audit and not on the actual transactions, mainly because of the volume of these transactions. Its audit must include, however, the regularity and legality of transactions. The ECA does not accept the Financial Controller's conclusions about legality and regularity without scepticism. Its comments mentioned above support that view. The ECA does not use the Financial Controller's findings in order to determine a transaction's legality but to see whether the system of internal control, including the Financial Controller, is suitable for verifying the legality and regularity of transactions. If the ECA is not satisfied with the suitability of the internal control system for this purpose, it will not accept that the transactions were legal and regular, regardless of the Financial Controller's findings. This, of course, will give grounds for severe criticism at the level of parliamentary control, as will be shown below.

4.1.3. Parliamentary Control

As with the external audit, given the detailed provisions of the EC Treaty about parliamentary control, the Financial Regulation has a supplementary nature. After practically repeating Art. 276 of the EC Treaty, Art. 89 of the Financial Regulation states that the discharge decision covers all the accounts of Community revenue and expenditure and the information provided in the balance sheet of the accounts drawn up

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[28] P. Lelong, op. cit. p. 108.
[29] Annual Report of the Court of Auditors for the financial year 1988, op. cit., p. 40.
[30] Ibid, p. 40.
[31] D. Strasser, The Finances...., op. cit., p. 236.

by the Commission. It shall also contain an assessment of the Commission's management of the budget. This assessment is probably the justification for the decision.

An interesting point concerns the Parliament's duty to consider the special reports submitted by the ECA with regard to various aspects of the budget's implementation by the Commission. These reports are treated in the same manner as the Annual Report. So, one problem will be how to decide that a special report is relevant to the discharge procedure.[33] Secondly, given the difference of procedures between the Annual Report and the special reports, will it be necessary to organise, besides the procedure of the annual discharge an *ad hoc* discharge procedure referring to the issue(s) mentioned in the special reports?[34] The solution to these problems cannot be separated since they are substantive and procedural aspectes of the same issue: what is the use of the special reports in the discharge procedure? The context of the special reports themselves may provide the reply to the substantive problem. A special report, by definition, presents more detailed information on a specific issue arising during audit, thus allowing the Budgetary Authority to examine it more carefully with regard to the discharge. Procedurally, there is no reason to have a parallel *ad hoc* discharge procedure. According to the relevant dispositions of the Financial Regulation (Art. 82), the Commission must send all the necessary information for the accounts of the year N to the Parliament, the Council and the ECA until May of the year N+1. The ECA, as mentioned above, must adopt its Annual Report by November of the year N+1. The Parliament gives the discharge to the Commission by 30 April of the year N+2 (Art. 89). So there is a time limit of about one year and four months within which the ECA may adopt special reports concerning specific issues of the financial management of the year N. The flexibility in the procedure for adopting special reports gives this advantage to the ECA.

According to another argument, special reports have the major drawback that Parliament (the chief recipient of special reports) often has neither the means nor the time to assess the points made in them.[35] This argument is not persuasive since the ECA's special reports are examined by *ad hoc* parliamentary committees, whose own reports generally lead to a resolution by the Parliament, listing the problems for which it expects a solution to be found. The Commission must then take follow-up action.[36] More

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[32] Ibid, p. 236.
[33] D. Strasser, Les dispositions....,op. cit., p. 201.
[34] Ibid, p. 201
[35] D. Strasser, The Finances...., op. cit., p. 276.
[36] National Audit Office, op. cit., p. 227.

specifically the Budget Committee, established in 1958, is responsible for all issues relating to the Parliament's powers over the budget and the Parliament's participation in the multi-annual financial planning of the European Union, especially through relevant interinstitutional agreements.[37] There is also the Committee on Budgetary Control (BCC), established in 1979, responsible for all issues regarding the Financial Regulation, the discharge, the control of the implementation of the budget, the evaluation of the effectiveness of Community financing, the study of the ECA's reports and the fight against fraud.[38] So the Parliament has the necessary structure to evaluate the information provided by the ECA and take the necessary action.[39]

4.1.4. Decentralised Audit

The Financial Regulation does not provide details on the cooperation between national audit authorities and the financial control bodies of the Commission. It contains only a general disposition in Art. 2 according to which the Member States and Commission must cooperate to ensure the adequacy of systems for decentralized management of Community funds. Such cooperation includes the prompt exchange of all necessary information.

This seems to repeat the general principle of cooperation between Commission and the Member States established in Art. 274 EC Treaty. There are however, some points which concern financial management and its control. The reference to decentralized management demonstrates a preference for this system. The adequacy of such a system can be ensured mainly through efficient controlling proceedings at Community and national level. The exchange of information is not the only method of cooperation. Joint audits of the financial management can provide substantive information about the implementation of the budget. For instance, the Greek authorities have cooperated with the Commission's Financial Controller, and ECA in auditing the management of ESF resources given to Greece. This cooperation includes not only the

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[37] Office of the European Parliament in Greece, European Parliament-The parliamentary institution of the European Union, Athens, 1999, p. 38.
[38] Ibid, p. 41.
[39] More details on the internal procedures of parliamentary control regarding the financial management of the European Union's budget can be found in European Parliament, Institutional aspects of budgetary control, Briefing document-Budgetary affairs No 2, PE 167.189, 15 December 1997, p. 4 and European Parliament, Controlling the implementation of the budget in the course of the year-The "Notenboom Procedure", Briefing document-Budgetary affairs No 8, PE 167.744, 8 December 1998, p. 4.

exchange of information (mainly the provision of information by the Greek managing authorities) but also controlling activities, undertaken jointly by Greek controlling bodies and the competent Community authorities. Such cooperation more that satisfies the requirements of the Financial Regulation.

4.2. Regulations regarding the Structural Funds

The procedures of financial control, according to the provisions of the Regulations on the Structural Funds, co-exist with the procedures established by the Financial Regulation. Usually there can be two types of control checks of structural operations: system checks and procedure checks.[40] System checks are similar to the controls performed by the ECA according to the "systems based" approach, analysed above. Procedure checks consist of detailed examination of the procedural framework of a project's implementation, as established by the coordinator of the project (usually called "leader"), regardless of whether this is a public or a private law person.

4.2.1. The early Legislation

The early legislative measures about the ESF, especially Regulations 72/858/EEC and 77/2894/EEC (see Chapter 1), included certain provisions with regard to the controlling procedure. The Member States had to make available to the Commission all information concerning the ESF's function in their respective countries. The checks performed by the Commission operated in parallel to the controls provided for by the national legislation of the Member States and the general provisions of the EC Treaty. They aimed to verify the conformity of the administrative practices regarding the ESF with Community rules, the existence of justification for the operations financed and the conditions under which the financed operations were realized. Some of these checks were on-the-spot, and national delegations could participate. If the checks revealed any irregularities or changes not approved by the Commission, assistance was suspended, reduced or even terminated. The final decision lay with the Commission, after hearing the Member State's opinion.

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[40] European Commission, 10th Annual Report on the Structural Funds, available on line at www.inforegio.cec.eu.int/wbdoc/docoffic/official/rastru98/rastru_en.htm on 8.12.1999, p.123.

The ECA examined this system and strongly criticized the lack of monitoring of projects; the settlement of advanced payments by the Commission against a mere certification by the Member States that various stages of the projects were completed; the examination of final payment requests on the basis of reports which served only to demonstrate the eligibility of the expenditure; the non assessment of the consequences and effectiveness of the measures financed and the Commission's acceptance of the definitions used in each Member States for key terms such as "bodies governed by public or private law", or of the situation of various target-groups like young job-seekers, the unemployed, the disabled, and migrant workers.[41]

The Council tried to improve the situation by adopting Regulation 83/2950/EEC (see Chapter 1). The main provisions about financial control were Articles 6 and 7 of this Regulation. The Commission could carry out on-the-spot checks. For the first time a legislative text, specifically concerning the ESF, included dispositions on the method of control, stipulating that checks may be made by representative sampling. The Member States had to ensure that the Commission had access to the information necessary to evaluate the content of the financed operations. Member States' delegations could also participate in the Commission's on-the-spot checks. The Commission could ask the Member States to perform the checks themselves. In that case the Commission's representatives could participate in the checks. If the assistance was not used in conformity with the conditions set out in the approving decision, the Commission could suspend, reduce, or withdraw the financing, after hearing the Member State concerned. Sums paid but not used in accordance with the conditions of approval had to be refunded by the beneficiaries. The Member State concerned had also secondary liability based on the guarantee given by the State, as provided for in Art. 2(2) of Decision 83/516/EEC.[42]

4.2.2. The 1988 and 1993 Regulations

4.2.2.1. Council Regulations 88/2052/EEC and 93/2081/EEC

Art. 6 and 7 of Regulation 88/2052/EEC stipulated that all measures and operations financed by the Structural Funds would be monitored in order to ensure that

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[41] European Court of Auditors, Report in response to the conclusions of the European Council of 18 June 1983, OJ 1983, C 287/1 at 14-15.

they were in keeping with the provisions and objectives of the Treaties (especially Art. 158 and 160 EC Treaty) and relevant Regulations. Regulation 88/2052/EEC aimed to strengthen checks on structural operations. Its provisions were complementary to these of the Financial Regulation. *Ex ante* and *ex post* assessments were performed in order to highlight the effectiveness and impact of these structural operations, especially with regard to the five Objectives set out in Regulation 88/2052/EEC. The 1993 amendments by Regulation 93/2081/EEC did not change the content of these dispositions.

These dispositions did not indicate at which of the four levels the structural operations were to be controlled. It is therefore logical to assume that they were subject to all four levels. With regard to types of audit, Regulation 88/2052/EEC established that the financial control of structural activities included first legality controls (conformity of the measures with the Treaties and the Structural Funds' Regulations). Competition rules, rules about awarding contracts (public procurement)[43] and rules about environmental protection are also taken into consideration.

4.2.2.2. Regulations 88/4253/EEC and 93/2082/EEC

Regulation 88/4253/EEC contained more detailed dispositions on financial control, some of which were amended by Regulation 93/2082/EEC. Art. 23 of Regulation 88/4253/EEC obliged the Member States to verify regularly that operations financed by the Structural Funds were properly carried out, to prevent any irregularities and to recover any amount lost through irregularity and negligence. The control would cover operations carried out by public or private promoters. This provision covered a "loophole" in the general provisions of the EC Treaty, which at that time (1988 and 1993) did not provide specifically for the audit to include private bodies managing Community funds or final beneficiaries. This "loophole" has been eliminated by the Treaty of Amsterdam, but at that time this provision of Regulation 88/4253/EEC was

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[42] As mentioned in Chapter 1, the Member States had to guarantee the successful completion of the operations financed unless the operations in question were fully financed by the ESF.

[43] For instance, Art. 7(1) of Regulation 88/2052/EEC as amended by Regulation 93/2081/EEC is to be interpreted as meaning that Community structural funding of a works project is not conditional upon the recipients complying with the review procedures of Directive 89/665/EEC (OJ 1989, L 395/33) on the coordination of national legislation relating to the application of review procedures to the award of public supply or public work contracts, if they are not themselves contracting authorities within the meaning of Art. 1 of Directive 93/37/EEC (OJ 1993, L 199/54) on the coordination of procedures for the award of public works contracts. See C-44/96, *Mannesmann Anlagenbau Austria AG and Others v. Strohal Rotationsdruck GesmbH*, [1998] ECR I-73 at I-120, paras 47-49.

invaluable. The Member States had to inform the Commission about the management systems used in order to have an efficient implementation of the structural operations. Initially the Member States had to make available to the Commission all national control reports only when they submitted requests for payment. In 1993 this obligation became more permanent: the Member States must make available to the Commission all national control reports on structural operations. This amendment was particularly positive. It was more effective from a financial control point of view, for the Commission to be aware, at any time, of the status of structural operations in the Member States, which status was reflected in the national control reports.

The second paragraph of Art. 23 of Regulation 88/4253/EEC granted the Commission authority to perform on-the-spot checks regarding operations financed by the Structural Funds. These checks were additional to the controlling proceedings established under Articles 248, 276, 279 EC Treaty. Before carrying out such a check, the Commission had to notify the Member State concerned in order to obtain all assistance necessary. If the Commission did not notify the Member State, an agreement had to be reached between the Commission and the Member State, in accordance with the provisions of the Financial Regulation, and based always on the partnership principle. Spot checks without prior notice from the Commission did not violate the partnership principle. They involved the element of surprise, which seems, *prima facie*, to be contrary to the partnership principle. Surprise, however, is a crucial characteristic of financial control, especially with regard to effectiveness. So the partnership principle, in that case, had to be interpreted so as to be compatible with unnotified spot checks. National officials were entitled to participate in such checks. The method usually used was sampling. The Commission could ask the Member States to verify the regularity of payment requests. The checks performed for this purpose could be performed jointly by the Member States and the Commission. The Commission had to ensure that all checks were coordinated in order to avoid repetitions and to establish an information exchange network between the itself and the Member States. All the supporting documents of the controls had to be kept available for the Commission for three years after the last payment of the operation concerned.

If the control revealed that the operation did not justify part or the whole of the assistance provided by the Structural Funds, then according to Art. 24, the Commission could ask the Member State concerned to submit its comments on this issue, following

which submission the Commission was entitled to reduce or suspend assistance for an operation, if there was evidence of irregularities or changes to the nature of the operation which it had not approved. Recovery action was to be taken in cased of sums paid unduly.

4.2.2.3. Criticisms and further developments

The main criticism[44] regarding both the original and amended (after 1993) versions of Articles 23 and 24 of Regulation 88/4253/EEC, was their failure to provide a systematic procedure for clearing accounts or for making financial corrections, two situations very important in cases of reduction, suspension and cancellation of structural assistance. There has therefore been an inconsistent practice for dealing with irregularities in the Member States. Irregular operations were simply being replaced by others without any increase of management security. The Member States' management and control system was only examined when the public becomes aware of serious defects. This confused situation was caused by the lack of political will (especially in the Member States) to implement Articles 23 and 24, and by the fact that these provisions were already complex enough.

The Commission considered that the obligations imposed on the Member States by Art. 23 were sufficient, since failure to comply with these obligations would entail the exclusion of the measure in question from Community funding. Therefore, there was no need to introduce a procedure on financial corrections through new legislation. The existing provisions could be simply supplemented by a Commission Regulation and some internal guidelines including specific dispositions on financial corrections. The model used by the Commission is used for the financial corrections regarding operations financed by the European Agricultural Guidance and Guarantee Fund-Guarantee Section.[45]

The European Parliament, however, was of the opinion that additional provisions had to be included in the Financial Regulation as well as the Regulations on the Structural Funds. For the transitional period until the enactment of the new Regulations

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[44] European Parliament, Committee on Budgetary Control, Report on the Commission document on financial control of Structural Fund operations – net financial corrections, (Rapporteur J. Colom I Naval) A4-0230/97, PE 222.175/fin, p. 7.

[45] Ibid, p. 8. For a detailed description of the financial correction's system regarding EAGGF-Guarantee Section, see Regulation 729/70, OJ 1970, L 94/13 and Regulation 1287/95, OJ 1995, L 125/1.

on the Structural Funds, the Parliament accepted the Commission's proposal to introduce a Commission Regulation specifying the Member States' obligations regarding control, corrective action, recovery and information given to the Commission, under Art. 23 of Regulation 88/4253/EEC. This led to the adoption of Commission Regulation 97/2064/EC.[46] In addition, the Parliament endorsed the idea of the Commission adopting internal directives on the application of the corrections provided for in Art. 24 of Regulation 88/4253/EEC.[47]

Commission Regulation 97/2064/EC established detailed arrangements for the financial control by the Member States of operations co-financed by the Structural Funds. The relevant controlling systems had to ensure the proper implementation of the financed operations, making sure that the financial management was sound, all claims for payment were valid, and that a sufficient audit trail[48] and corrective measures eliminating possible weaknesses and irregularites were provided. The responsibilities of the controlling officers had to be clearly specified. The controls focused on samples of expenditure selected according to the need to control an appropriate mix of types and sizes of plans or actions, the risk factors identified by national or Community controls and the concentration of projects under certain implementing authorities or final beneficiaries. The legality and regularity of transactions was verified by examining, *inter alia*: the correspondence of a sample of accounting records with the Community requirements described in the approving decision and the supporting documents at all levels, the consistence of the use of the project with the use described in the application for financing, the retaining of the Community's contributions within the limits set by the Regulations of the Structural Funds, and the actual payment of the appropriate national contributions. All persons involved in the implementation of structural operations, co-financed by the Community and the Member States, must present all documents and records required by the controlling authorities. All information collected in the course of control is protected by professional secrecy, but Community officials have access to these documents in order to continue the controls. The Commission and Member States must cooperate (partnership principle) in order to improve the controlling techniques. In

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[46] OJ 1997, L 290/1

[47] European Parliament, Committee on Budgetary Control, op. cit., p. 9-10.

[48] According to Art.2 (2) of Commission Regulation 97/2064/EC such a trail included the reconciliation of the summary accounts certified to the Commission with the individual expenditure records and supporting documents at all levels including the final beneficiary as well as verification of the allocation and transfers of the available Community and national funds.

case of reported irregularities the Member States must oblige the final beneficiaries or the implementing authorities to present evidence (accounting records, supporting documents, etc) that the apparent irregularity does not exist or has been corrected. The Member States must also present a statement to the Commission, summarising the conclusions of the financial controls and verifying the legality and regularity of the operations, which statement must include any control weaknesses or irregularities identified.

Commission Regulation 97/2064/EC focuses on the control of legality and regularity of transactions. Its provisions aim to establish the correspondence of the expenditure incurred with the requirements set in the legislative texts (regulations, approving decisions etc) providing for such expenditure. However, the effectiveness of financial management cannot be verified on the basis of legislative provisions concerning to the procedure for payments, ignoring the goals set. This is a most notable disadvantage of this Commission Regulation which has not been amended so far.

4.2.3. The new Structural Funds Regulations

Regulation 99/1260/EC contains detailed provisions about the financial control of structural operations. Their aim is to improve control of the management of the resources given to the Member States by the Structural Funds. In the Commission's point of view, prime responsibility for that area lies with the Member States, as a prerequisite for guaranteeing the efficiency and correctness of financial management and for preventing, detecting and correcting irregularities.[49]

Putting this into practice, in Art. 34 of Regulation 99/1260/EC, responsibility for the correctness and efficiency of the operations' management and implementation is granted to the managing authority. This, according to Art. 9, is any public or private authority or body at national, regional or local level, which manages structural assistance. The authority has several tasks:

- to set up a system to gather reliable financial and statistical information,
- to adjust the programme complement when necessary without changing the total amount of the Funds' contribution,

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[49] European Commission, Reform of the Structural Funds, COM(1998)131 final, p. 28.

- to prepare and submit the annual implementation report, thus providing the Commission with the clearest possible image of the implementation of the operations (see Art. 37),
- to organize the mid-term evaluation,
- to ensure that the implementing bodies have an adequate accounting system, the operations are implemented correctly (this is realized through the performance of financial controls) and the Community policies and the provisions about the operations' publicity are complied with.

The same pattern of allocating responsibilities has also been selected for the activities of financial control. According to Art. 38, the Member States should take measures to verify the establishment and implementation of the necessary management and control arrangements, to present these arrangements to the Commission, to verify adherence to the applicable Community rules, to certify accuracy of the declarations of expenditure presented to the Commission, to prevent, detect and correct irregularities, to cooperate with the Commission in order to ensure the soundness of the financial management of the structural assistance, and to recover any amounts wrongfully paid. The Commission's task is simply to ensure that the Member States have fulfilled their obligations under Regulation 99/1260/EC. However there is a provision granting the Commission authority to perform on-the-spot checks, in cooperation with the Member States. Cooperation and coordination are key concepts under the new Regulations. The Commission and Member States must reach bilateral administrative agreements of cooperation, and should coordinate their activities with regard to plans, methods and implementation of checks in order to maximize their usefulness (Art. 38(3)). At least once a year, the results of the checks, the comments put forward by national or Community control bodies, and the financial impact of the irregularities detected, will be examined and evaluated. Special attention must be paid to the tackling of irregularities.

The Commission, based on the evaluation of the management proceedings and results of the financial controls, may offer comments or conclusions regarding the management of the structural assistance. These may be accompanied by requests for corrective action. The Member States may alo put forward comments. Articles 34(2), 38(4), 38(5) and 39 grant the Commission the authority to suspend part or the whole of Community assistance, if it considers that the Member States did not take the appropriate action to remedy the management shortcomings or irregularities detected.

Art. 31(2) is of particular interest to Greece. Any budget commitment which has not been absorbed by the beneficiary Member State by the end of the second year following the year of its approval, will automatically be decommitted. Given the practice of the Greek governments so far, not to absorb large amounts during the first two years and to transfer the relevant commitments to the following years, this new provision will oblige the Greek authorities to improve the rhythm of absorbing Community resources. The solution of absorbing these resources and simply keeping them in the relevant bank accounts (discussed further in Chapter 5) is not viable. Greece's performance in managing Community resources will be judged according to the resources paid to it by the Structural Funds. If the monitoring and controlling proceedings reveal that most of these amounts remain in bank accounts, the Commission will most probably ask the Greek government to return them for redistribution to other Member States. Therefore, it is essential that the Greek authorities should be prepared not only to absorb these resources but also to use them by financing the relevant programmes. This presupposes flexible and effective administrative and managing structures as well as coordination between the programming and implementing authorities and bodies (public or private) within the Greek Community Support Framework.

In general, the provisions of the 1999 Regulations are much more detailed than the equivalent provisions of the 1988/1993 Regulations They include a detailed account of the financial control proceedings and a specific provision (Art. 39 of Regulation 99/1260/EC) dedicated to the issue of financial corrections. The Member States are entrusted with the task of investigating irregularities and making financial corrections, while the Commission will verify the relevant calculations. Furthermore a draft Commission Regulation lays down detailed rules for the procedure of financial corrections according to Art.39 of Regulation 99/1260/EC.[50] When enacted, this will regulate this issue for the programming period 2000-2006.

Initially, the Commission intended the 1999 Regulations to be combined with the provisions of Commission Regulation 97/2064/EC.[51] However, for reasons of clarity, since Commission Regulation 97/2064/EC referred to the 1988/1993 Regulations and not the 1999 Regulations, it was decided to replace it altogether. A draft of the

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[50] European Commission, Doc. 1135finalEN, 12.7.2000.
[51] European Commission, Reform ..., op. cit., p. 28.

replacement Commission Regulation has already been presented.[52] This document builds on the experience acquired by the implementation of Commission Regulation 97/2064/EC. It repeats the main points of the latter (see above) but adds technical details (falling beyond the scope of this thesis) concerning the accounting forms through which the structural expenditure will be reported and monitored. It also enhances the Commission's monitoring capacity by obliging the Member States to present detailed descriptions of the financial management and control systems they establish. The certification of expenditure must include proof that the expenditure has actually been incurred in operations eligible for funding under the particular structural assistance scheme and that the measures in question involve state aid already approved by the Commission. Emphasis is given to the establishment of an internal audit service within the managing and paying authorities that will examine the transactions as well as the financial control system itself.

The new provisions about financial control are impressive. However this does not guarantee their effectiveness. Usually the main problem in this situation is not to be found in the legislative framework (after all the relevant Community legislation is more than adequate). The problem is the implementation of these rules. The experience so far has proved that national authorities are reluctant to cooperate fully with the Commission. The classic example of this reluctance is the area of financial corrections. While the Member States declare that they support the initiatives of the Community institutions in order to improve the financial management of the structural resources, they do not hesitate to seek redress before the ECJ in the event of financial corrections being applied according to the improved framework of financial management and control.[53]

In Greece, the cooperation between national and Community authorities is especially problematic because of a spirit of mutual distrust, often found when Community officials come to Greece to audit the management of resources given by the Union. The Community officials consider that Greece has a completely inadequate auditing system with regard to the Structural Funds. Recently even the Greek member of the European Court of Audit, Kalliopi Nikolaou, stated in an interview that Greece has a

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[52] European Commission, Draft Commission Regulation laying down detailed rules for the application of Regulation 99/1260/EC regarding the management and control systems for assistance granted under the Structural Funds and regarding the form and content of the accounting information that the Member States must hold at the disposal of the Commission for the purposes of checking Structural Fund accounts, Brussels, 12.7.2000.

[53] European Parliament, Committee on Budgetary Control, op. cit., p. 9.

serious problem of quality regarding its auditing mechanisms, which must be resolved in order to reduce the returns of money to the Union.[54] The Greek officials, although they realize the weaknesses of the system used in Greece, do not want to expose them, while they sometimes have the impression that the Community officials' opinion is based on prejudice. The result of this situation is that especially during on-the-spot checks by the Commission or the ECA, the Greek authorities frequently do not participate in these checks but simply observe the procedures. The only way forward is a change of attitude from both sides. Mutual trust and cooperation are not practical requirements for increasing the effectiveness of auditing procedures. They are also legal obligations for both sides, deriving from Art. 248(3) EC Treaty and the Regulation on the Structural Funds. The Greek and Community authorities must focus on their objective, which is to establish whether the Community resources are spent correctly. All differences must be put aside otherwise no system of control, regardless of its objectively established adequacy, will be able to produce the required results.

However, once again it is too early to attempt a substantive evaluation of the new system, especially since its implementation has just started. The aforementioned remarks are mainly estimations and are based on the experience of the implementation of the previous systems.

4.3. Dispositions about the fight against fraud in the European Union

4.3.1. The problem, its nature and its impact

"The huge sums which are being lost due to fraud and irregularity against the Community are losses borne by all the taxpayers and traders of Europe. This strikes at the roots of democratic societies, based as they are on the rule of law and its enforcement, and it is a public scandal".[55]

The problem of fraud in the European Union is multidimensional. It involves the misallocation of Community resources, the damage caused to the Union's image with regard to European public opinion, the need for cooperation among the Member States in order to eliminate any fraudulent activities, and the incentive for an organisational

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[54] See interview of Kalliopi Nikolaou, Member of the European Court of Auditors, in EE, issue 11, 1999, pp. 20-22.

[55] House of Lords, Select Committee on the European Communities, Fraud against the European Communities, Session 1988-1989, 5th Report, HL paper 27, para. 205.

restructuring of the Communities.[56] If the resources absorbed by the tackling of fraud are added to these,[57] a good picture of the fraud within the Communities may be obtained.

The overall figure for fraud (revenue and expenditure) in 1998 was 1.02 billion ECU.[58] In 1996 it was 1.3 billion ECU, while in 1995 it was 1.1 billion ECU.[59] The cases of fraud against the Structural Funds involved the following amounts (annual breakdown):[60]

Year	Number of cases	Amounts in mil ECU	% of the budget regarding Structural actions
1995	272	85	0.44%
1996	387	140	0.57%
1997	369	117	0.45%
1998	448	50	0.17%

More than 50% of the cases reported in 1996 affected the ESF. In 1997 this figure dropped to 40% but in 1998 it increased again to 50%.[61] From 1994-1996, for instance, 309 cases of irregularities regarding ESF funding were reported with a financial impact of 34,498,717 ECU from which only 4,323,869 ECU were recovered.[62]

With regard to Greece, 53 cases of fraud and irregularities in structural operations were reported in 1997 involving 3,807,000 ECU.[63] In 1998 the number of cases dropped to only 17, however the amount involved remained surprisingly high at

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[56] M. Mendrinou, European Community Fraud and the politics of institutional development, EJPR, Vol. 26, 1994, p. 81-101 at 87-96.

[57] For instance in the 1996 budget, the appropriations for carrying out anti-fraud measures totalled 86,62 million ECU. See European Court of Auditors, Paper submitted to the 16th Conference of the International Organization of Supreme Audit Institutions, organized in Uruguay in 1998, on The Role of Supreme Audit Institutions in preventing and detecting fraud and corruption in Minutes of the Conference, Vol. 1 titled The role and experiences of Supreme Audit Institutions in Preventing and Detecting Fraud and Corruption, p. 367-383, at 372.

[58] European Commission, Protecting the Communities' Financial Interests and the Fight against Fraud, Annual Report 1998, COM 1999(590) final, p. 11-12.

[59] European Commission, Protection of Community Financial Interests-Fight against fraud, Annual Report 1996, available on line at www.europa.eu.int/comm/sg/uclaf/ar1996.htm on 10.06.1998.

[60] European Commission, Protection of Community Financial Interests-Fight against fraud, Annual Report 1997, COM (98) 276 final, p. 60, European Commission, Protecting the Communities' Financial Interests and the Fight against Fraud, Annual Report 1998, op. cit., p. 64-65.

[61] European Commission, Protection of Community Financial Interests-Fight against fraud, Annual Report 1997, op. cit., p. 12, European Commission, Protecting the Communities' Financial Interests and the Fight against Fraud, Annual Report 1998, op. cit., p. 13 and 15.

[62] European Court of Auditors, Annual Report for the financial year 1996, OJ 1997, C 348/185.

3,080,826 ECU.[64] 48 of the 1997 cases concerned the ESF, involving 2,387,000 ECU.[65] 11 of the 1998 cases concerned the ESF involving 307,417 ECU.[66]

These figures correspond only to cases of fraud detected by the competent authorities of the Commission and the Member States. The real amounts involved in cases of fraud might never be discovered.

In an attempt to locate the roots of the problem of fraud, it has been noted that it has a structural dimension: a complex system of collecting and paying out Community money, through national agencies that are not interested in the efficient and fair operation of the system itself, is very vulnerable to fraud.[67] The present stage of integration however does not permit another system to be adopted and implemented.[68]

Usually, fraud against the Structural Funds involves,[69] *inter alia*

- ineligilibity of expenditure
- over-invoicing of prices
- forgery (false invoices, false expenditure statements, false signatures)
- expenditure split into sub-components to escape the thresholds for tendering procedures
- favouritism
- conflicts of interest
- services not performed
- corruption
- transmition of sensitive and protected information akin to insider dealing.

The main cause of this situation are the faults existing in the implementation of the procedures regarding funding from the ESF. In the ECA's opinion, the frequent

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[63] European Commission, Protection of Community Financial Interests-Fight against fraud, Annual Report 1997, op. cit., p. 58.
[64] European Commission, Protecting the Communities' Financial Interests and the Fight against Fraud, Annual Report 1998, op. cit., p. 59.
[65] European Commission, Protection of Community Financial Interests-Fight against fraud, Annual Report 1997, op. cit., p. 58.
[66] European Commission, Protecting the Communities' Financial Interests and the Fight against Fraud, Annual Report 1998, op. cit., p. 58.
[67] A. Sherlock, Chr. Harding, Controlling Fraud within the European Community, (1991) 16 E.L.Rev., p. 20-36 at 25.
[68] Ibid, p. 25. The complexity of the current system is indicated by the fact that sometimes it is impossible even to distinguish between fraud relating to Community revenue and fraud relating to Community expenditure. For more details see A. Brown, Organized crime and the EC Budget in 1997, New Law Journal, Vol. 148(6849), p. 1046-1047.
[69] European Commission, First Report of the European Anti-Fraud Office on operational activities 1999-2000, Brussels, 23.5.2000, p. 28.

over-declaration of ESF amounts by the final beneficiaries is symptomatic of a system where the eligibility of programmes to be funded was not always clearly set out and applied.[70] Thus the claimant gives himself the "benefit of the doubt", and relies on the national administrations to accept or question the amounts declared.[71] The ECA has highlighted some weaknesses encountered in the checking and audit procedures in the Member States:[72] a) there were no agreed and generally available eligibility and audit guidelines, b) the follow up of audit results was not efficiently clear and prompt to support corrections and recovery of wrongly paid sums, c) weak coordination between the various national inspection services could lead to undetected double financing, d) an absence of a control programme based on risk analysis, e) a lack of reviewing at management level errors detected during desk checks.

4.3.2. The solutions adopted

Two types of measures protect the financial interests of the European Union: preventive and suppressive. The former, naturally, aim to prevent any action harmful to the financial interests of the Union. Such are the systems of financial control described above (Directorate General of Financial Control, European Court of Auditors, etc). The suppressive measures aim to punish any harmful acts. It is true that suppressive measures, especially criminal proceedings, also have a preventive effect. However the distinction between preventive and suppressive measures is based on the criterion of the time of activation[73] of the measure in question: preventive measures are activated before any action harmful to the financial interests of the Union has occurred, while suppressive measures are activated after such action.

A preventive measure which has not already been examined is the European Anti-Fraud Office (OLAF), which replaced the Coordinating Unit for the Fight against Fraud (UCLAF). UCLAF had focused on three aims: prevention of fraud, cooperation with other institutions and Member States, and suppression of fraud.[74] Its operational role was to investigate complex and very serious cases of fraud, especially of international scale,

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[70] Ibid, p. 185.
[71] Ibid, p. 185.
[72] Ibid, p. 186.
[73] The activation of a measure must be distinguished from its enactment. The activation refers to the use of the measure while the enactment refers to its establishment.
[74] D. Strasser, The Finances...., op. cit., p. 251.

in collaboration with the appropriate national authorities.[75] However, after a condemning report from the ECA[76] and all the other developments which obliged the Commission to resign in March 1999, UCLAF was replaced. The legislative framework of OLAF consists of Commission Decision 99/352/EC,[77] Regulation 99/1073/EC,[78] and an Interinstitutional Agreement of 25 May 1999 between the Parliament, the Council and the Commission concerning internal investigations by OLAF.[79] OLAF is operationally independent from all institutions although it lacks legal personality. Its objectives are to fight fraud, corruption and any other illegal activity affecting the financial interests of the Communities, and to investigate matters relating to the discharge of professional duties and obligations on the part of Community officials. It also assists the Member States and cooperates with the competent national authorities, simultaneously developing methods to combat fraud. There are two kinds of investigations performed by OLAF: internal (within the Community institutions and other Community bodies[80]) and external (within the Member States). OLAF may carry out or participate in on-the-spot audit checks according to Regulations 95/2988/EC and 96/2185/EC. It has access to all information necessary for its tasks. It must prepare a report after every investigation, presenting its findings. Its Director must report regularly to the Council and the Parliament. The Office has a Supervisory Committee, composed of five independent fraud experts, which submits its opinion to the Director of OLAF and makes annual reports to the institutions.

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[75] European Commission, The Budget of the European Union: How is your money spent, Europe on the move Series, Office for Official Publications of the European Communities, 1996, p. 10-11.

[76] European Court of Auditors, Special Report no 8/1998 on the Commission's services involved in the fight against fraud, notably UCLAF, OJ 1998, C 230/1. In this Report the ECA was particularly critical, focusing on the following: shortcomings in internal organisation and in relationships and cooperation between UCLAF and the Member States; the fact that the Commission databases were not fully operational or effective; lack of management information and the absence within UCLAF of standard rules for the opening, conduct and conclusion of proceedings; poor discipline in the handling of documents on files; incomplete and misleading statistical information in UCLAF's annual reports; the staffing arrangements of UCLAF; failure of the Commission to adopt a "zero-tolerance" policy to fraud within itself; and the Commission's denial of full access to documents to UCLAF.

[77] OJ 1999, L 136/20.

[78] OJ 1999, L 136/1.

[79] OJ 1999, L 136/15.

[80] The Community institutions must adopt a decision establishing a duty for all officials and staff to cooperate with OLAF (Art. 4 of Regulation 99/1073/EC). The Council and the Commission have already complied. See Decision 99/394/EC concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Communities' interests, OJ 1999, L 149/36, and Commission Decision concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corrpution and any illegal activity detrimental to the Communities' interests, OJ 1999, L 149/57.

The provisions concerning OLAF have been examined by the ECA,[81] which noted that the new Regulations do not clarify which amendments are necessary in order to made compatible the Staff Regulations with the new provisions. It was also very critical of the Supervisory Committee and suggested its abolition. It also noted that OLAF is both operationally independent and part of the Commission, which complicates its status. It has been suggested, however, that a completely independent new anti-fraud office would require amendments currently beyond the scope of the Treaties, especially with regard to the provisions regarding the third pillar of the Union.[82] A solution to this problem, that would guarantee OLAF's indipendence, would be to establish OLAF as an independent directorate, affiliated to the ECA, which is a truly independent institution.

Five years ago,[83] in an attempt to establish an effective suppressive mechanism to combat fraud and irregularities,[84] the Council took the following action: At first, it drew up the "Convention on the Protection of European Communities' financial interests" (PFI Convention).[85] According to Art. 1 of the PFI Convention

> *"Fraud affecting the European Communities financial interests shall consist of:*
> a) *in respect of expenditure, any international act or omission relating to:*
> *-the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of*

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[81] European Court of Auditors, Opinion 2/1999 on the amended proposal for a Council Regulation concerning investigations conducted by the Fraud Office, OJ 1999, C 154/1.

[82] See the remarks of Mr P. Dankert, MEP in European Parliament Doc. A4-0297/1998 – Bösch.

[83] Until 1995 there was no legislative definition of fraud or irregularities. The ECJ had had several opportunities to provide such a definition but it refrained from doing so. For instance in the case C-68/88, *Commission of the European Communities v. Greece* [1990] ECR 296, despite the fact that there was a falsification of documents by the Greek authorities in order to present the Yugoslavian maize as Greek and thus to avoid the payment of an agricultural levy for importing agricultural products from a country outside the Community, the ECJ declined to pronounce this obvious case of fraud as such and simply stated (para 13) that "It is not necessary for the Court to express any view concerning the circumstances in which the official documents were drawn up or the liability of the persons responsible for doing so." The only definition existing until 1995 was given by the ECA in its Annual Report for the Financial Year 1977 ([1978] O.J. C 313/8):"We should be very clear what it is meant by fraud. It has been defined as criminal deception, the use of false representations to gain an unjust advantage. In the Community context it is the deliberate misappropriation of money or goods, inevitably involving breaking the law or the relevant rules and instructions of the organisation concerned. It is necessary to distinguish fraud in this sense from actions designed to exploit loopholes in existing legislation. These...actions which remain within the law cannot be considered to be fraudulent."

[84] These two concepts are considered to be different because fraud involves a criminal aspect that does not exist in the case of irregularities. More practically it has been said that a fraud is an irregularity in which there is an element of intent which makes it a criminal offence. See European Commission, Protection of Community Financial Interests-Fight against fraud, Annual Report 1997, op. cit., p. 7 and European Commission, Protecting the Community Financial Interests-Fight against fraud, Annual Report 1998, op. cit., p. 6.

[85] Council Act of 26 July 1995, [1995] O.J. C 316/48-53. For a detailed analysis of this document see Council of the European Union, Explanatory Report on the Convention on the Protection of European Communities' financial interests, OJ 1997, C 191/1.

funds from the general budget of the European Communities or budgets managed by, or not behalf of the European Communities
-non disclosure of information in violation of a specific obligation, with the same effect
-the misapplication of such funds for purposes other than those for which they were originally granted;
b) *in respect of revenue, any international act or omission relating to:*
--the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the general budget of the European Communities or budgets managed by, or not behalf of the European Communities
-non disclosure of information in violation of a specific obligation, with the same effect
-misapplication of a legally obtained benefit, with the same effect".

Second, it adopted Regulation 2988/95[86] on the protection of the Communities' financial interests, according to Art. 1 (2) of which

"Irregularity shall mean any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure."

Both documents contain provisions obliging the Member States to establish administrative or (in the case of the PFI Convention) criminal proceedings against those involved in cases of fraud against the Union's financial interests. These proceedings include administrative checks on the legality and regularity of transactions by both national and Community officials, administrative penalties such as fines, removal of advantages granted by Community rules, exclusion from participation in Community schemes, etc. The PFI Convention requires the Member States to adopt legislation relating to the prosecution and the extradiction of persons involved in "euro-frauds" as well as the jurisdiction of their courts for such issues. The Member States are also to cooperate during the investigation, prosecution and the carrying out of the punishment imposed by providing mutual assistance in terms of extradiction, tranfer of proceedings or enforcement of sentences. Of course, the *ne bis in idem* rule must be adhered to. The assimilation, cooperation and harmonisation methods described in the PFI Convention, although intended to increase the efficacy of national criminal law systems, actually create a very complex system of criminal law protection against fraud and corruption at European level. Furthermore, the PFI Convention, being adopted under Art. 30 and 31

EU Treaty i.e. the Third Pillar of the Union (Cooperation in Justice and Home Affairs), must be ratified by all Member States in order to be enacted. Although it was tabled for ratification in July 1995, only 3 Member States (Germany, Finland, and Netherlands) have ratified it. The delay is obvious.

In an attempt to meet the need for a more effective system of criminal law protection against fraud, a new document was prepared and published in 1997, at the request of the European Parliament and the Commission's Directorate General for Financial Control. It is called "Corpus Juris introducing penal provisions for the purpose of the financial interests of the European Union". It is divided into two parts. The first contains substantive provisions about the punishable offences and the penalties (Articles 1-17) while the second contains provisions about the criminal procedure, investigation and trial structure (Articles 18-35). The Corpus Juris does not provide only for intergovernmental cooperation against fraud and corruption but also suggests the establishment a European system of criminal procedure involving a European Public Prosecutor, a whole prosecution procedure, special national courts to try these fraud and corruption cases, etc. The definition of fraud contained in this document is similar to that of the PFI Convention. It adds, however, a direct reference to the *mens rea* of the person involved (intention, recklessness, gross negligence) which was not included in previous definitions. Art. 10 of the Corpus Juris specifically stipulates that all offences included in this document require intention, except the Community fraud for which recklessness or gross negligence is sufficient. The Corpus Juris also contains definitions for other offences: corruption, market-rigging, abuse of office, misappropriation of funds, disclosure of secrets, money laundering and conspiracy. (Art. 2-8).

Art. 9 provides for penalties for the offences. There can be a custodial sentence (or equivalent supervision for legal persons) of up to 5 years, or a fine up to 1 million Euros, as well as exclusion from future subsidies and contracts for five years. Corpus Juris is more precise in that respect than the PFI Convention, which refers only to categories of penalties, not the actual penalties to be imposed.

Articles 11-16 concern individual criminal liability (definition of principal offender, co-offender, inciter, accomplice), the liability of organizations and their heads, the extent of penalties and the aggravating circumstances of the offences.

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[86] OJ 1995, L 312/1-4.

According to Art. 17, if the case in question is regulated by both national criminal law and the Corpus Juris, then priority will be given to the Corpus Juris. The legal purpose of this provision is to avoid double punishment for the same action (*ne bis in idem*). It has, however, interesting political implications as it enshrines the principle of supremacy of EU law over national law,[87] with regard to the Corpus Juris.

Articles 18-27 provide for the establishment of a European Public Prosecutor (EPP). The EPP is responsible for investigating, prosecuting, committing to trial, presenting the prosecution case, and overseeing the execution of sentences. The EPP has vast investigating powers including the questioning of suspects, the collection of documents, searches, seizures, telephone tapping, the hearing of witnesses, the right to place a person in temporary custody etc. It has delegations in the Member States. The national public prosecutors are obliged to assist the EPP, as required. If the EPP decides to prosecute, the accused is committed to trial before a court in the Member State where the offence took place. The court must consist of professional judges only, not magistrates or jurors. In case of conviction, according to the Corpus Juris, the rules applicable for the execution of the sentence are those of the Member State where the sentence will be carried out. Appeal is possible before a higher court, leading to a full retrial of the case, in law and in fact.

Art. 28 refers to the jurisdiction of the ECJ with regard to the Corpus Juris. This jurisdiction includes a) preliminary rulings on the interpretation of the Corpus Juris, b) disputes over the application of the Corpus Juris and c) conflicts of jurisdiction (territoriality issues). The jurisdiction of the ECJ over disputes regarding the implementation of the Corpus Juris is considered to make the EPP accountable to the ECJ, thus providing a safeguard.

Articles 30-34 refer to the admissibility of evidence. They exclude all evidence obtained illegally, and they provide for the publicity and secrecy of the procedures. Art. 35 states that if there is a *lacuna* in the Corpus Juris, then the law applicable is that of the Member State where the offence is prosecuted. This is very interesting as it practically reverses the principle of subsidiarity. Usually, according to Art. 5 EC Treaty, in areas which are not within the exclusive competence of the Community, action will be taken by the EC institutions only if the objectives in question cannot be achieved by the Member

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[87] For this principle see C-6/1964, *Costa Flaminio v. ENEL*, [1964] ECR 585, C-11/1970, *Internationale Handelsgesellschaft mbH v. EinFuhr- und Vorratsstelle für Getreide und Futtermittel*, [1970] ECR 1125.

States. In this case, however, although the protection of the EU's financial interests is a competence of both the Community and the Member States (Art. 280 of the EC Treaty), priority is given to EU legislative action and only in case of a *"lacuna"* may the national legislation be used.

In general it has been noted that the Corpus Juris has no formal status and it is simply a Green Paper, an incomplete text in need of additional definition and clarifications.[88] With regard to its legal basis, so far, three possible legal bases have been suggested: Art. 280 EC Treaty, Articles 29 and 31 EU Treaty, or an amendment of the Treaties.[89] The practical aspect of this differentiation is that if Art. 280 is accepted as the legal basis for the Corpus Juris, then no country will be able to veto it alone.[90] More specifically Art. 280 provides that the Council shall adopt measures necessary for the protection of the Union's financial interests but these should not concern the application of national criminal law. It is obvious that the Corpus Juris affects the application of national criminal law, therefore Art. 280 cannot be used. However the European Parliament has suggested that this clause of Art. 280

> "....covers only the law currently in force in the Member States, which cannot be repealed or amended by Community law; it does not however prevent the Community from introducing supplementary legislation..."

and that the Corpus Juris can be such supplementary legislation.[91] If that opinion is adopted then, according to Art. 280, the Co-Decision procedure (Art. 251 EC Treaty) will be used in order to enact Corpus Juris. In this procedure the voting rule in the Council is qualified majority vote. The Council only needs unanimity to overturn the Parliament. Given that the Parliament is in favour of the Corpus Juris,[92] it is unlikely that the Council will need the unanimity rule. Consequently, no single country can veto Corpus Juris, if it is based on Art. 280.

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[88] House of Lords, Select Committee on the European Communities, Prosecuting Fraud on the Communities' Finances-The Corpus Juris, Session 1998-1999, 9th Report, HL paper 62, p. 33 and 15.
[89] House of Lords, op. cit., p. 17 and 28.
[90] See T. Dick-Ericson, The Corpus Juris, Oxford 27.9.1998, available on line at http://www.keele.ac.uk/socs/ks40/torq1.htm on 7.3.2000 and T. Dick-Ericson, The Major Legal, Political and Practical Implications of Corpus Juris, Rome 15.12.1998, available on line at http://www.euroscep.dircon.co.uk/corpus4.htm on 29.04.99.
[91] European Parliament, Report on judicial cooperation in criminal matters, 11.2.1998, Doc EN\RR\346\346115, p. 23
[92] Doc A4-0091/99, 13 April 1999. See also European Parliament, Doc A4-0082/98, Resolution of 31.3.1998 on criminal relating to the protection of the Union's financial interests, OJ 1998, C 138/61.

A final but equally important remark concerns the compatibility of the Corpus Juris with the national and European frameworks regarding the protection of human rights. According to Art. 29 of the Corpus Juris, the accused enjoys the rights of Art. 6 of the European Convention of Human Rights (ECHR) and of Art. 10 of the United Nations Convenant on Civil and Political Rights. These include the right to know the charges against him, the right to choose a lawyer and be assisted by him, the right to have an interpreter if necessary, the right to remain silent. This latter right is a very interesting example of the problems that Art. 29 may cause. The European Court of Human Rights has upheld that under Art.6 ECHR, the accused has the right to remain silent.[93] The ECJ, which according to Art. 28 is the only court that can interpret originally the Corpus Juris, has ruled that the right to be silent and not provide self-incriminating evidence is not covered by Art. 6 ECHR.[94] This uncertainty about the law is strengthened by the fact that although the EU is not a signatory to the ECHR, one of its bodies, the EPP, will be subject to the ECHR, if the Corpus Juris is enacted. The European Union has not yet established an adequate mechanism to protect human rights. The method of general principles used by the ECJ[95] is surely not enough to protect the human rights of a person involved in criminal proceedings launched by a European prosecuting mechanism.[96] It is therefore essential, before establishing such prosecuting schemes, to ensure that human rights are effectively protected against actions of the various bodies of the European Union.[97] It is a mistake, in the name of the fight against fraud, to sacrifice all the procedural rights of those involved in the relevant proceedings. That would be untenable for a Union that claims to be attached to the principles of liberty, democracy and respect for human rights, as stated in the preamble to the EU Treaty.

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[93] *Funke v France* (A/256-A) (1993) 16 EHRR 297.

[94] C-374/87, *Orkem SA v Commission of the European Communities*, [1989] ECR 3283.

[95] The ECJ's attitude towards unwritten general principles of law and fundamental rights, initially negative (Joined Cases 36/59, 37/59, 38/59 & 40/59, *Geitling v High Authority*, [1960] ECR 423), changed in C-26/69, *Stauder v City of Ulm*, [1969] ECR 419, C-11/70, *Internationale Handelsgesellschaft mbH v. EinFuhr- und Vorratsstelle für Getreide und Futtermittel*, [1970] ECR 1125, C-36/75, *Rutili v Minister for the Interior* [1975] ECR 1219.

[96] The ECJ has not yet had the opportunity to deliver a judgement regarding the interpretation of Art. 6(2) EU Treaty concerning the Union's respect for human rights.

[97] The ECJ has held that the Communities cannot accede to the ECHR without amending the existing Treaties (see Opinion 2/94, [1996] ECR I-1763, at 1789, paras 35-36). A charter of fundamental rights for the European Union is being drawn up in accordance with the Presidency Conclusions of the European Council in Cologne (June 1999).

Another measure to combat fraud is the recovery of the sums lost due to fraud and irregularities during the implementation of structural policies. The relevant provisions are included in Regulation 94/1681/EC.[98] The Member States are required to communicate to the Commission all national provisions regarding the application of structural measures and a list of all authorities and bodies involved. The Regulation does not specify that the list must include both public and private bodies, but both categories should be included, in order to present the most accurate picture of the measures's implementation. The Commission must also be informed about any irregularities in measures financed by the Structural Funds, in case these irregularities are or have been the subject of initial administrative or judicial proceedings. This information must include the Structural Fund which financed the measure, the legislative provision which was infringed, the amount paid, a description of the irregularity, the time when the irregularity was committed, the identity of the persons (natural and legal) involved, the action taken (i.e. suspension of payments, recovery possibilities) etc. The Member States must report immediately on irregularities which have transnational repercussions and indicate the employment of a new malpractice. The Commission must be informed about the administrative and judicial procedures initiated in the Member States, the amounts which have been or are expected to be recovered, any interim measures adopted, and the reasons for abandoning recovery or criminal proceedings. There are regular contacts between the Commission and the Member States during which there is an exchange of information on the nature of irregularities and the recovery mechanisms throughout the Community. Where sums paid for co-financed projects are recovered, the recovered amounts are shared between the Commission and the Member State(s) that participated in the project, in proportion to their financial contribution. The Member States need not report irregularities with a financial impact of less than 4,000 ECU, unless the Commission expressly requests this.

Clearly, there is no uniform mechanism of recovering sums wrongly paid by the Structural Funds throughout the Community. This is a big disadvantage because the differences between the national recovery procedures of the Member States create a different rate or possibility of recovery for each State. The Commission is not always capable of monitoring all the recovery proceedings in the Member States and given the existing differences between these proceedings such a monitoring task is almost

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[98] OJ 1994, L 178/43.

impossible. A solution could be the establishment, at Community level, of a uniform system for recovering sums wrongly paid from all financing instruments of the European Union, including the Structural Funds.

Projects financed by the Structural Funds are generally included in multiannual programmes. This enables the rectification of the financial situation, at any event, at the time of the final payment of the programme, so the recovery situation can only be assessed after the programme is completed.[99] It is interesting to note the recovery situation regarding the projects financed throughout the Union from 1989-1993. From a total of 123 million ECU in wrongly paid sums, only 44 million ECU (about 36%) have been recovered.[100]

4.4. Reform of the system of financial control of the European Union

After the resignation of the Commission in March 1999 and the appointment of a new one under R. Prodi, one of the most important pledges of the new Commission was to reform and improve itself. Several documents have been prepared identifying the following areas for:[101]

- Radical reform of the way in which political priorities are set and resources are allocated. Through decision making mechanisms and appropriate timetables, this will ensure that activities undertaken by the Commission are supported by the necessary human, administrative and financial resources (activity based management and activity based budgeting). The thorough evaluation of action taken will be made part of daily management activities.
- Important changes to human resources policy, placing a premium on continuous training, quality of management, and improving recruitment and career development. These changes will also place an emphasis on improving the working environment and equal opportunities, as well as the evaluation of individuals and will enable disciplinary matters or cases of under-performance to be dealt with properly and reasonably.

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[99] European Commission, Protecting the Communities' Financial Interests and the Fight against Fraud, Annual Report 1998, op. cit., p. 18.
[100] Ibid, p. 18.
[101] European Commission, Consultative Document on Reforming the Commission, CG3(2000) 1/17, European Commission, Commission Reform-Strategic Options Paper, CG3(1999) 10/6, European Commission, Reforming the Commission-Action Plan, CG3(2000) 1/18.

- Far-reaching reforms of financial management, enabling each department to establish its own, internal audit system appropriate to its own needs. In doing so, departments will be able to draw on the advice of the Commission's specialist services. Reform is predicated upon a precise definition of the responsibilities of each actor and upon regular checks by the Internal Audit Service – a new service within the Commission - of the quality and reliability of each audit system.

The Commission presented its detailed reform proposals, after a long period of consultation, in March 2000.[102] This thesis will focus on the reform regarding the system of financial management and control. However, a remark must be made concerning the human resources of all services of the Commission. It is not only the quality of these resources that must be improved. Their quantity must be increased as well. A good example is the case of the staff employed in the mechanisms of financial control of the European Union. The Commission's Directorate General of Financial Control currently employs some 230 employees, a figure that has remained stable since 1995.[103] The ECA employs 500 staff, comprising 240 auditors, 55 translators, 140 administrators and 65 other staff.[104] The European Anti-Fraud Office (OLAF) employs 139 employees, 87 of which are involved in operations. For the Structural Funds OLAF had in April 1999 20 employees but in March 2000 these were reduced to 17, and only 10 are involved in operations.[105] These figures are disproportionate to the enormous task of auditing the transactions financed by Community resources. It is therefore necessary to increase the personnel involved in these audits. Within the framework of the reform, the Commission has decided to assess the human resources needs for financial management and control and to meet them by allocating to the relevant services a part of the 200 new posts that will be created for the implementation of the report.[106]

With regard to the system of financial management, control and audit, three main reforms have been identified as necessary:[107]

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[102] European Commission, Reforming the Commission-A White Paper, COM(2000)200 final. This document was divided into two parts, the first containing the analysis of the proposals and the second containing the relevant action plan including the timetable for the reform's implementation.
[103] European Commission, Role, Mission and Instruments of the Directorate General for Financial Control, available on line at http://www.europa.eu.int/comm/dgs/financialcontrol/mission/mission_en.htm on 3.4.2000.
[104] National Audit Office, State Audit in the European Union, London 1996, p. 222.
[105] European Commission, First Report of the European Anti-Fraud Office..., op. cit., pp. 23, 34.
[106] European Commission, Reforming the Commission-A White Paper, Part II-Action Plan, COM(2000)200 final, p. 67-68.
[107] European Commission, Reforming the Commission-A White Paper, Part I, COM(2000)200 final, p. 20.

- A radical overhaul of the system, including the creation of new organisational structures and the replacement of others, in order to make the best use of resources and expertise and take into account the different types of expenditure that for which Commission is responsible.
- The definition of the responsibilities of authorising officers and line managers for the quality, correctness and efficiency of their actions.
- The adoption of measures to protect the Community's financial interests by improving the relevant legislation and the cooperation between the Commission and the competent authorities of the Member States.

4.4.1. Responsibility and Accountability of Authorising Officers and Line Managers[108]

It has been noted that since the control system of the European Commission absolves practically everybody (except the Financial Controller of DG XX) from responsibility for good financial management, the policy makers and operators are not accountable for their spending.[109] The reservations of the ECA regarding the current scheme of internal control and the relevant allocation of responsibilities have been mentioned earlier in this Chapter. Also, one of the most significant conclusions reached by the Committee of Independent Experts, established in January 1999 to examine allegations of mismanagement against the Commission, was that it has become "difficult to find anyone who has even the slightest sense of responsibility" within the Commission.[110] In order to create a real sense of responsibility for sound financial management the Commission decided to implement several measures. First, it decided to define clearly the responsibilities of each financial actor (authorising officer, accounting officer, financial controller) by enacting a set of clear relevant rules which will be given to the persons concerned. Appropriate training will also be provided. If the actors concerned fail to meet the Commission's standards, their responsibilities will be withdrawn. Secondly, the Commission will confer power to authorise expenditure to

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[108] See European Commission, Reforming the Commission-A White Paper, Part I, COM(2000)200 final, p. 20-21 and European Commission, Reforming the Commission-A White Paper, Part II-Action Plan, COM(2000)200 final, p. 53-54.

[109] House of Lords, Select Committee on the European Communities, Financial Control and Fraud in the Community, Session 1993-1994, 12th Report, HL paper 75, para. 22.

[110] Committee of Independent Experts, First Report on Allegations regarding Fraud, Mismanagement and Nepotism in the European Commission, 15 March 1999, p. 144.

Community officials on the principle that the person taking the decision to proceed with an operation involving expenditure should also be the one authorising the expenditure. Only in exceptional cases will the College of Commissioners retain its power to authorise expenditure. These cases will be regulated by the Commission's internal rules on the execution of the budget. Thirdly, in cases of financial errors or irregularities not involving fraud, the Director-General of the department concerned will be able, before initiating disciplinary proceedings, to refer the case to an advisory panel, the Financial Irregularities Panel. This will consider whether there are systemic shortcomings and, if so, which is the responsibility of the persons involved in managing the control system. It is intended to be an intermediary step between the detection of an irregularity and the possible start of formal disciplinary proceedings. Finally the Commission will suggest the repeal of Art. 73 of the Financial Regulation which provides for the disciplinary and financial liability of authorising officers, if they violate the Financial Regulation. The Commission believes that this provision prevents authorising officers from undertaking any responsibility since they might be held liable during the exercise of that responsibility. The Commission considers its proposals regarding the amendment of the Staff Regulations on civil servants' liability for serious misconduct[111] to be more than sufficient to dead fairly and adequately with financial irregularities and fraud.

4.4.2. Overhauling Financial Management, Control and Audit[112]

In order to provide professional support and advice to officials dealing with budgetary and financial management, the Commission has decided to create a Central Financial Service within the Directorate-General responsible for the Budget. This Service will define financial rules, procedures and common minimum standards for internal controls in the various Directorates General. It will also advise the operational departments and all those who manage financial appropriation in the Commission. The

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[111] See European Commission, Reforming the Commission-A White Paper, Part II-Action Plan, COM(2000)200 final, p. 45-46. These proposals include the publication of handbook explaining official's rights and obligations, the enactment of internal rules for opening disciplinary proceedings, the establishment of a permanent Secretariat of the Disciplinary Board, the adoption of guidelines on sanctions based on their proportionality in relation to the gravity of the offence, the amendment of the conditions relating to suspension of officials during the disciplinary proceedings and the creation of an Attorney's office to prepare the Administration's case before the Disciplinary Board and to attend and participate to the proceedings before this Board.

[112] See European Commission, Reforming the Commission-A White Paper, Part I, COM(2000)200 final, p. 21-23 and European Commission, Reforming the Commission-A White Paper, Part II-Action Plan, COM(2000)200 final, p. 55-66.

Commission also aims to create a Contracts Unit to define standard contracts and provide expertise and advice on contract management and procurement procedures. This Unit will also manage a central database of all contracts and agreements concluded by the Commission including information on the object of the contract, the contractor, the beneficiaries and the implementation of the contract. Articles 56-64a of the Financial Regulation on conclusion of contracts by the Commission will also be revised.

With regard to financial control and audit, the Commission regards the current system analysed above as over-centralized, with no effect in comprehensively assessing the added value and correctness of financial operations. Its procedural complexity does not facilitate the efficient implementation of the budget. The overall solution proposed by the Commission is to devolve controls which are currently under the responsibility of the Commission's Financial Controller so that Directors-General will be made directly accountable for organizing adequate systems of internal control in their department and managers will be made wholly responsible for their financial decisions. Several actions must be taken before such a system is established.

The first measure proposed is the separation of the internal audit operation from the *ex ante* internal financial control and the creation of an Internal Audit Service. This was suggested by the Committee of Independent Experts.[113] As mentioned above, the competence of the Financial Controller to perform internal audits in addition to *ex ante* internal financial controls was established in 1998. The Commission had already proposed the amendment of Art. 24 of the Financial Regulation arguing that the current provision which obliges the Financial Controller to perform both audits and financial controls undermines both operations.[114] Since the internal audit will include an evaluation of the internal control system, this will lead to a conflict of interests as the officials performing the audit will be obliged to evaluate controlling operations which they have conducted themselves. Thus, there is a high possibility that the audit will be biased, and any defects in the internal control will not be reported. Consequently the internal audit must not be performed by the same body which performs the internal *ex ante* financial control. However, that does not mean that the internal audit operation will be abolished.

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[113] Committee of Independent Experts, First Report ..., op. cit., p. 143.

[114] European Commission, Proposal for a Council Regulation amending the Financial Regulation and separating the internal audit function for the *ex ante* financial control function, COM(2000) 341 final.

According to the recommendation of the Committee of Independent Experts,[115] which was adopted by the Commission, a new body, the Internal Audit Service, is to be established by the Commission's Vice-President responsible for Reform. The Service will be progressively established on the basis of internal audit experience in the Commission. The Head of this Service will be independent, reporting only to the Commission's Vice-President for Reform and the President and the College of Commissioners if necessary. The Internal Audit Service will assist the Commission to reduce control risks by monitoring compliance of the operations with the relevant rules, providing an independent opinion about the quality of management and control systems (internal audit *stricto sensu*) and making recommendations for improving the efficiency and effectiveness of operations. An Annual Audit Report will be presented on the activities of the Service and the relevant results. It is very important that these two measures (separation of internal audit from *ex ante* control and establishment of the Internal Audit Service) are activated simultaneously. Their contents are complementary to each other.

After the implementation of these two measures the Commission aims to continue its reform. An Audit Progress Committee will be established in order to monitor the control processes of the Commission through the results of the Internal Audit Service and the ECA, the implementation of audit recommendations and the quality of audit work. It will be purely advisory. The next stage entails the actual decentralization of the control operations within the Commission. Based on common minimum standards defined by the Central Financial Service, the Directorates-General will review their internal control systems and prepare a report to be sent to the Central Financial Service which will oversee the implementation of the standards. The existing Financial Units within the Directorates General will evolve in order to create and manage the Directorates' financial systems, to produce the Annual Activity Report of the Directorates and ensure that the accounting information supporting each transaction is complete. They may also undertake an *ex ante* approval role. However the actual *ex ante* control will be performed by the authorizing officers within the operational Directorates. Thus the basic principle of separating the authorizing officer from the financial controller will be abolished. The Commission has suggested the amendment of the relevant provision (Art. 21) of the Financial Regulation. The exact division of duties of the

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[115] Committee of Independent Experts, Second Report on the Reform of the Commission: Analysis of current practice and proposals for tackling mismanagement, irregularities and fraud, 10 September 1999, p. 130.

officials in the Directorates-General will be decided by the Directors on the basis of a cost-effective analysis of the use of human resources and expertise. As a transitional measure, officials now belonging to the Financial Controller will be delegated to the operational Directorates-General, who will carry out the *ex ante* control. These officials will be initially coordinated and assisted by a central unit within the Directorate General for Financial Control. After the Financial Regulation has been amended and the *ex ante* control is performed by the authorizing officers, the Directorate General for Financial Control will be cease to exist. The delegated officials will be redeployed according to the needs of the operational Directorates General. The current tasks of the Financial Controller will be distributed as follows: the *ex ante* control will be performed by the authorizing officers, the internal audit will be performed by the Internal Audit Service, the training and coordination of the relevant officials (especially in the Member States) will be undertaken by the Central Financial Service and the *ex post* verifications and system audits in the Member States will be performed by the operational Directorates General. With regard to the actual function of controls, this will include an assessment of every single financial transaction from any operational and financial point of view. The progress made by the Commission's services in the reform process will be reviewed by the Internal Audit Service and the College of Commissioners will be informed through the Audit Progress Committee. It is estimated that the whole reform will be completed by 2002.

4.4.3. Protecting the Communities' Financial Interests[116]

In order to create an effective mechanism to combat fraud, the Commission will prepare a manual containing guidelines for sound project management in order to prevent behaviour detrimental to the Communities' financial interests and to raise awareness on the part of the officials and beneficiaries involved in the management of the projects. Another aim will be to achieve better coordination between OLAF and other services such as the Internal Audit Service and the Directorate General responsible for the Budget. Agreements will be reached concerning efficient and timely exchange of information. Perhaps the most interesting novelty is that the Commission services will be

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[116] The information about the relevant proposals of the Commission was found in European Commission, Reforming the Commission-A White Paper, Part I, COM(2000)200 final, p. 23-24 and

required, when proposing new legislation with a potential impact on the Community budget, to submit draft proposals to OLAF for a risk assessment. OLAF will provide advice on fraud-proofing throughout the legislative process. The procedures regarding the recovery of sums wrongfully paid and the legal enforcement of recovery orders will be reviewed and a competent central organizational structure will be established within the Commission. The Member States will be required to provide information on the progress of the implementation of projects financed by the Structural Funds including information in financial corrections, additionality, project substitution etc. The Commission will perform thorough audits of this information and of the controlling procedures established in the Member States. Compensation mechanisms will be established in case the Member States fail to introduce sufficient controls or to provide adequate information.

4.4.4. Reflections on the Reform

The Commission's proposals are ambitious. The main idea of adding the *ex ante* financial control to the duties of the authorising officers demonstrates that the Commission is now rejecting the fundamental principle that the authorising officer and the Financial Controller must not be the same person. Although this new concept of unifying the duties of authorising officers and Financial Controllers seems dangerous, there is a safeguard to the proposed system. The Internal Audit Service will be able to oversee the operation of the new scheme, so the authorising officers will not be completely uncontrollable. This safeguard would have been even more promising if the Internal Audit Service were to be placed under the direct responsibility of the President of the Commission, not one of the Vice-Presidents. The new structure of the Commission's management and control mechanism can really be effective. The establishment of the new bodies and procedures create several levels of control and audit within the Commission. The operational Directorates, being more familiar with their operations, will be able to examine more effectively their financial aspects and report on possible irregularities. Nevertheless, it must be born in mind that the real evaluation of a management and control system is its actual operation. So far the progress of the reform

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European Commission, Reforming the Commission-A White Paper, Part II-Action Plan, COM(2000)200 final, p. 69-70.

has been deemed "satisfactory":[117] The review of the existing systems of internal control has been completed in most Directorates General, a Charter of Responsibilities along with a list of minimum standards for internal control will be adopted during 2000, while the Internal Audit Service has been partly established and commenced operational activities and the setting up of the Central Financial Service is underway with recruitment ongoing. However, only when the system is fully operational, can there be safe conclusions about its efficiency and effectiveness.

[117] European Commission, Progress Report on the Reform Actions as at 10 July 2000, Doc/00/16, 18.7.2000, p. 3.

Chapter Five: The National Legal Framework on controlling the financial management of ESF resources in Greece

The accession of Greece to the European Communities and the European Union had three principal objectives. Firstly, to consolidate the political and democratic institutions established in 1974-1975, after the dictatorship of 1967-1974; secondly to improve Greece's position in the international political and economic system; and finally to modernize Greece's economic, financial and social system.[1]

This latter objective was to be achieved through, *inter alia*, the modernization of the Greek Public Administration. Since Greece had adopted as ideal administrative models those established in Western Europe (chiefly France, United Kingdom, and Germany), this modernizing process was called "Europeanization". More specifically,[2] Europeanization is a developing process which re-orientates the direction and the content of internal policies to such a degree that the policy and the economic dynamic of the European Union becomes part of the organization logic of the national political system and of the procedures which form the policies. For Greece the European Communities and the European Union were models for the modernization of its political, economic and social system. Therefore the "Europeanization process" in Greece was not limited to the incorporation of Community legislation and policies in the national legislation and policies. It included the adoption of European models of organization, structure and the operation of society at political, economic and social levels.[3]

It is true that the modernization/Europeanization of the Greek state will contribute towards its effort to achieve convergence (economic, social, political, structural etc) with the other Member States.[4] The complete examination of the Europeanization of the Greek State falls beyond the scope of this thesis. The focus will be on the impact of this process on the Greek Public Administration, especially with reference to the management of ESF resources.

All national legislation on controlling the financial management of Community resources in Greece is included in the level of decentralised audit of the implementation

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[1] P. K. Ioakeimidis, European Union and Greek State: The consequences of the participation in the integrating process, Themelio Publications, 1998, p. 46.
[2] Ibid, p. 28 and the references therein.
[3] Ibid, p. 48.

of the Community budget. Decentralised management of Community Funds has been analysed in previous chapters. It is however noteworthy that decentralised management in general, as a consequence of decentralised policy-making for labour markets is considered to increase the accountability of the policy makers.[5] Since the governments of the Member States manage, for instance, ESF resources, they must monitor their use and protect them from fraud, and since these resources are incorporated in the national budgets, the governments have strong financial incentives to establish efficient and effective controlling schemes for them, to prevent any misuses.[6]

The Greek legislation concerning the control of the financial management of the ESF resources can be divided into two categories. The first comprises the general and common provisions about financial control of all kinds of resources, including Community funds. The second comprises of provisions adopted especially for the control of the financial management of resources given to Greece by the ESF.

It is important to briefly examine the current system of administration and financial management of Community resources given to Greece, before examining the national legislation concerning the financial control of this management. With regard to the administrative structure,[7] there is first of all the Central Monitoring Committee, located at the Ministry of National Economy, which is responsible for the coordination, the monitoring and the decision-making regarding the implementation of the Community Support Frameworks (CSFs) at national level. There are Monitoring Committees, located at the Managing Bodies (usually Ministries - see below), which are responsible for monitoring the control and the decision making regarding those aspects of the CSF which belong to their substantive competence (e.g. the Monitoring Committee at the Ministry of Labour is responsible for the aspects of CSF regarding employment). These Committees are assisted by Secretariats, which are responsible for the actual implementation of the Operational Programmes of the CSF. The Secretariats are supported by Management Advisors, who examine the economic and financial development of the operations as well as the implementing bodies, and submit proposals for the solution of problems detected in these areas. Finally, there are Evaluation

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[4] I. Iliopoulos, The modernization of the state is promoting convergence, Development-Bulletin of the Industrial and Commercial Chamber of Athens, July 1998, p. 37-40.
[5] N. Adnett, European Labour Markets: Analysis and Policy, Longman Publishing, 1996, p. 83.
[6] Ibid, p. 83.

Advisors who monitor and evaluate the implementation of the programmes of the CSF. The Central Monitoring Committee, the Monitoring Committees and the Evaluation Advisors cooperate with the Commission (implementation of the partnership principle) by providing information on all aspects of the implementation of the CSF.

With regard to financial management,[8] there is in Greece a Managing Body responsible for the resources of each Structural Fund. The Managing Body is responsible for selecting the body (or bodies) that is (or are) going to implement the programmes: the "Implementation Body (Bodies)". For the ESF the Managing Body is the Greek Ministry of Labour and Social Security, which must issue the necessary Ministerial Decisions in order to select, implement and control programmes financed by the ESF. The financing procedure is as follows: For each Structural Fund there are two temporary accounts at the Bank of Greece. One temporary account finances programmes included in the CSFs and the other finances programmes included in the Community Initiatives. The Managing Body certifies the identity of the beneficiaries, the start of the implementation of the programme (in case of advance payments) or the end of the implementation (in case of final payments). This certification is sent to the Commission and the relevant Directorate General orders the transfer of the necessary resources to the temporary accounts of the Structural Funds at the Bank of Greece. The Bank of Greece notifies the Greek Ministry of Finance about this transfer. The Ministry of Finance notifies the Managing Body about the transfer. The Managing Body, after verifying the order of transfer by comparing the information provided by the order with the information contained in its files, asks the Ministry of Finance to transfer the amounts to be paid from the temporary accounts to the accounts of the Implementation Body. Whenever the Implementation Body is the Greek State itself, or bodies governed by public law, the relevant amounts are transferred to special accounts held by the Greek State at the Bank of Greece. These resources are incorporated in the Greek national Budget: more specifically the Budget of Public Investments.

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[7] See V. Samothrakis, The effectiveness of the administration system of the programmes of the Community Support Framework: The case of the Regional Operation Programme of Western Greece, Dioikitiki Enimerwsi, issue 9, September 1997, p. 87-100 at 88.

[8] See further S. Ntouni, G. Maragkou, Structural Funds: Proceedings of selection, implementation and audit of the works co-financed by the European Union and the Greek State, Report, Fourth Division, Court of Audit, May 1997. See also Art. 32 of Regulation 99/1260/EC.

5.1. General Provisions about Financial Control

These provisions can be found in the Greek Constitution, the Public Accounting Code and other legislation providing in general for the financial control of the management of resources in Greece.

5.1.1. The Greek Constitution

The only relevant provision is Art. 98, referring to the Greek Court of Audit, the institution competent to control the financial management of the various resources by the Greek State.[9] According to the first paragraph of this Article

> *" The jurisdiction of the Court of Audit pertains mainly to:*
> *a) The audit of the State's expenditures, and of local government agencies or other public law legal persons subject to its audit by special laws.*
> *b) The presentation to Parliament of the financial report and balance sheet of the State.....*
> *d) The audit of the accounts of the accountable officials and of the local government agencies and public law legal persons specified in subparagraph (a)...."*

These provisions establish the framework for the financial control of all resources managed by the Greek State, including those provided by the ESF. The first subparagraph of Art. 98(1) is the legal basis for the *ex ante* financial control of public expenditure.[10] The fourth subparagraph of Art. 98(1) is the legal basis for the *ex post* financial control of public expenditure.[11] It has been correctly pointed out that according to the first subparagraph of Art. 98(1) the authorizing officers are controlled through the *ex ante* audit of the necessary documents by the Court of Audit while according to the fourth subparagraph of Art. 98(1) the accounting officers are controlled through the *ex*

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[9] A detailed analysis of the Greek Court of Audit will be made in Chapter 7.
[10] N. Themelis, The Court of Audit - 150 years since its establishment, National Press Office, Athens, 1983, p. 63-64, N. Themelis, The *ex ante* financial control and Art. 98 of the Constitution, To Syntagma, 1987, p. 248-268 at 250, A. Gerontas-A. Psaltis, Public Finance Law Vol. 1, A. N. Sakkoulas Publications, 1998, p. 175. The jurisprudence of the Greek Court of Audit has reached the same conclusion. See Minutes of the Plenary Session of the Greek Court of Audit of 30.05.1979 in I. Sarma, The constitutional jurisprudence of the Greek Court of Audit, A. N. Sakkoulas Publications, 1997, p. 43-61 at 44-45.
[11] N. Themelis, The Court of Audit...., op. cit., p. 63-64, A. Gerontas-A. Psaltis, op. cit., p. 180, Minutes of the Plenary Session of the Greek Court of Audit of 30.05.1979 in I. Sarma, op. cit., p. 44.

post audit of the accounts.[12] The fourth subparagraph of Art. 98(1) refers to *ex post* financial controls since it refers to audits of accounts, while the first subparagraph refers to *ex ante* financial controls because it does not limit the audits only to the examination of the accounts. There cannot be an *ex ante* control of the accounts since it is necessary first to have a transaction, which will create the accounts (and be described in them): control of the accounts is possible only after there are accounts to be controlled.[13]

The submission of the financial report by the Greek Court of Audit to the Greek Parliament, under the second subparagraph of Art. 98(1), is the last stage of the whole auditing procedure. The importance of this report is similar to that of the Annual Report submitted by the ECA to the European Parliament. The consequences, however, of this procedure are completely different. As has been analysed above, the European Parliament, based on the ECA's Annual Report, grants a discharge to the Commission with regard to the implementation of the Community budget. The Greek Parliament does not have a similar competence. Under Art. 79(7) of the Greek Constitution, the Greek Parliament examines and ratifies the financial statement and the general balance sheet of the State submitted by the Ministry of Finance. The Greek Court of Audit submits to the Greek Parliament a financial report commenting on the financial statement and the balance sheet. This procedure could provide the Greek Parliament with the opportunity to control *ex post* and substantively the financial management of the Greek Government regarding all expenses, including those given by the ESF. So far, however, this procedure has been regarded as a mere formality.[14] Instead of using it to apply political pressure, the Greek Parliament invariably ratifies the reports submitted by the Ministry of Finance and the Court of Audit, practically without any debate, thus losing an opportunity for a substantive scrutiny of governmental policies. The ratification procedure of the financial statement and the general balance sheet is incorporated in the ratification procedure of the budget.[15] So, given the interest shown by all the political parties and the members of the Greek Parliament in the issues of the budget, it is not surprising that the financial statement and the general balance sheet are ratified rather carelessly, without any real evaluation of their substance.

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[12] K. Sarantopoulos, Judicial Review of managing public resources Vol IA, National Press Office, Athens, 1978, p. 2.

[13] Minutes of the Plenary Session of the Greek Court of Audit of 30.05.1979 in I. Sarma, op. cit., p. 44-45.

[14] A. Gerontas-A. Psaltis, op. cit., p. 270, D. Korsos, Public Finance Law Vol. A, A. N. Sakkoulas Publications, 1980, p. 169-170.

The comparison of this procedure with the corresponding procedure regarding the financial control exercised by the European Parliament (Art. 276 EC Treaty) demonstrates the weakness of the parliamentary control of financial management in Greece. Typically, the procedure before the Greek Parliament aims simply to legitimize the financial management and the implementation of the budget. The Greek Parliament has created a Parliamentary Committee of Financial Affairs, which cannot however actually investigate the substance of the documents regarding the financial management because of their volume and the timing of their submission. In practice, these documents are submitted a few days before the plenary session of the Parliament regarding the approval of the budget, the financial statement and the general balance sheet. Consequently, the members of this Committee (and of the whole Parliament) cannot examine the documents in depth and the approval is based on a very superficial (sometimes non-existent) examination.[16] During the last twenty five years there has not been any motion of censure against any Greek government, based on findings regarding the financial management and the implementation of the budget.

5.1.2. Dispositions of the Public Accounting Code

The Public Accounting Code[17] regulates all the procedures concerning the financial management of the Greek budget by the Greek Government. The revenue of the Greek budget is divided in many categories. One of the most important includes all the resources given to Greece by the European Union.[18] These resources are incorporated in the Greek budget, and responsibility for their management lies with the Greek Government, according to the Public Accounting Code.

The Public Accounting Code has specific dispositions concerning these resources (Articles 96-105). According to these provisions, all such are revenue of the Greek Budget and are regulated by the general provisions regarding this Budget (Art. 97). All transactions and the relevant accounting books are regulated by ministerial decisions of the Ministry of Finance, according to the provisions of Community Law and the general

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[15] See Articles 122-123 of the Standing Orders (Rules of Procedure) of the Greek Parliament.
[16] For more details on the comparison between the competences of Greek Parliament and those of its European counterpart on financial control, especially with regard to the political implications see the interview of the former MEP P. Sarlis in Kathimerini, 17.5.1998, p. 66.
[17] Law 2362/1995, Journal of the Government of the Hellenic Republic 1995, No A 247, p. 6637.

provisions of Public Accounting Law (Articles 99-100). The Ministry of Finance is responsible for monitoring and controlling the financial management, especially the expenditure resulting from programmes, activities and initiatives financed by Community resources (Articles 96,101).[19] The dispositions regulating these monitoring and controlling proceedings are the general provisions of the Public Accounting Code on financial control. These controlling activities can be considered as the level of internal financial control at national (Greek) level. All sums paid unlawfully, during the implementation of Community policies financed by Community and national resources, are to be recovered according to the general provisions of the Public Accounting Code and to specific ministerial decisions issued for that purpose (Articles 102-104).

It is beyond the scope of this thesis to analyze in detail all the provisions of the Public Accounting Code. It suffices to present the general outline of the system of financial management and control, as it is established by this Code, focusing especially on the provisions applicable to the Community resources given to Greece.

First, it must noted that the Greek financial management system is similar to that of the European Union. There is the same fundamental distinction between authorizing officer and accounting officer. Their competences resemble those of their counterparts in the Commission. The Authorizing Officer undertakes obligations for payments within the limits of the appropriations of the budget (Art. 20 of the Public Accounting Code). The Accounting Officer manages resources of the Greek State (Art. 54 of the Public Accounting Code). The Authorizing Officer is a Minister or any other person entitled to act as an Authorizing Officer (Art. 20 of the Public Accounting Code). The internal financial control is regulated by Articles 22-26 of the Public Accounting Code. It is performed by the competent authorities of the Ministry of Finance called Services of Financial Control. These are independent while performing their controlling duties. The scope of control includes the regularity and legality of the expenses. The Services of Financial Control examine all expenditure incurred during programmes financed by the European Union. The control is based on documents justifying the legality and regularity of the expenditure. An expense is legal when it is provided for in a legislative act and there is a relevant appropriation in the budget. An expense is regular when it has been

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[18] A. Gerontas-A. Psaltis, op. cit., p. 247, A. Gkouzis, Public Accounting, Sakkoulas Publications, 1991, p. 56.

[19] This is also stipulated by Art. 3 of the Public Accounting Code which sets the competences of the Ministry of Finance.

undertaken legally, all the necessary supporting documents have been submitted and the relevant claim has not been prescribed. The control might be performed on the spot. At the end of every financial year the Ministry of Finance, based on information provided by the Services of Financial Control, prepares an overall report regarding the control of the expenditure of the State's budget.

The Public Accounting Code does not include very detailed dispositions regarding external audit. Under Art. 27 all expenditure (including Community resources incorporated into the Greek budget) is to be controlled *ex ante* and *ex post* by the Court of Audit. Art. 59 stipulates that all Accounting Officers must submit their accounts to the Court of Audit within two months after the end of the financial year. The Court of Audit determines whether these accounts are correct, i.e. legal and regular.

Articles 72-75 of the Public Accounting Code provide for the details of the preparation of the financial statement and the general balance sheet of the State by the Ministry of Finance, their sumission to the Parliament and their approval as mentioned above.

5.1.3. The Presidential Decree 774/1980[20]

This measure concerns the rules of procedure of the Greek Court of Audit and more specifically its controlling competences. A similar measure, Presidential Decree 1225/1981,[21] concerning the judicial competences of the Court of Audit will be analysed in Chapter 7.

Art. 17 stipulates that the Court of Audit controls all expenditure by verifying that there is a legal appropriation in the budget about each expense and that all requirements of the Public Accounting Code have been met. The Court of Audit also examines the accounts of the accounting officers. The control might be based on samples and if the findings demonstrate the existence of mistakes in the financial management, the control is extended in order to cover all the expenditure in question. The control is limited to the legality and regularity of the expenditure and does not cover the purposes or the necessity of the expenses. Consequently the Greek Court of Audit cannot perform any control in order to establish the soundness of the financial management of the budget. This is a major difference between the ECA and the Greek Court of Audit.

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[20] Journal of Government of the Hellenic Republic 1980, No A 189, p. 2301.

However, according to the Greek Court of Audit,[22] it may, during the performance of financial controls, take into account general principles of Greek Public Law such as the principle of economy, the principle of effectiveness, the principle of efficiency or the principle of transparency of all public accounts. These principles, as analysed in Chapter 3, are those of sound financial management. The Greek Court of Audit can use them because of their nature as legal principles. Therefore, through the control of the legality of the expenditure, the Greek Court of Audit may also establish whether the financial management of public resources has been sound. This is a solution to a potential problem. As shown above, Community legislation requires national authorities to control the management of all resources made available by the European Union to the Member States. This control must conform with the requirements of the financial provisions of Community Law. Establishing the soundness of the financial management of resources given by the Union to Member States is a major element of these requirements. If the Greek Court of Audit could not examine the soundness of the financial management of these resources, that would violate of Community Law, possibly resulting in a limitation of the resources given to Greece.

5.1.3.1. Ex ante Financial Control

According to Art. 21, the *ex ante* financial control begins when the Authorizing Officer sends to the Accounting Officer a warrant to pay a certain amount. This warrant must also be sent to the Court of Audit with all the supporting documents. The Court of Audit examines the legality of the warrant and if this is verified, the Accounting Officer is notified to pay the amount in question. If the legality of the warrant is not verified, the warrant must be sent back to the Authorizing Officer who must make all the amendments requested by the Court before resubmitting it. If the Court of Audit verifies that all necessary amendments have been made, the warrant is sent to the Accounting Officer in order to pay the amount. If, however, the Court of Audit does not approve the warrant for a second time, the Minister responsible for the warrant may ask the Court of Audit to approve it. In that case the Court of Audit will approve the warrant, but it also sends a report to the Greek Parliament mentioning its reasons for originally disapproving the

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[21] Journal of Government of the Hellenic Republic 1981, No A 304, p. 4079.

warrant. If the Parliament approves the warrant, the Accounting Officer must pay the amount without delay. If the Parliament does not approve the warrant, the amount is paid but the Court of Audit imputes the amount paid to the Minister. It must be said that so far this procedure before the Parliament has rarely been used and whenever it has been activated, the Parliament has always approved the warrant, usually without even noticing the remarks of the Court of Audit. Thus another opportunity for a more effective parliamentary control over the financial management of the budget is lost. Usually when a warrant is not approved by the Court of Audit at first instance, it is not resubmitted, or, if it is resubmitted, it is amended according to the Court's remarks.

With regard to the verification of the legality of administrative actions involved in the financial management, there has been a difference of opinion between the Council of State (Supreme Administrative Court in Greece) and the Court of Audit. The basis of the dispute was that all administrative actions are considered legal until they are revoked or annulled by a competent administrative body or court.[23] According to the jurisprudence of the Council of State[24] the Court of Audit cannot control the legality of these administrative actions and should focus only on the financial aspect of the transaction. Nevertheless, the Court of Audit has accepted that[25] controlling the legality of these actions lies within its competences. This control is incidental.[26] The main objective of the control is to verify the legality of the expenditure, therefore the verification of the legality of the administrative actions relevant to this expenditure is necessary for a complete audit. This incidental control is obligatory when the administrative action itself causes the expenditure, but optional when the administrative action is simply included in the procedure leading to the creation of the expenditure.[27] It has been noted that excluding this incidental control of administrative actions from the Court of Audit's competence would reduce its audit to a mere accounting and mechanical procedure.[28] Given the European Union's demands for an efficient and effective control of public (including

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[22] Minutes of the Plenary Session of the Greek Court of Audit of 27.11.1996 in I. Sarmas, The constitutional jurisprudence of the Greek Court of Audit, A. N. Sakkoulas Publications, 1997, p. 128-140 at 132.

[23] P. D. Dagtoglou, General Administrative Law, A. N. Sakkoulas Publications, 1992, p. 290, N. E. Brontakis, Administrative Law, P. Sakkoulas Publications, 1989, p. 19.

[24] Council of State 3564/1986, Nomiko Vima No 35, 1987, p. 606.

[25] Minutes of the Plenary Session of the Greek Court of Audit of 20.05.1992, Dioikitiki Diki 1992, p. 1231, Court of Audit, 1558/1981 in I. Sarmas, op. cit., p. 253-257 at 256.

[26] See also Art. 17(3) of the P.D. 774/1980 according to which during the control by the Court of Audit it is permitted to control all incidental issues arising from these proceedings.

[27] K. Sarantopoulos, Judicial Review...., op. cit., p. 58.

[28] A. Gerontas-A. Psaltis, op. cit., p. 332.

Community) expenditure, it is necessary to have an audit capable of covering all matters arising from the financial management of these resources.

Another important issue of *ex ante* financial control is the so called "pardonable error" doctrine, established by the case law of the Greek Court of Audit.[29] According to this, the Court of Audit approves an order to pay an expense despite its illegality, when it is proved that the managing authority acted in order to serve the public interest despite making an error about the law and the substance of the issue.[30] For instance, it was ruled once that although an authority did not advertise a public procurement contract to the Official Journal of the European Communities, thus violating the relevant Community legislation, the warrant to pay the expense incurred was valid, because the contract had been approved by the Court of Audit as the relevant national and Community provisions were difficult to interpret and the authority's error was pardonable.[31] This doctrine is not convincing, but it is used to legalize expenditure incurred in "delicate" circumstances.

5.1.3.2. Ex post Financial Control

According to Art. 22, the Court of Audit controls the accounts of the Accounting Officers. During this control the Court is entitled to examine all relevant documents and if necessary the control may be performed on the spot. Any authority performing regular financial controls must forward all relevant documents and its findings to the Court of Audit which will examine them and determine whether the control needs to be repeated by the Court itself (Art.23). This is an important provision especially with regard to authorities established especially for the management of Community resources.

Articles 24 and 25 stipulate that all Accounting Officers must submit monthly and annual accounts to the Court of Audit within certain time limits. This obligation also concerns those managing public resources on behalf of the Accounting Officers (Art. 36). If the time limits are violated without acceptable justification the Court of Audit may fine the responsible Accounting Officers or seek their dismissal if they refuse to submit the requested accounts (Art. 26).

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[29] See K. Sarantopoulos, Judicial Review...., op. cit., p. 74 for a detailed presentation of this jurisprudence.
[30] A. Gerontas-A. Psaltis, op. cit., p. 335.
[31] Court of Audit, 133/1995, not published.

The Court of Audit determines whether the accounts submitted are legal and correct (Art. 27). In case of deficit or surplus the equivalent amount is imputed or credited to the responsible Accounting Officer. The imputed amounts are increased by the inclusion of interest accrued since the date of the creation of the deficit. The action of imputation is subjected to an appeal by the officer concerned (Art. 29), which can be based on a) factual errors or an accounting error, b) new documents, c) the fact that the imputation was based on false testimonies recognized judicially and d) the fact that the imputation was based on false documents recognized judicially. This appeal can be submitted within one year after the imputation and is a measure of administrative review, submitted to the Court of Audit.

All Accounting Officers are monitored by the Court of Audit which is entitled to perform on the spot inspections whenever this is deemed necessary (Art. 39). All authorities in receipt of reports from accounting officers must forward a copy of this report to the Court of Audit.

5.2. Provisions adopted especially for the control of the financial management of resources given to Greece by the European Union, particularly the European Social Fund

As mentioned, besides the general provisions about financial control which also apply to the control of resources given to Greece by the European Union, there are *ad hoc* provisions, adopted especially for this purpose.

5.2.1. Legislation providing for the financial control of actions financed by the ESF through the Community Support Frameworks and the Community Initiatives

5.2.1.1. First Community Support Framework

During the implementation of the first Greek CSF (1989-1993), the Greek government tried to create a legislative framework for the monitoring of the implementation of programmes and projects financed by the ESF. The first such measure was the Ministerial Decision (Ministry of Labour and Social Security) 110543/1992 on conditions, obligations, keeping supporting documents and evidence of the

implementation of the programmes financed by the ESF.[32] This Decision stipulated the terms and conditions of funding by the ESF. The bodies receiving ESF funding had to uphold a series of national and Community legislative measures, among them the Regulations about the Structural Funds, the Commission's Decision approving the CSF, the National Legislation on Public Accounting and Taxation etc. Special provision was made for the Local Government Authorities, according to which these could not maintain their own bank accounts in order to receive payments by the ESF. The financing had to be given via the temporary accounts at the Bank of Greece (see above). Whenever the implementation of a programme was undertaken by a third party (private or public bodies other than Ministries and Local Government Organizations) there had to be a contract clearly mentioning the obligations of this party and the detailed analysis of the approvable expenditure. All tenders for such contracts have to be communicated to the Ministry of Labour and Social Security and all other bodies involved in the management and the implementation of the programme. In case of an audit all invoices and supporting documents had to be presented (the Decision includes a list of the documents and files that had to be kept by the bodies involved in the implementation of the programmes).

The penalty for the violation of these provisions was the cancellation of the programme and the recovery of any sums paid. The violating body was also to be refused any future ESF funding.

The main problem with this Decision was not its content (which was subsequently analyzed by a Ministerial Circular - see below), but its legal validity. According to Art. 43(2) of the Greek Constitution

> *"The issuance of general regulatory decrees, by virtue of special delegation granted by statute and within the limits of such delegation, shall be permitted on the proposal of the competent Minister. Delegation for the purpose of issuing regulatory acts by other administrative organs shall be permitted in cases concerning the regulation of more specific matters, or matters of local interest or of a technical and detailed nature."*

From this provision it is obvious that a Minister, in order to issue a Decision, must have legislative authorisation from the Parliament. When Ministerial Decision 110543/1992 was issued, there was no statute granting the Ministry of Labour and Social Security the authority to issue such a decision. The legislative authorization was granted only in 1993,

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[32] Not published in the Journal of Government of the Hellenic Republic.

by Art. 13 of Law 2150/1993.[33] According to this, the Minister of Labour and Social Security, within the framework of the implementation of the Regulations regarding the ESF, is entitled to issue decisions regulating the selection criteria of the projects to be financed, the terms and conditions, obligations, the keeping of supporting documents and evidence of the implementation of the programmes financed by the ESF. Consequently for a whole year, the legislative framework for the monitoring of implementation of the projects financed by the ESF, was unconstitutional, therefore invalid. Nevertheless this Decision was never challenged directly or indirectly before a court and its legislative fault was cured by Law 2150/1993.

As mentioned, Ministerial Decision 110543/1992 was further clarified by Ministerial Circular 113123/1992[34] (Ministry of Labour and Social Security). This Circular combined the provisions of the Regulations on the ESF with the Ministerial Decision. It provided all interested bodies with examples of documents to be used and kept in file during the implementation of the projects. The system of financial control was not complicated. It was part of the internal financial control performed by the Ministry of Labour and Social Security and the Ministry of Finance, as well as regional authorities and bodies managing the projects. It focused on the legality of the project's implementation (compliance with national and Community legislation), the eligibility of the expenses, the prevention of any irregularities and the recovery of any amounts wrongly paid. The controls were based on samples. The selection of samples was based on the nature of the body implementing the project, its system of internal audit, its actions of vocational training and the correspondence of these actions to the needs of the local labour market. The control aimed to establish that the action in question was a) achieving its objectives, b) in accordance with the CSF and the Structural Objectives and c) not violating the principles of sound financial management. Financial controls were to be performed either on the spot or by submission of the necessary documents to the competent controlling authorities.

The Decision and Circular have not been repealed by more recent legislative measures. They form the basis for the content of the financial control regarding the management of the second CSF, as described in the relevant legislation.

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[33] Journal of Government of the Hellenic Republic 1993, No A 98, p. 1515.
[34] Not published in the Journal of Government of the Hellenic Republic.

5.2.1.2. Second Community Support Framework

Given the importance of the second CSF and the Community Initiatives, the Greek Government decided to establish an *ad hoc* system of financial control for the programmes financed by the ESF through these schemes. The legislative framework was provided by Ministerial Decision 111456/1996[35] (Ministry of Labour and Social Security), focusing on actions of continuing vocational training and Ministerial Decision 112862/1996[36] (Ministry of Labour and Social Security), focusing on actions to combating the exclusion from the labour market.[37] The legislative framework of financial control of measures financed through the Community Initiatives was provided by Ministerial Decision 180821/1997[38] focusing on the EMPLOYMENT Initiative and Ministerial Decision 180822/1997[39] focusing on the ADAPT Initiative. These Decisions are similar in structure. They include provisions about the target groups, the projects that can be selected and the procedure of selection, the national and regional operational programmes, the expenses covered by the actions and the necessary supporting documents, the rate of payment by the ESF etc. Art. 10 of Ministerial Decision 111456/1996, Art. 17 of Ministerial Decision 112862/1996, Art. 9 of Ministerial Decision 180821/1997 and Art. 9 of Ministerial Decision 180882/1997 provide for the financial control of these actions.

According to these dispositions, the institution responsible for the financial control of these programmes is the Ministry of Labour and Social Security, in association with the Ministry of Finance, the regional authorities and the managers of the programmes. The contents of the financial control are similar to those of the financial control required by the aforementioned Ministerial Decision 110543/1992 and Ministerial Circular 113123/1992. The only addition is that the controlling authorities must also take into consideration the Community legislation against fraud, enacted in 1995. All objections to the findings of the financial control are submitted to an administrative body of the Ministry of Labour and Social Security, which has been established especially for such cases.

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[35] Journal of Government of the Hellenic Republic 1996, No B 567, p. 6103.
[36] Journal of Government of the Hellenic Republic 1996, No B 678, p. 7189.
[37] This latter Decision was later supplemented by Ministerial Decision 108489/1997, Journal of Government of the Hellenic Republic 1997, No B 721, p. 7877.
[38] Journal of Government of the Hellenic Republic 1997, No B 180, p. 1809.
[39] Journal of Government of the Hellenic Republic 1997, No B 194, p. 1989.

After the establishment of the Greek National Action Plans for Employment, it was decided that the measures implemented within these schemes required a separate legal basis with regard to their establishment and the procedures about their financial management and control. Consequently, Ministerial Decision 30236/2000 (Ministry of Labour and Social Security), on programmes for the promotion of employment of unemployed persons aged 18-64, was adopted.[40] This decision, after describing the various programmes and setting the necessary conditions for their implementation, establishes a system for controlling their implementation. This is a system of managerial control, since it empowers the managing authority (Greek Ministry of Labour and Social Security or Greek Manpower Employment Organization) to suspend the assistance provided through the programme, if the conditions stipulated in the Ministerial Decision are violated. Any disputes regarding these actions (suspension, recovery, etc) are resolved by a decision of the competent Regional Director of the Greek Manpower Employment Organization, which can be reviewed by the Governing Body of this Organization or an *ad hoc* committee established specifically for this purpose. The contents of the control include the verification of compliance with all national and Community provisions and the correct implementation of the programmes. Any irregularities are to be reported and appropriate recovery action is to be taken. The controls are performed at three levels: first degree controls performed by the local authorities of the Greek Manpower Employment Organization, second degree controls performed by the regional authorities of this Organization and third degree controls performed by employees appointed for this purpose by the Governor of the Organization. Such controls can also be performed by the Ministry of Labour and Social Security.

5.2.2. Legislation providing for the institutional framework of the financial management and control of resources given to Greece by the ESF

The implementation of the financial controls analysed above required the Greek State to establish an effective institutional framework. This included the restructuring of existing units of management and the creation of new management structures.

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[40] Journal of Government of the Hellenic Republic 2000, No B 394, p.

5.2.2.1. Restructuring the Ministry of Labour and Social Security

The first task was to reorganize the structure of the Ministry of Labour and Social Security in order to focus on the ESF resources. Art. 18 of Law 2224/1994[41] established a new Secretariat-General of Management of Community and Other Resources. There are three Directorates within this Secretariat General: Directorate of Planning and Implementing programmes of the ESF; Directorate of Community Initiatives and other Financing and Directorate of Control and Evaluation. Every project financed by the ESF in Greece is examined by at least one Directorate. For the purposes of this thesis, the most important is the Directorate of Control and Evaluation. Its competences include:

- evaluation of the expediency of financing a project,
- verification that the principles of sound financial management are upheld,
- examination of the correspondence of the advance and final payments with the expenses included in the budget,
- the establishment of measures in order to tackle any irregularities regarding the financial management,
- the overall control of all necessary documents (the statute of the implementing body, the approving decision, the accounting books, the educational material in case of vocational training measures, any contracts signed, etc),
- the recovery of the sums that the implementing bodies must return because of the non implementation or the incorrect implementation of the projects.

The financial controls performed and the penalties imposed are those described in Ministerial Decision 110543/1992 and Ministerial Circular 113123/1992.

5.2.2.2. The Special Coordinating Body of Control of the Programmes financed by the European Union

Another measure was the establishment, at the Ministry of Finance, of a Special Coordinating Body of Control of the Programmes financed by the European Union. Art. 6 of Law 2187/1994[42] provides for this Body stipulating that its aim is to organise the audit procedure of the programmes financed by the Community and implemented by

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[41] Journal of Government of the Hellenic Republic 1994, No A 112, p. 1469.
[42] Journal of Government of the Hellenic Republic 1994, No A 16, p. 261 at 266-267.

legal persons of public and private law, Local Government Organizations, Public Enterprises, and natural persons. The audit focuses on financial and substantive aspects such as the absorption of the resources, the regularity of the implementation of the programmes etc. The controllers draw up reports, which are sent to the Special Coordinating Body of Control. This Body notifies the Ministry of Finance of any irregularities reported. The Ministry will re-examing the case and determine whether there are any civil and/or criminal responsibilities. In the latter case, the competent public prosecutor is notified.

More details about this Special Coordinating Body of Control of the Programmes financed by the European Union are provided by Presidential Decree 393/1994.[43] The competences of this Body include:

- coordination of national and Community financial controls of programmes financed completely or partly by the European Union,
- the programming of sampling controls every three months for these programmes,
- the study and examination of the reports submitted by the audit groups after the controls,
- the suggestion to the Minister of Finance to take action following up the findings of the audit reports,
- the compilation of an annual report about the results of the financial controls,
- the suggestion of measures to combat irregularities and fraud affecting Community resources.

This Body is an important liaison between the Ministry of Finance and other institutions (internal or external) involved in the control of the financial management of Community resources in Greece.

5.2.2.3. The Greek Management Organisation Unit of the Community Support Framework

Finally another institutional development was the creation of the Management Organization Unit of the Community Support Framework S.A.. This Unit was established by Art. 3 of Law 2372/1996[44] as a non-profit making company. It is a support mechanism operating under the guidance and control of the Ministry of National

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[43] Journal of Government of the Hellenic Republic 1994, No A 219, p. 3969.

Economy but is external to the Ministry's civil service structure. It operates in favour of the public interest and according to the rules of private economy. The statute of the Unit was included in Art. 3 of Law 2372/1996. Its aim is to support Public Administration by covering specific needs in highly specialized human resources and expertise for the successful implementation of projects included in the CSF. The tasks undertaken by this Unit, when asked to intervene by implementing bodies include

- Evaluation of the implementing authority's needs in relation to the operational programme for which this authority is responsible,
- Selection, hiring and placing at the disposal of the implementing authority of a tailor-made team of experts which assume the entire management and/or technical support of programmes
- Provision of expertise and management systems, and the organization of seminars and training programmes.

The Unit consists of a Central Service and several Project Teams. The latter are at the disposal of Ministries, regional authorities, public organizations and all other bodies managing programmes financed by the Community. Their basic role is to a) monitor the specific operational programme's absorption capacity, b) support the implementing authorities by providing expertise, c) coordinate competent authorities in order to accelerate the programme's implementing procedures, d) anticipate and detect problems arising during the project's implementation, e) propose solutions to such problems and monitor their implementation, while notifying the political authority responsible, f) ensure the implementation of project eligibility criteria and g) monitor the adherence to relevant national and Community legislation.

These measures form an institutional framework capable of adequately managing the resources given by the Structural Funds to Greece through the CSF. Each measure provides safeguards of control to detect irregularities before or after the project's implementation. The multiple levels of financial control established in this framework, incorporated in the overall internal financial control system, can be very effective in establishing the sound financial management of Community (including, of course, ESF) resources in Greece.

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[44] Journal of Government of the Hellenic Republic 1996, No A 29, p. 303.

5.2.3. The case of the Greek Vocational Training Centres: An unpleasant experience

Within the framework of the Operational Programme for Continuous Vocational Training, included in the second Greek CSF was a provision for the establishment of Vocational Training Centres to implement the relevant training programmes. According to Art. 17 of Law 2224/1994, the proper structure, organization and operation of these Centres was to be certified by a private law body, the National Centre of Certification, supervised by the Ministry of Labour and Social Security. This body became operative in 1995. It was anticipated that about 300 Vocational Training Centres would be certified. However, by end of 1996, 614 such Centres had been certified. During the last three months of 1996, the Commission performed an on-the-spot control of the system of certification used. It was found that several certified Centres did not meet elementary conditions, which would guarantee the correct implementation of the programmes.[45] After that, the Commission decided to suspend all financial assistance relating to vocational training programmes implemented by these Centres. Several Centres had however already invested large amounts of money preparing for the implementation of these vocational training programmes. The Commission's decision had serious adverse effects on them, since the assistance and all relevant programmes were suspended for almost two years. Furthermore the people responsible for the Vocational Training Centres already certified by the old system, were informed by the Greek state that they should keep their Centres open but not operational, in order to participate in the new certification process. In 1998, after the adoption and implementation of Ministerial Decision 111457/1996[46] (Ministry of Labour and Social Security), and the establishment of a new certification system, the Commission resumed the provision of assistance. By that time, however, most Vocational Training Centres, having been kept open without any support from the State, could not continue their operation financially, since their owners could not maintain them. Consequently, they did not participate in the new certification process.

In the Commission this case created a very negative impression regarding the Greek system of vocational training, which explains its reluctance to provide further

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[45] See further European Court of Auditors, Doc. 54/16.1.1998 including Letter of Audit No 1/1998 on the audit of the European Social Fund operations in Greece of October 1997, addressed to the Greek Court of Audit, p. 2.

[46] Journal of Government of the Hellenic Republic 1996, No B 567, p. 6121.

assistance unless there are guarantees regarding the legality and the effectiveness of the operations financed. A very interesting aspect of this case is the issue of the Greek State's liability. It had been established in *Francovich*[47] that a Member State can be held liable for violating Community law. The conditions of such liability were assessed and clarified in *Brasserie du Pêcher/Factortame III*.[48] According to the latter case these conditions are: a) the rule of law infringed must be intended to confer rights on individuals, b) the breach must be sufficiently serious (there must be a manifest and grave disregard of the limits of the Member State's) and c) there must be a direct causal link between the breach of the obligation resting on the State and the damage sustained by the injured parties. The rules of Community law violated by the Greek State were Regulations 88/2052/EEC, 88/4253/EEC, 88/4255/EEC as amended by Regulations 93/2081/EEC, 93/2082/EEC, 93/2084/EEC respectively, and the Commission Decision COM(94) 1716 final on the establishment of the second CSF for Greece. Those legislative documents obliged the Greek State to establish a reliable, transparent and effective system for the control and financial management of all programmes financed under the Operational Programmes (including those on Vocational Training) of the CSF. The creation of such a system benefited not only the Commission or the State that would be able to monitor the use of the resources invested in these programmes, but also those participating in their implementation and their final beneficiaries. The certification system established in 1994 was part of the controlling and managing mechanism, and the Commission found it to be ineffective and unsuitable.

In general, three types of violation of Community legislation have been identified: non-implementation,[49] mis-implementation,[50] and breach, *stricto sensu*.[51] Another type of violation of Community law has been suggested in the *Three Rivers* case: a State should not only implement a provision of Community law, but also adopt all the necessary

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[47] Joined Cases C-6/90 and C-9/90, *Francovich and Bonifaci v. Italy*, [1991] ECR I-5357.
[48] Joined Cases C-46/93 and C-48/93, *Brasserie du Pêcheur SA v. Germany* and *R. v. Secretary of State for Transport, ex parte Factortame Ltd. and others*, [1996] ECR I-1029.
[49] See Joined Cases C-178/94, C-179/94, C-188/94, C-189/94, C-190/94, *Dillenkofer and others v. Germany*,[1996] ECR I-4845.
[50] See C-392/93, *R. v. HM Treasury ex parte British Telecommunications plc*, [1996] ECR I-1631, although in that case the ECJ found that this particular mis-implementation was not a serious breach because it was made in good faith, the legislation in question was ambiguous and there was not any previous relevant ruling from the ECJ.
[51] C-5/94, *R. v. Ministry of Agriculture, Fisheries and Food, ex parte Hedley Lomas*, [1996] ECR I-2553.

measures (mainly administrative) to enforce thats provision, especially if the State knew or should have known that its lack of intervention might cause harm to people.[52]

In the case of the Greek Vocational Training Centres, the Greek State violated Community law by not establishing an adequate controlling and managing mechanism. It seems that this is a case of mis-implementation as the State did establish such a mechanism but, did not establish it correctly. Furthermore, the State did not ensure (through the adoption of administrative measures) that the National Centre for Certification and its operation complied with the relevant Community legislation. Consequently, the type of violation of Community law proposed in the *Three Rivers* case seems applicable as well. It has been noted that the violated Community provisions aimed to help the participants to the programmes as well as the State and the Commission. So, the first condition established in *Brasserie du Pêcher/Factortame III* is met. The second refers to the seriousness of the violation. In the *Brasserie du Pêcher/Factortame III* mentions some factors assisting the determination of this seriousness:[53] the clarity and precision of the rule breached, the measure of discretion left by that rule to national authorities, whether the infringement and the damage caused was intentional or involuntary, whether the error of law was excusable or not, and the fact that a position taken by a Community institution may have contributed to the violation. In the case of the Vocational Training Centres, the Community rules in question were clear and precise (see Chapter 4). The Greek State had to create the controlling and management mechanism in order to prevent any possibility of mismanagement. It also knew or should have known that any problem with that system would lead to the immediate suspension or withdrawal of the assistance. It is therefore evident that the Greek State committed a serious violation of Community law. With regard to the causal link between that violation and the damage suffered by those responsible for the Vocational Training Centres, it must be emphasized that the State told them to keep their Centres open but not operational until the new certification system was activated, thus obliging them to spend large amounts for two years (1996-1998) and resulting in their being unable to maintain the Centres when the new certification took place. The damage consists of the loss of money spent at first in preparing and then maintaining the Centres without

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[52] See *Three Rivers D.C. v. Bank of England (No 3)* (C.A.), 2000, 2 Weekly Law Reports, 15 at 70-85. In this case, the court was not convinced that such a type of violation of Community law exists but it refused to make a preliminary reference under Art. 234 EC Treaty on that issue.
[53] Joined Cases C-46/93 and C-48/93, op. cit., p. I-1150, para 56.

operating them and the moral damage caused because the Centres were unable to fulfil their obligations towards their students. This case is still pending before the Greek courts.

5.3. Overall evaluation of the system of financial management and control of Community resources in Greece

5.3.1. The Greek Experience

It is true that the Greek Public Administration, after Greece's accession to the Communities, had to expand its activities in areas which had been either underdeveloped or even non-existent. Two such areas were structural operations and employment policies (especially those concerning vocational training). More specifically the Greek Public Administration had to adopt a new policy-formulating process. All operations had to be based on programmes which should have been planned according to the legislative provisions of the Community, namely the Regulations regarding the Structural Funds.[54]

The Greek Public Administration benefited from this process in two ways.

First, the administrative mechanisms of the Greek State gained experience during the planning and implementation of structural programmes. One consequence of this experience was that the policy-planning and policy-implementing procedures were simplified by reducing the bureaucratic factors involved. The Community provisions regarding the time limits for the planning or implementing periods of structural operations, and those concerning the contents of the various documents drawn up during these operations (proposals, reports, evaluations, etc) "obliged" the Greek Public Administration to operate in much faster and more effective rhythms. Another consequence is closely connected with the adoption of the partnership principle, which "forced" the various Greek ministries to cooperate with the European institutions, especially the Commission, during the preparation and implementation of structural operations. This was a new experience for the civil services concerned. They had been the only bodies competent to manage such issues. Furthermore, the partnership principle, especially during the implementation of the second Greek CSF, allowed the Greek regional and local authorities to become involved for the first time in the planning and

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[54] P. K. Ioakeimidis, op. cit., p. 88-89.

implementation of operations of such magnitude as the structural programmes. The same can be said fot the social partners, especially after the establishment of the National Economic and Social Committee.[55]

Second, in both Greek CSFs, there have been allocations of resources regarding the modernization of the Greek Public Administration. In the first CSF the relevant appropriations were not distinguished from the appropriations regarding the development of human resources, therefore it was not possible to evaluate their impact. The overall conclusion, however, was that the problems identified were not resolved. In the second CSF the allocations were separate. 305.3 million ECU (1.5% of the whole amount given through the CSF) were allocated to the modernization of the Greek Public Administration. As mentioned in Chapter 2, of this amount 44.7 million ECU were provided by the ESF (1.9% of the ESF assistance given to Greece under the second CSF). The objective of this CSF regarding the Public Administration, was to improve the training of civil servants in order to meet new challenges such as the introduction of information technology in public administration.[56] The main programme regarding the modernization of the Greek Public Administration is called "Kleisthenis".[57] 96.4 billion drachmas have been allocated to this programme, which was supposed to be completed in December 1999. However, according to the interim evaluation report published in August 1999, only 48.9 billion drachmas have been absorbed (about 49% of the total budget of the programme) and it is estimated that the programme will be completed in 2001. According to the report several projects financed under "Kleisthenis" have been characterized by long delays in planning, implementing and contracting the various operations, especially those regarding the introduction of information technology in public services. Several items of expenditure regarding various seminars and studies have been considered unnecessary by the evaluating team. It has also been found that although several civil servants have been trained, under "Kleisthenis", in order to use IT facilities, either their new qualifications are not used by their departments (32% of cases) or they are used in a sporadic and unorganized manner (62% of cases).[58]

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[55] Ibid, p. 95.

[56] See European Commission, Greece-Community Support Framework for the development and structural adjustment of the regions whose development is lagging behind (Objective 1) 1994-1999, COM(94) 1716 final, p. 58.

[57] Kleisthenis (601-570 B.C.) was a politician in ancient Greece and more specifically in Athens. His reforms regarding the political, governmental and administrative system of the city-state of Athens are a landmark in Greek ancient history.

[58] For all these see Apogevmatini, 02.08.1999, p. 11, To Vima, 15.08.1999, p. D7.

A project financed under the "Kleisthenis" programme and very relevant to this thesis is the introduction of information technology to the Greek Court of Audit. Cooperation between the Court of Audit and its European counterparts (including the ECA) and its status as the sole institution of external financial control in Greece necessitate its modernization. In cases of on-the-spot controls performed by the ECA and the Commission, the Greek Court of Audit's lack of computerised data has frequently been unpleasantly noted.[59] The Court of Audit's IT programme is called "National Network of the Court of Audit". It commenced in 1994 and aimed to support the Court's auditing operations, to facilitate the supervision of Authorizing Officers, and to organize the evaluation, analysis and elaboration of the findings of the auditing operations.[60] Within the first year of the project certain necessary hardware and software equipment was purchased. Other identified necessities were a) the hiring of specialized personnel to undertake the management and operation of the Network and to provide any support necessary to its users, b) the training of the judicial and administrative staff to use the Network, c) the loading of the Network's Database.[61] In December 1997 the "National Network of the Court of Audit" project was focusing on the human resources required. The original aims of the project including the connection of all regional services with the central service in Athens and the connection of the Greek Court of Audit with the ECA, have been achieved.[62] The difficulties identified during the implementation of the project included problems of staffing in areas of IT analysis and programming, the lack of communication between services of the Court, the low participation of senior members of the Court's staff in the project, the lack of improvement in training existing staff on the use of the IT facilities, the lack of connection with European Data Banks such as CELEX etc.[63] One method to resolve some of these problems was to inform the Court's personel about the benefits of the project both in quantitative terms (reduction of time and cost in the operations) and qualitative terms (increase in the reliability of operations and the overall benefit of better control).[64] The training of the Court's existing personel (including senior members), and the additional hiring of personnel specialized in

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[59] See a document of the President of the ECA to the Greek Prime Minister and the President of the Greek Court of Audit reported in To Vima, 21.03.1999, p. A52.
[60] See Doc 108/31.05.1995 of the Head of the Directorate of Information Technology of the Court of Audit to the President of the Court of Audit, p. 6.
[61] Ibid, p. 1-5.
[62] See Doc 451/23.12.1997 of the Head of the Directorate of Information Technology of the Court of Audit to the President of the Court of Audit, p. 8.
[63] Ibid, p. 8-11.

information technology would reduce the aforementioned disadvantages.[65] So far however, for reasons which are beyond the scope of this thesis, the whole project has stagnated and its implementation has been limited to operations carried out by two or three persons.

Nevertheless, it must be stated that the Greek Government really tried to create an institutional and legislative framework that could meet the standards required by the Community in order to proceed with the financing of programmes in Greece. However, it made a critical error. It increased the controlling procedures by creating one for each category of measures (which has its own benefits as mentioned above), but it maintained the same number of bodies to perform these controls. The main controlling institution, with regard to the resources given by the ESF, is the Ministry of Labour and Social Security. Its restructuring, although very important, is not enough to solve the problem. The personnel of the new Directorates of the Ministry, despite their specialization and knowledge, can control only a limited number of cases because of their limited human resources. The Management Organization Unit is a very useful assistant but it has limited effect because a) its real competence is to advise, not to control and b) it can only examine programmes included in the CSFs, and so could not offer any assistance regarding the Community Initiatives. A careful examination of the competences of the Coordinating Body established in the Ministry of Finance reveals that it can be very useful in coordinating and organizing controlling activities, but it actually perform no financial controls itself. So the main controlling body, in terms of internal financial control, is the Ministry of Labour and Social Security. Of course this Ministry cooperates with the Ministry of Finance, according to the general provisions about financial control. However, the volume of work of the new controlling Directorate of the Ministry of Labour and Social Security is such that most programmes are examined summarily. The need to control as many programmes as possible obliges the controlling officers not to these examine closely and in detail, but to be satisfied with superficial, *prima facie* examination.

These weaknesses have been identifed by the Greek Government. So, for the implementation of the third CSF, new structures of management and control will be created. A draft Bill is being prepared for presentation to the Parliament and enactment

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[64] Ibid, p. 4.
[65] Ibid, p. 5-7.

during Autumn 2000.[66] According to this Bill the current system having one level of planning, implementation and monitoring (the Monitoring Committee) will be replaced by a new system having four such levels:[67] a) the Monitoring Committee which will plan every Operational Programme, b) the Managing Authority (another Committee) which will include projects in the Operational programmes and will monitor their implementation, c) the Paying Authority (also a Committee) which will make the actual payments and d) the public audit. The overall aim of the new system is to separate the various levels of responsibility e.g. planning from implementation and audit.

The new Managing Authorities (a central Authority situated at the Ministry of National Economy and one for each Operational Programme) will ensure the effectiveness and the legality of the operations implemented within the third CSF. They will coordinate all relevant operations by issuing guidelines on management, control and evaluation. The Central Managing Authority will also manage the Integrated Electronic Data Processing System of the Ministry of National Economy which includes all information regarding the CSF, the Community Initiatives, the Cohesion Fund, the Public Investments Programme such as administrative procedures, findings of financial controls etc. It will report to the Monitoring Committee, will suggest possible amendments to the CSF and will submit the annual implementation report to the Commission. The new Paying Authority, established at the Ministry of National Economy, will submit to the Commission the requests for payments and will receive the resources provided by the Community budget. It will manage all bank accounts for all Structural Funds (including the ESF) held at the Bank of Greece. Finally, it will ensure that the resources of the Public Investments Budget are distributed to the final beneficiaries. [68]

The audit and financial control will be performed at four levels completely independent from each other.[69] At the first level the controlling bodies will be the Managing Authorities of each Operational Programme. The Paying Authority at the Ministry of National Economy will perform the necessary audits and financial controls at the second level. The third level will include new Committees of Financial Control, established at the Ministry of Finance. The fourth and final level of audit includes the audits and financial controls undertaken by the Commission.

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[66] See the interview of the Deputy Minister of National Economy in To Vima, 30.7.2000, p. D3.
[67] See To Vima, 23.7.2000, p. D2.
[68] See the interview of the Deputy Minister of National Economy in To Vima, 30.7.2000, p. D3.
[69] See Kathimerini, 20.8.2000, p. 46 and the interview of the Deputy Minister of National Economy in To Vima, 30.7.2000, p. D3.

It has been estimated that this new framework will require about 3,000 new personnel for the Greek Public administration. These new employees must have knowledge and experience of managing issues like regional development, information technology, financial management and structures, etc, which will be required by the new structures of implementation of the the third CSF. 800 new staff will be required by the new Managing and Paying Authorities, while 2200 new staff will be required by the various ministries and other bodies that will be involved in implementing the third CSF.[70]

These measures will concern the resources provided by all Structural Funds. An additional solution to the problems identified above, especially with the regard to the ESF resources, could be to expand the framework established in Greece for resources given by the EAGGF. Under Law 2637/1998[71] two new organizations responsible for the financial control of the management of the latter resources were established. The Organization of Certification of Accounts is competent to control the legality and regularity of all accounts of the transactions involving resources given by the Guarantee section of the EAGGF. It also has the authority to impute any amounts, which are proved to have been paid without legal justification. The Organization of Payments and Control of Community Subsidies of Guidance and Guarantee is competent to manage the resources given by both sections (Guidance and Guarantee) of the EAGGF and to prevent any fraudulent activities regarding these resources. It is also competent to perform controls focusing on the legality of the transactions involving any EAGGF resources and to undertake action for the recovery of illegally paid amounts. Both Organizations are legal persons governed by public law and monitored by the Greek Ministry of Agriculture. The establishment of these Organizations provides an institutional framework, sufficient to control all Community resources given by the EAGGF. The personnel is specialized and the Organizations have authority to control the whole spectrum of transactions involving EAGGF resources.

A similar framework could be established for the control of the transactions involving ESF resources. The existence of at least one organization responsible for the financial control of the transactions involving ESF resources would be very helpful and constructive. It would be a legal person governed by public law and monitored by the Ministry of Labour and Social Security. This organization could undertake at least half the volume of work of the Directorates of the Ministry of Labour and Social Security. It

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[70] For more detailes see To Vima, 23.7.2000, p. D2.

would cooperate closely with these Directorates. Its personnel would be specialized in issues of financial control. So, the controls performed by these authorities would be more substantive and there would be in depth examinations of the transactions. A more effective system of internal control would thereby be established, including the Directorates of the Ministry of Labour and Social Security, the Coordinating Body of the Ministry of Finance, the Management Organization Unit and the new organization suggested here.

It is true that the establishment of all these new mechanisms within the framework of the Greek Public Administration creates institutional dualism. This phenomenon refers to the co-existence, within the same administrative unit (ministry, organization, etc) of "European Affairs services" being competent for all issues relating to the European Union and traditional "substantively competent services", whose competences would have included those of the European Affairs services, if the latter had not been created.[72] This dualism can lead to direct conflicts between administrative services.[73] However, it has been found that the traditional administrative services of the Greek ministries were unable to meet the managerial challenges of the Greek CSFs.[74] Therefore, administrative reform was (and still is) obligatory.

5.3.2. Lessons from the other Member States of the European Union

All Member States had to create the necessary structures in order to be able to manage the operations financed by the Structural Funds:[75]

In the other Cohesion countries (Ireland, Portugal and Spain), the managerial structure for the assistance provided by the Structural Funds has some common characteristics. A Ministry (usually called Ministry of Labour or Ministry of Employment) is responsible for the overall implementation of programmes financed by the ESF. Other ministries are also involved with regard to their respective sectors of the economy. In Ireland, if a CSF has been submitted, the Department of Finance has overall

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[71] Journal of Government of the Hellenic Republic 1998, No A 200, p. 3033.
[72] P. K. Ioakeimidis, op. cit., p. 136.
[73] See for instance the reactions of the services of the Ministry of National Economy to the creation of the Management Organization Unit. P. K. Ioakeimidis, op. cit., p. 136-137.
[74] Ibid, p. 136, 140.
[75] A summary description of the structures created in all Member States with regard to the management of resources provided by the Structural Funds during the programming period 1994-1999, focusing especially on the resources given by the ESF, was available on line at http://www.europa.eu.int/comm/

responsibility for its implementation, while the Department of Enterprise and Employment maintains its responsibility for the ESF operations. There are also several "semi-state bodies" involved in the implementation of ESF programmes and especially the Operational Programmes. In 1992 an ESF Evaluation Unit was established in order to monitor the effectiveness of ESF actions. In Portugal, the Governmental Commission for the Coordination of Community Funding is responsible for CSFs. The Ministry for Employment and Qualification maintains responsibility for ESF operations. Other governmental organisations have also been set up with specific competences. These include the Commission for ESF Coordination (policy guidelines, information on ESF matters, direct interlocutor of the European Commission) and the Department of ESF Affairs-DAFSE (overall financial management, control and monitoring of ESF actions). In Spain 75% of ESF aid is managed by central administration (Ministry of Labour and Social Affairs). This Ministry is also responsible for controlling and evaluating ESF operations. There are also seventeen autonomous communities, managing 25% of ESF assistance, and responsible for implementing regional development strategies. The Monitoring Committees in all three countries have the competences provided by the Regulations regarding the Structural Funds (monitoring implementation, coordinating various forms of assistance, preparing amendments to Community Support Frameworks and Operational Programmes etc). Their membership includes representatives from all the relevant governmental departments, regional and local authorities, other bodies involved in the management of ESF resources and the social partners. However in Portugal the social partners do not participate in the Monitoring Committee because such participation is regarded as incompatible with the fact that they benefit from ESF interventions.

In another southern country, Italy, the overall responsibility for ESF programmes belongs to the Ministry of Labour, which coordinates ESF programmes, manages multinational programmes, and monitors how the ESF appropriations are spent etc. It is assisted by the Institute for the Development of Worker's training (ISFOL), which is provides technical assistance, especially with regard to the evaluation of the programmes' implementation. The regional authorities manage Operational Programmes for all structural Objectives, except the multiregional Operational Programmes which are

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dg05/esf/en/member/member.htm on 14.10.1999.

managed by the Ministries. The Monitoring Committee includes all Ministries involved in the ESF programmes, the social partners, and various non-governmental organizations.

The northern Member States (Finland, Sweden and Denmark) also have a central system of management. Their respective Ministries of Labour are responsible for the management of ESF resources. In Finland, other ministries are also involved and the Ministry of Labour has a coordinating role. The aims of their managerial actions are to make the eligibility criteria easier to understand and the administration systems simpler. The monitoring and the evaluation of the implementation of ESF programmes is performed on the basis of cooperation between the various ministries. There are also regional management committees assisting the central government in the implementation of regional actions. In Denmark the Ministry of Labour is in charge of monitoring and controlling all the financial aspects of ESF assistance. Programmes for Objectives 4 and 5b and the ADAPT Initiative are managed at national level. Programmes for Objectives 2 and 3, and the EMPLOYMENT Initiative, are managed regionally. In Sweden the Ministry of Labour has charged the National Labour Market Board with overall responsibility for implementing ESF programmes. However various bodies are involved in the programmes' management: the Office for Education, Training and Competence Development Programme (for Objective 4 programmes), the National Rural Development Agency (for Objective 5b programmes) and the National Board for Industrial and Technical Development (for Objectives 2 and 6 programmes). There are also several Regional and Local Committees which assist in the programmes' implementation. In all three States, there are Monitoring Committees as provided by the Regulations on the Structural Funds. Their membership includes representatives of the European Commission, the implementing national, regional and local authorities, and of the social partners.

In the BENELUX states (Belgium, the Netherlands and Luxembourg), the respective Ministries of Labour are also responsible for the overall management of ESF operations. In Belgium, given the federal nature of this state there are four regional administrations (Flemish, French, German and Brussels region) which manage Operational Programmes and Single Programming Documents under all Structural Objectives. The Ministry coordinates action for Objectives 3 and 4. In the Netherlands a tripartite organization called Employment Services was set up, comprising representatives from the government and the central federations of employers and

employees. This body assumed responsibility for employment policy making. It is organized at central and regional level. It is responsible for implementing ESF programmes under Objectives 1,2,3 and 5b. Another service, within the Ministry of Social Affairs and Labour, called "Bureau Uitvoering Europese Subsidie Instrumenten" and established in 1995, is responsible for ESF programmes under Objective 4. In Luxembourg the Ministries of Education, of Economy and of Family cooperate with the Ministry of Labour. Partnerships with training organisations have been established. There are several Monitoring Committees in Belgium and the Netherlands, alomost one for each Operational Programme and Single Programming Document. In Luxembourg the Monitoring Committees were amalgamated in the interest of greater coherence. The membership of these committees includes representatives from the various ministries involved, social partners, programme operators, and external experts if necessary (this especially in Luxembourg).

In Germany and Austria, two typical federal states, the Federal Government has overall responsibility for the implementation and coordination of ESF programmes. In Germany, programmes under Objectives 1,3 and 4 are within the competence of the Government's Labour Market Agency which also has a less prominent coordinating role in programmes for Objectives 2 and 5b. The implementation structures vary from one Länder to another, but the financial management provisions are broadly similar. The Federal Labour Office and the Länder Ministries of Labour cooperate in order to ensure the effectiveness of the management of resources given under Objective 3, while resources given to the Länder under Objective 1 are managed directly by them. In Austria, although the Federal Labour Market Service, along with other federal ministries administers project selection, the responsibilities for the projects' implementation has been allocated to each Bundesland, regarding Objectives 1, 2 and 5b. The Federal Offices use their regional and local branches to manage programmes at regional and local level. In both states the social partners have predominant roles in the decision making and implementing procedures and their participation in the relevant Monitoring Committees is well established. The membership of these Committees also includes representative from the Commission, the federal ministries, the Länder or Bundesland ministries, other local and regional authorities, and non-governmental organizations.

In France, several governmental departments share the responsibility for the management of ESF assistance. The two main poles are the Regional Planning Authority

(DATAR, part of the Ministry for Town Planning and Integration) and the Employment Delegation/ESF Mission (part of the Ministry for Employment and Vocational Training). DATAR is responsible for the overall coordination and implementation of structural operations while the ESF Mission is responsible for the overall implementation of ESF operations. More specifically the ESF Mission manages programmes under Objectives 3 and 4 as well as the Initiatives EMPLOYMENT and ADAPT. Programmes under Objectives 1, 2 and 5b as well as the Initiatives for regional development are managed by DATAR. The ESF Mission however is responsible for all the relevant financial dealings and has general supervision. Regional authorities are entrusted with the management of Single Programming Documents under Objectives 1, 2 and 5b and a number of programmes financed by Community Initiatives. The membership of the Monitoring Committees includes representatives from the Commission, the central State services, regional and local authorities, the social partners and various consultative bodies.

Finally, in the United Kingdom, the Regional European Funds Directorate of the Department for Trade and Industry is responsible for coordinating and presenting UK policy on the Structural Funds. It also coordinates the administration of the Funds throughout the UK, whilst day-to-day administration is delegated to the Scottish, Welsh and Northern Ireland offices and in England to the Department for the Environment, Transport and the Regions via the Government Offices for the Regions. With regard to ESF, the ESF Unit within the Department for Education and Employment has overall responsibility. The Government Offices for the Regions are responsible for managing and making ESF payments in England, the Scottish Executive in Scotland and the National Assembly for Wales in Wales. There is also much emphasis on the partnership principle. The funding is distributed by the national Monitoring Committee, based on labour market information and other plans submitted by regional committees. The Monitoring Committee's membership includes representatives of the Commission, the governmental departments involved, the regional and local authorities. The social partners are formally excluded from all relevant monitoring committees and they participate in the management of the ESF resources through other bodies (i.e. local boards, expert groups etc). It is interesting to note that voluntary organizations participate in the Monitoring Committees and they manage high quality and innovative projects.

This variety of systems used throughout the European Union with regard to the management of ESF resources represents the corresponding diversities in the mentality

about management of public funds in general. Each State adopted a system fitting its management culture and potential, while trying to meet the requirements of the Regulations on the Structural Funds. This led to some complicated systems, e.g. that of France. Some other choices such as the exclusion of the social partners from the monitoring committees (in the UK and Portugal) are incompatible with the 1999 Regulations on the Structural Funds. These Regulations call for more involvement of the social partners in decision-making about the management of the relevant resources. In general, the systems used by the Member States contain some common core points i.e. the existence of a central government body, usually a Ministry, as responsible for the overall management of ESF resources. The provisions of the Regulations have harmonized their managing systems, at least with regard to Structural Funds' resources. Thus the process of Institutional Europeanization has advanced throughout the European Union. However, there will always be diversities since no legislative document can completely change the well established managing cultures of each State.

The effectiveness of such schemes (including that of Greece) was assessed by the ECA, which concluded that the various Committees involved failed to operate properly. They were established late, they do not hold enough meetings, their decision-making procedures are lengthy and despite that, their organization is such that they have insufficient time to study the necessary documentation or to hear opinions from interested parties. Their decisions usually consist only of proposals submitted to the national authorities and the Commission, requiring explicit confirmation, which again sets lengthy procedures in motion.[76] These remarks must be considered very seriously by all Member States. The Greek Government especially, must try to correct all the defects detected by the ECA, because the new system that is going to be established will be based on the accurate, efficient and effective operation of the various committees that will constitute the monitoring, managing and paying authorities.

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[76] European Court of Auditors, Special Report 16/1998 on the implementation of appropriations for structural operations for the programming period 1994-1999, OJ 1998, C 347/48 at 56.

Chapter Six: Judicial Review at Community Level of the Financial Management of resources of the European Social Fund in Greece

Since the management and controlling procedures of the ESF resources given to Greece are included in legislative provisions, they can be reviewed judicially. The legality of action of the European institutions is very significant and the financial propriety, legitimacy and accountability in the allocation of resources must be safeguarded.[1] The competent institutions for the judicial review at Community level are the European Court of Justice (ECJ) and the Court of First Instance (CFI).[2] The legal basis for judicial review consists mainly of Articles 230 and 232 EC Treaty. Reference will also be made to Articles 226, 234 and 288 EC Treaty. The latter Articles can be applied in order to provide solutions to problems identified in the management of ESF resources. Their function is supplementary to the main provisions on judicial review.

Judicial review covers not only the management of the resources but also the control of this management. Below, the following aspects are examined: direct actions for annulment, actions for failure to act, enforcement actions, preliminary rulings and actions for damages. The institutional framework of judicial review of the financial control of the management of ESF assistance is also examined separately.

6.1. Direct Actions for annulment

In analyzing such actions with regard to the management of ESF resources, several issues can be identified. One involves the question of whether the Commission or another body has adopted the contested act. Another concerns the reviewablity of acts in the context of ESF management procedures. A major issue is the *locus standi* of regional/local authorities and the recipients (natural and legal persons) of structural assistance to bring an action for annulment before the ECJ. Some interesting matters also arise concerning the grounds of annulment. Finally, the time limits for bringing an action for annulment can be confusing, given the complexity of procedures about the

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[1] T. Hervey, European Social Law and Policy, Longman Publications, 1998, p. 39.

[2] The CFI was established by Decision 88/591/EEC (OJ 1988, L 319/1) as amended by Decisions 93/350/EEC (OJ 1993, L 144/21) and 94/149/EC (OJ 1994, L 66/29). It has jurisdiction over all actions brought by natural or legal persons while the ECJ has jurisdiction over actions brought by Member States or Community institutions.

management of ESF resources. The relevant provisions are included in Art. 230 EC Treaty.

6.1.1. Reviewable Acts

According to Art. 230(1) EC Treaty:

> *"The Court of Justice shall review the legality of acts adopted jointly by the European Parliament and the Council, of acts of the Council, of the Commission and of the European Central Bank, other than recommendations and opinions, and of acts of the European Parliament intended to produce legal effects vis-à-vis third parties."*

As noted in Chapter 1, the legislation regarding the ESF provides for the Commission to adopt the relevant legislative acts. Under the 1983 Regulations, the ECJ and the CFI confirmed that only the Commission assumed (vis-à-vis the recipient) legal responsibility for approving, suspending, reducing, or withdrawing ESF assistance.[3] National authorities cooperated with the Commission but were not responsible for any final decision regarding the management of ESF resources. It was noted that the procedure established by those Regulations created a financial relationship between the Commission and the Member State authorities on the one hand and between those authorities and the recipient of the financial assistance on the other.[4] It is interesting to consider whether this two-level relationship has been maintained under the 1988/1993 Regulations and 1999 Regulations. Since one of the most important principles of these Regulations is the partnership between the Commission and national authorities in ESF programmes, it could be argued that the national authorities share the responsibility for all final decisions with the Commission. This does not seem convincing. It is true that, under the 1988/1993 and 1999 Regulations, the role of the national authorities is very important. They participate greatly in drawing, negotiating, implementing, monitoring and evaluating the structural operations funded by the ESF. The responsibility, however,

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[3] C-32/95, *Commission of the European Communities v. Lisrestal-Organização Gestão de Restaurantes Colectivos Lda and Others*, [1996] ECR I-5373 at I-5397 para 29; T-271/94, *Eugenio Branco Lda v. Commission of the European Communities*, [1996] ECR II-749 at II-763 para 39; T-151/95, *Instituto Europeu de Formação Profissional Lda (INEF) v. Commission of the European Communities*, [1997] ECR II-1541 at II-1553 para 36.

[4] C-310/81, *Ente Italiano di Servizio Sociale (EISS) v. Commission of the European Communities*, [1984] ECR 1341 at 1353 para 15.

for producing a legally binding act regarding the approval, reduction, withdrawal or suspension of ESF assistance lies exclusively with the Commission.

However, the situation is less clear with regard to projects financed within the framework of the operational programmes of a Community Support Framework. More specifically, as analyzed in Chapter 1, Member States submit draft operational programmes to the Commission, which is competent to approve them. These drafts do not contain specific information on particular projects to be financed within the operational programmes' scope, therefore the Commission's approval of the programme as a whole does not necessarily imply specific approval of its constituent parts.[5] Consequently it remains uncertain who actually approves the projects included in operational projects. The solution to this problem can be found in examining the role of the Monitoring Committees responsible for the supervision of the programmes' implementation. It is true that the 1988/1993 Regulations did not grant these committees any specific power regarding project selection.[6] The 1999 Regulations are novel in that respect. According to Articles 35(3) and 15(6) of Regulation 99/1260/EC, the Monitoring Committees must approve the complement programmes containing all the details of the measures to be implemented within the scope of the operational programmes. These complement programmes must be submitted to the Commission for information purposes. Consequently, these documents determine the exact content of the measures to be implemented under the operational programmes. This is actually a form of project selection. It is therefore concluded that the authority selecting the projects to be financed under the operational programmes is the relevant Monitoring Committee. Since this Committee operates within the legal, institutional and financial framework of a Member State and the Commission participates only in an advisory capacity, any judicial action against the Committee's decisions falls within the jurisdiction of the national courts. It is true that, in practice,[7] the Commission officials attending the Monitoring Committee do not simpy adopt an advisory role, even declaring projects ineligible. If, despite this, a project is approved, the Commission's official states his/her objection to including the project within the proramme's expenditure. This type of participation by the Commission, although understandable given its task to implement the budget under

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[5] J. Scott, Regional Policy: An Evolutionary Perspective, in P. Graig, G. De Búrca, The Evolution of EU Law, Oxford University Press, 1999, p. 625-652 at 633.
[6] Ibid, p. 634.
[7] Ibid, p. 635.

Art. 274 EC Treaty, does not alter the nature of the decision adopted by the Monitoring Committee. Furthermore, such behaviour or the absence thereof, on the Commission's part, cannot constitute a reviewable act.[8]

Nevertheless, these proceedings must be distinguished from the actual procedure of authorizing structural expenditure, as is described in the Financial Regulation. Authorizing structural expenditure entails a decisive authority since the Authorizing Officer (with regard to the ESF, this officer is the Director-General for Employment and Social Affairs) first examines all the relevant information, afterwards adopts the decision to authorise the expenditure and then asks the Accounting Officer to pay the sums involved. Such decisions obviously produce legal effects and it has been correctly contended that they can be reviewed judicially.[9]

If Art. 230(1) EC Treaty is read in combination with Art. 249 EC Treaty, it is clear that the ECJ can review regulations, decisions and directives, inlcuding of course those concerning the ESF. However the criterion of review is not the form of an act but its substance. The ECJ has accepted that reviewable acts have binding force or produce legal effect, whatever their form.[10] A simple letter[11], a communication[12] and even a press release[13] from the Commission, has been held to be reviewable because of its contents.

An interesting issue has arisen recently, regarding the internal guidelines adopted by the Commission concerning the net financial corrections in the context of the application of Art. 24 of Regulation 88/2052/EEC as amended by Regulation 93/2081/EEC. As mentioned in Chapter 4, according to this provision the Commission may suspend or reduce the assistance granted to an operation if irregularities are found in that operation. The internal guidelines provide for the procedures within the Commission regarding the sums involved in such cases and in cases when the Member States violate their obligations under Art. 23(1) Regulation 88/2052/EEC as amended. These guidelines were challenged for lack of legal basis. The ECJ, however, ruled that they have effects only within the Commission, do not create rights or obligations of third

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[8] It has been suggested, however, that the Commission's behaviour can be reviewed judicially. See J. Scott, op. cit., p. 636.

[9] Ibid., op. cit., 637.

[10] C-22/70, *Commission of the European Communities v. Council of the European Communities*, [1971] ECR 263 paras 48-55.

[11] Joined Cases C-8/66, C-9/66, C-10/66, C-11/66, *Cimenteries CBR Cementsbedrijven NV v. Commission of the European Communities*, [1967] ECR 75.

[12] C-57/95, *France v. Commission of the European Communities*, [1997] ECR I-1627.

[13] C-106/96, *United Kingdom v. Commission of the European Communities (re Poverty 4)*, [1998] ECR I-2729.

parties, and consequently cannot be considered to produce legal effects, therefore they cannot be reviewed judicially.[14] The problem of the obligatory or advisory nature of internal guidelines regarding the Structural Funds and the management of the relevant resources has also been examined by the European Parliament. It was found that such ambiguity is useful as the threat of sanctions is necessary in order to oblige the Member States to treat the policy priorities of the Union more seriously.[15] The legal services of the Parliament declared such guidelines legally binding but it has been noted that they would be more effective as advisory instruments or guiding principles whose force would lie in their relevance and applicability to the practitioners who seek to implement them.[16] Nevertheless, the .Parliament regarded these guidelines as instruments designed to penalize irregularities attributable to the breach of the Member States' obligations under Art. 23 of Regulation 88/4253/EEC.[17] In light of this analysis, it seems that these guidelines produce more legal effects vis-à-vis the Member States than the ECJ acknowledged in its aforementioned ruling.

It is has also been found that the reports and relevant recommendations adopted by the Union's anti-fraud bodies (previously UCLAF, now OLAF) after an inquiry on the management of Structural Funds' resources, are not reviewable acts because they do not directly affect the legal position of the (natural or legal) persons concerned. These reports notify the national authorities of any irregularities or frauds detected and suggest follow-up action but it is the duty of the national authorities to actually take action, i.e. judicial proccedings, recovery action, etc.[18]

In the area of the ESF the matter of reviewable acts has arisen several times. The normal practice under all Regulations so far regarding the ESF, was the following: the

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[14] C-443/97, *Spain v. Commission of the European Communities*, judgement delivered on 6.4.2000, not yet reported, paras 28-36. The Advocate General in that case had a different opinion as he accepted that these internal guidelines allow the Commission to reduce or suspend structural assistance not only in case of irregularities (Art. 24 of Regulation 88/2052/EEC as amended by Regulation 93/2081/EEC) but also in case of the Member States violating their obligations under Art. 23(1) of Regulation 88/2052/EEC as amended. Therefore they actually establish new sanctions for the Member States, thus producing legal effects and being reviewable by the ECJ (Advocate General's opinion in C-443/97, delivered on 28.10.1999, paras 21-24).

[15] European Parliament, Committee on Regional Policy, Report on the Commission Guidelines on Priorities for the adjustment of Structural Funds programmes to the end of 1999, (Rapporteur R. Howitt) A4-0214/98, PE 225.868/fin, p. 9.

[16] Ibid, p. 9.

[17] European Parliament, Committee on Budgetary Control, Report on the Commission document on financial control of Structural Fund operations – net financial corrections, (Rapporteur J. Colom I Naval) A4-0230/97, PE 222.175/fin, p. 9

Commission issued a decision and sent a letter about this to the competent national authority, usually but not always enclosing the actual decision. The national authorities either wrote to the recipients of ESF assistance, informing them of the Commission's decision, or more rarely, forwarded the letter of the Commission and the decision itself. Consequently most recipients of ESF assistance did not receive the actual Commission decision but a letter from a national authority informing them of it. The difficulty in challenging a decision under these circumstances is obvious. The ECJ, however, stated that if the informing letter did not provide sufficient information (e.g. the date and content of the decision), the applicants seeking the decision's annulment could not be criticized for not providing in support of their application more extensive particulars concerning the contested decision.[19] Of course, in order to challenge a decision, it is necessary for one to exist. If the applicants cannot furnish any evidence (not even a letter) of the existence of a decision, their action for annulment will be inadmissible.[20] The existence in law of a decision regarding the ESF is to be determined having regard to its tenor and effects. Decisions concerning ESF assistance may be notified by an ordinary letter from the Directorate General for Employment and Social Affairs.[21] The fact that the decision is formally embodied only in the documents by which it is notified (usually letters) does not call into question its existence in law.[22]

It has also been noted that, for a measure to amount to a decision, those to whom it is addressed must be able to recognize clearly that they are dealing with such a measure.[23] For example, the recovery orders issued by the Commission purport to be measures definitively reducing ESF assistance and requiring the recipient to reimburse part of the advance paid. Such orders affect the recipient's legal position and thus constitute decisions that can be challenged under Art. 230.[24] The fact that such a decision

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[18] T-492/93, *Nutral SpA v. Commission of the European Communities*, [1993] ECR II-1023 at II-1033, II-1034, paras 26-29, C-476/93 P, *Nutral SpA v. Commission of the European Communities*, [1995] ECR I-4125 at I-4146, I-4147, paras 30-31.

[19] C-157/90, *Infortec-Projectos e Consultadoria Lda v. Commission of the European Community*, [1992] ECR I-3525, at I-3553 para 14.

[20] C-130/91, *ISAE/VP (Instituto Social de Apoio ao Emprego e à Valorização Profissional) and Interdata (Centro de Processamento de Dados Lda) v. Commission of the European Communities*, [1992] ECR I-69, at I-73 para 11.

[21] T-446/93, *Frinil v. Commission of European Communities*, not published in the ECR, paras 29 and 32; Joined cases T-432/93, T-433/93 and T-434/93, *Socurte-Sociedade de Curtumes a Sul do Tejo, Lda and Others v. Commission of the European Communities*, [1995] ECR II-503 at II-519, II-520 para 47.

[22] Joined cases T-432/93, T-433/93 and T-434/93, op. cit., p. II-520 para 47.

[23] C-271/94, op. cit., p. II-764 para 15.

[24] C-199/91, *Foyer Culturel du Sart-Tilman ASBL v. Commission of the European Communities*, [1993] ECR I-2667 at I-2694 para 21; T-151/95, op. cit., p. II-1554 para 39.

may be communicated to the recipient of the assistance directly by the Commission instead of the competent national authority, does not affect its legal nature.[25] Similar recovery decisions can be issued by the competent national authorities regarding national contributions to the structural operations. Such decisions are not attributable to the Commission and it is for the competent national court, not the ECJ, to review the validity of such national measures implementing Community acts relating to ESF assistance.[26]

A final issue concerns the replacement of one Commission decision with another. This is not rare in the area of ESF assistance, since after the adoption of the first decision the national authorities or recipients of the assistance may submit remarks to the Commission that will make it change the original decision. If the original decision has been challenged and but then repealed by a further decision, the action against the original decision becomes devoid of purpose and the ECJ does not have to adjudicate on the relevant application.[27]

6.1.2. *Locus Standi*

Another problem concerning judicial review within the European Union involves the question of who may bring an action against a reviewable act. According to Art. 230 there are three categories of possible applicants.

The first category includes the Member States, the Council and the Commission, which can challenge any reviewable act.[28] With regard to Member States, the ECJ has accepted that these may have "legitimate expectations" regarding the grant of assistance by the ESF, which expectations can be enforced judicially.[29] Moreover, the ECJ has held that since a Member State contributes to the Community Budget, it can rely on the damage which would arise from expenditure being incurred contrary to the rules

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[25] C-199/91, op. cit., p. I-2694 para 22.
[26] C-271/94, op. cit., p. II-766 para 53.
[27] T-145/95, *Proderec-Formação e Desenvolvimento de Recursos Humanos ACE v. Commission of the European Communities*, [1997] ECR II-823 at 832 para 27.
[28] For this reason they are called "privileged applicants". See P. Craig-G. De Burca, EU Law, Texts, Cases and Materials, Oxford University Press, 1998, p. 457, J. Steiner,-L. Woods, Textbook on EC Law, Blackstone Press Limited, 1998, p. 457, W. Cairns, Introduction to European Union Law, Cavendish Publishing Limited, 1998, p. 110, A. Arnull, Private applications and the action for annulment under Article 173 of the EC Treaty, CMLRev, 32, 1995, pp. 7-49 at 13.
[29] C-84/85, *United Kingdom v. Commission of the European Communities (re Aid for part-time work)*, [1987] ECR 3765 at 3798 paras 25-27.

regarding the financial management of the Union and its institutions.[30] An interesting question is whether regional or local authorities, which are often involved in the implementation of Structural operations and the management of ESF assistance, are also entitled to challenge any reviewable act. Initially, the ECJ accepted, indirectly,[31] that regional and local authorities could bring actions only under Art. 230(4) (see below). On another occasion it stated that since the admissibility of an application of a regional or local authority was not contested, there were no grounds for examining it on its own initiative.[32] More recently, however, the ECJ stated clearly that simply because it did not consider it necessary to examine the admissibility of an action brought by a regional or local authority did not imply acknowledgement that such an action was brought by a legal entity equivalent to a Member State.[33] It also stated that the term "Member State" in Art. 230(2) refers only to government authorities and cannot include regional or local authorities, irrespective of the powers they may have.[34] Therefore it must be accepted that regional and local authorities may challenge acts only under Art. 230(4), without enjoying privileged applicant status.[35] It has been noted that while regional authorities have a vital role to play in the articulation of cohesion and integration policies, the ECJ does not secure a role for them in judicial proceedings.[36] This, however, contradicts the tendency promoted especially by the 1999 Regulations on the Structural Funds. It has been noted above that regional and local authorities are strongly encouraged to get involved in the management of structural resources. However, depriving them of the right to bring actions for annulment before the ECJ freely, which national authorities enjoy, is a serious disincentive, since they may regard this as deprivation of a more effective judicial protection.

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[30] Joined Cases C-239/96, C-240/96, *United Kingdom v. Commission of the European Communities (re Measures to combat poverty and social exclusion)*, [1996] ECR I-4475 at I-4492 para 66.

[31] C-222/83, *Municipality of Differdange and Others v. Commission of the European Communities*, [1984] ECR 2889.

[32] Joined Cases C-62/87 and C-72/87, *Exécutif régional Wallon and SA Glaverbel v. Commission of the European Communities*, [1988] ECR 1573 at 1592 para 8.

[33] C-95/97, *Région Wallone v. Commission of the European Communities*, [1997] ECR I-1787 at I-1791 para 5.

[34] Ibid, p. I-1791 para 6.

[35] See also E. Besila Vika-D. Papagiannis, Contemporary Competences of Local Government and European Integration, P. N. Sakkoulas Publications, 1996, p. 95-96.

[36] A. Evans, The EU Structural Funds, Oxford University Press, 1999, p. 301. It has been suggested (see M. Vellano, Coesione economica e sociale e ripartizione de competenze: Le nuove iniziative communitarie, (1995) RDE, 193-208 at 194) that regional and local authorities should have standing to challenge a measure affecting their own prerogatives. Evans (op.cit., p. 301) considers however that the ECJ's case law recognizes no link between such prerogatives and cohesion policies of the Union.

The second category of applicants is indicated in Art. 230(3). The Parliament, the European Court of Auditors and the European Central Bank are entitled to challenge only those reviewable acts that affect their prerogatives.[37]

The third category includes the so called "non privileged applicants".[38] According to Art. 230(4), this consists of any natural or legal person. The applicants may challenge only a) a decision addressed to them, b) a decision addressed to another person but of individual and direct concern to them, c) a decision in the form of a regulation which is of individual and direct concern to them. From these three options, the first is straightforward: the addressee of a decision can challenge this decision. The third option (challenging a decision "disguised" in the form of a regulation) is quite interesting[39] but does not fall within the scope of this thesis, because according to the legislative framework of the Structural operations, the legislative instruments regarding the management of ESF assistance by the national authorities are decisions in the technical sense of the term as described in Art. 249 EC Treaty. The most common case in the management of ESF assistance is a decision addressed to another person but of direct and individual concern to the applicant. Usually the decision is a Commission act, addressed to the national authorities but concerning the recipients of ESF assistance individually and directly.

It is therefore necessary to examine more in detail the condition of "direct and individual concern". This condition is the clearest indication that there cannot be an "*actio popularis*", especially in proceedings regarding the management of ESF assistance. There are always economic actors which are quite eager to challenge Community acts when the annulment thereof may mean the continuation of their business profits and the repayment of any sums unduly paid under an illicit Community measure.[40] The financial stakes may be high and there are always attempts to "torpedo Community

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[37] These bodies are called "semi-privileged applicants", because of that limitation. For more details see P. Craig-G. De Burca, op. cit., p. 458-460, J. Steiner,-L. Woods, op. cit., p. 457-458, A. Arnull, op. cit., p. 13.

[38] P. Craig-G. De Burca, op. cit., p. 461-473, J. Steiner,-L. Woods, op. cit., p. 458-472, W. Cairns, op. cit., p. 110-112, A. Arnull, op. cit., p. 12-13.

[39] For a detailed analysis of the relevant case law see J. Usher, Individual Concern in general legislation-10 years on, (1994) 19 E.L.Rev., pp. 636-640, R. Greaves, *Locus Standi* under Article 173 EEC when seeking annulment of a Regulation, (1986) 11 E.L.Rev., pp. 119-133, P. Craig-G. De Burca, op. cit., p. 466-473, J. Steiner,-L. Woods, op. cit., p. 460-463, P.J.G. Kapteyn, P. Verloren van Themaat, Introduction to the Law of the European Communities, 3rd edition edited by L. Gormley, Kluwer Law International, 1998, p. 481-488, A. Arnull, op. cit., p. 16-40, N. A. E. Neuwahl, Article 173 paragraph 4 EC: Past, Present and Possible Future, (1996) 21 E.L.Rev., pp. 17-31.

[40] N. A. E. Neuwahl, op. cit., p. 18.

administration in pursuit of individual interests".[41] This is sometimes the case with ESF assistance. The amounts involved are large and there are always those who are willing to profit at the expense of Community structural assistance. Consequently, in order to protect, *inter alia*, the Communities' financial interests there is a test. Any natural or legal person seeking the annulment of an act relating to the management of ESF assistance must prove that it is directly and individually concerned by that act. This is a cumulative test: both conditions (direct concern, individual concern) must be met.[42]

The ECJ's method of establishing individual concern is found in its judgement in *Plaumann*,[43] according to which

> "Persons...may only claim to be individually concerned if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons, and by virtue of these factors distinguishes them individually...".[44]

The general rule for direct concern is that if a Member State is granted any discretion to act under the disputed provision, then the provision by its nature cannot give rise to direct concern.[45] Furthermore, it has been found (in the context of Community liability under Art. 288 of the EC Treaty) that if the Community institutions have been granted broad discretion to act the applicants cannot claim that the provisions granting this discretion, concern them directly.[46] These general definitions have been applied by the ECJ and the CFI in several cases regarding the management of ESF assistance. As mentioned above, normally the Commission sends a letter to the competent national authorities, usually incorporating its decision about approval, reduction, suspension or withdrawal of the ESF assistance (the majority of cases before the ECJ and the CFI concerned reduction of this assistance). It has been held repeatedly that the contested decision, although addressed only to the national authorities, since it named and expressly referred to the applicants as direct beneficiaries of the assistance granted, was of direct and individual concern to the applicants inasmuch as it deprived them of part of the assistance originally granted to them, the Member States having no discretion in that

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[41] P.J.G. Kapteyn, P. Verloren van Themaat, op. cit., p. 477.
[42] N. A. E. Neuwahl, op. cit., p. 20.
[43] C-25/62, *Plaumann & Co. v. Commission of the European Communities*, [1963] ECR 95.
[44] Ibid, at 107.
[45] Joined Cases C-41/70, C-42/70, C-43/70, C-44/70, *NV International Fruit Company v. Commission of the European Communities*, [1971] ECR 411, at 422-423, paras 25-28.
[46] T-113/96, *Édouard Dubois et Fils v. Council of the European Union and Commission of the European Communities*, [1998] ECR II-125 at II-146, II-147, paras 59-66.

respect.[47] Clearly, it follows that this rule also applies to decisions granting ESF assistance, since the concerned parties are mentioned therein as beneficiaries. Thus, the ECJ and the CFI have adjusted their case law to the practice followed by the Commission in deciding on the management of ESF assistance. It has been suggested that whenever the Commission refuses payment of assistance which it has previously undertaken to grant, it disputes a prior commitment or denies the existence of a prior commitment, thereby adopting an act having legal effect and which can be challenged.[48]

A relevant issue concerns the competitors of the recipient(s) of assistance.[49] These may challenge the legality of a decision to grant the assistance where their market position has been "significantly effected" by the assistance.[50] However it has been noted that simply because a decision affects competition in the market, a trader in any competitive relationship with the recipient cannot be regarded as directly and individually concerned by that decision.[51] Only specific circumstances can give standing,[52] such as the competitor being located in the same region as the recipient,[53] or the competitor participating in the proceedings leading to the contested decision.[54] It has been suggested that the ECJ should acknowledge the admissibility of actions brought by natural or legal persons whose participation in the proceedings can be regarded as having affected their

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[47] C-291/89, *Interhotel v. Commission of the European Communities*, [1991] ECR I-2257 at I-2279 para 13; C-304/89, *Estabelecimentos Isidoro M. Oliveira SA v. Commission of the European Communities*, [1991] ECR I-2283 at I-2311 para 13, C-157/90, op. cit., p. I-3554 para 17; C-181/90, *Consorgan-Gestão de Empresas, Lda v. Commission of the European Communities*, [1992] ECR I-3557 at I-3568 para 12; C-189/90, *Cipeke-Commércio e Indústria de Papel Lda v. Commision of the European Communities*, [1992] ECR I-3573 at I-3585 para 12; T-450/93, *Lisrestal-Organização Gestão de Restaurantes Colectivos Lda and Others v. Commission of the European Communities*, [1994] ECR II-1177 at II-1195 paras 45-46; T-85/94, *Eugénio Branco Lda v. Commission of the European Communities*, [1995] ECR II-45 at II-55 paras 25-26.

[48] A. Evans, op. cit., p. 295. This may happen when persons who had previously applied for assistance have participated in protracted procedures for evaluation of their application by the Commission. See T-465/93, *Consorzio Gruppo di Azione Locale "Murgia Messapica" v. Commission of the European Communities*, [1994] ECR II-361 at II-373 para 26.

[49] See A. Evans, op. cit., p. 296.

[50] C-169/84, *Cie Française de l' Azote (COFAZ) SA v. Commission of the European Communities*, [1986] ECR 391 at 415 para 28; Joined Cases T-447/93, T-448/93, T-449/93 *Associazione Italiana Tecnico Economica del Cemento, British Cement Association, Titan Cement Company SA v. Commission of the European Communities*, [1995] ECR II-1971 at II-1994 paras 55-56 and II-2002 para 80.

[51] A. Evans, op. cit., p. 296.

[52] Joined Cases C-10/68, C-18/68, *Società "Eridania" Zuccherifici Nazionali v. Commission of the European Communities*, [1969] ECR 459 at 481.

[53] A. Evans, op. cit., p. 296.

[54] A. Arnull, op. cit., p. 33, C-169/84, op. cit., p. 415, paras 25-26, C-264/82, *Timex Corporation v. Council and Commission of the European Communities*, [1985] ECR 849 at 865, paras 12-16.

outcome.[55] There are positive reactions to this suggestion which is considered conducive to a healthy democracy, by promoting both public participation in the decision-making process and the control of the legality of its outcome.[56] However, it also raises possible questions such as the extent of the involvement necessary to confer standing, or the criteria for establishing that the outcome of a procedure has been influenced.[57] It must be noted that, with regard to ESF management, the participation of all interested parties in the relevant decision-making procedure is sometimes obligatory, thus constituting an essential procedural requirement (see below).

Finally, reference must be made to the *locus standi* of certain groups such as trade associations or interest groups.[58] Trade associations must prove that they have a "personal" interest in the case by showing that this interest is distinct from those of the industrial policy of the Member State concerned.[59] A trade association does not have *locus standi* if the decision affects the general interests of the category of persons represented by this association.[60] A relevant criterion established by case law is that an association may challenge a decision only where its members can also do so individually.[61] It has also been found that representative bodies have standing to challenge decisions not addressed to them, in the field of state aids.[62] These bodies must have been in close contact and cooperation with the Commission during the proceeding leading to the adoption of the decisions in question, which must affect their members' interests. With regard to interest groups, that same reasoning has proven to be problematic.[63] An example is provided in the area of environmental protection, which is

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[55] See Opinion of Advocate General Jacobs in C-358/89, *Extramet Industrie SA v. Council of the European Communities*, [1991] ECR I-2501 at I-2523, para 66. The ECJ however, in the same case, ignored this approach and focused on the nature of the applicants' activity, see C-358/89, op. cit., p. I-2531, I-2532 paras 14-17. For an analysis of this behaviour see A. Arnull, op. cit., p. 34-35.

[56] N. A. E. Neuwahl, op. cit., p. 27.

[57] Ibid, p. 27.

[58] A. Evans, op. cit., p. 296-300.

[59] C-282/85, *Comité de Développement et de Promotion du Textile et de l' Habillement v. Commission of the European Communities*, [1986] ECR 2469 at 2481 para 18.

[60] Joined Cases 16/62, 17/62, *Confédération Nationale des Producteurs de Fruits et Legumes v. Council of the European Economic Community*, [1962] ECR 471 at 479-480; T-117/94, *Associazione Agricoltori della Provincia di Rovino v. Commission of the European Communities*, [1995] ECR II-455 at II-466 para 27-28.

[61] T-197/95, *Sveriges Betodlares Centralförening and Sven Åke Henrikson v. Commission of the European Communities*, [1996] ECR II-1283, at II-1296-1297, para 35.

[62] C-313/90, *Comité Internationale de la Rayonne et des Fibres Synthetiques (CIRFS) and others v. Commission of the European Communities*, [1993] ECR I-1125 at 1185, paras 29-30, Joined Cases 67,68 and 70/85, *Kwekerij Gebroeders Van der Kooy BV and Others v. Commission of the European Communities*, [1988] ECR 219 at 268-269, paras 20-24.

[63] A. Evans, op. cit., p. 297.

now a high priority among the objectives of structural action. According to the 1999 Regulations on the Structural Funds all programmes financed must take account of the environment. The ECJ, however, has found that Greenpeace, a major environmental group, has no standing to challenge a decision granting assistance the use of which might affect the environment because its members' interests were not individually affected.[64] It has been observed, however, that environmental protection is now such an integral part of cohesion, and the link between structural assistance and environmental protection is so strong, that it should justify judicial action not only by those individually affected but also by groups representing such persons.[65] Nevertheless, the ECJ recently reaffirmed its opinion, ruling once more that associations such as Greenpeace have no *locus standi* since their members are not individually concerned but are concerned only in a general and abstract fashion, like any other person interested in the protection of the environment.[66]

6.1.3. Grounds for Annulment

According to Art. 230(2) there are four grounds for annulment of Community acts: lack of competence, infringement of an essential procedural requirement, infringement of the Treaty or of any rule of law relating to its application and misuse of powers.[67] It has been ruled that the grounds for annulment must be clearly stated in the relevant application, indicating the basic legal and factual particulars of the case and avoiding "catch-all" references to other documents annexed to the application, since it is not for the Court to seek and identify from the annexes the grounds on which the application is based.[68]

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[64] T-585/93, *Stichting Greenpeace Council (Greenpeace International) v. Commission of the European Communities*, [1995] ECR II-2205 at II-2230, II2231 para 60.
[65] A. Evans, op. cit., p. 298.
[66] C-321/95, *Stichtng Greenpeace Council (Greenpeace International) and others v. Commission of the European Communities*, [1998] ECR I-1651 at I-1715, paras 28-29.
[67] CFI has tried to make these grounds even more distinct from each other. For example, concerning the difference between the infringement of essential procedural requirement and infringement of Community legislation, it has held that: "...the absence or inadequacy of a statement of reasons constitutes a plea going to infringement of an essential procedural requirement and, as such, is distinct from a plea going to the incorrectness of the grounds of the contested decision, which by contrast, is reviewed in the context of the question whether a decision is well founded." T-84/96, *Cipeke-Comércio e Indústria de Papel Lda v. Commission of the European Communities*, [1997] ECR II-2081 at II-2094 para 47.

6.1.3.1. Lack of Competence

This ground for annulment is the natural corollary of Art. 7 EC Treaty according to which all Community institutions must act within the limits of the powers conferred upon them by Community law.[69] A Community institution must have legal authority to adopt a measure, otherwise this measure shall be declared void for lack of competence. With regard to the management of ESF assistance the issue arising is the competence of the Commission's departments to issue decisions about ESF assistance. In *Funoc* the applicant submitted that the decision in question was not taken by the Commission itself but by the Head of Division of the Directorate General for Employment and Social Affairs, who was not empowered to do so.[70] The ECJ noted that under the applicable provisions regarding the Commission's structure, the Directorate General for Employment and Social Affairs is responsible for managing ESF, in cooperation with the Financial Controller.[71] There is a Directorate of ESF affairs within the Directorate General for Employment and Social Affairs.[72] This department is competent to manage ESF affairs, including granting, withdrawing, reducing or suspending ESF assistance, through the system of delegation of signature, which is the normal means used by the Commission in exercising its powers.[73] Delegation of authority to sign within an institution is a measure relating to the internal organization of the Commission's administrative departments in accordance with its Rules of Procedure. Therefore, officials may be empowered to adopt in the Commission's name and subject to its control, clearly defined measures of management and administration relating to the ESF.[74] The applicant must prove the Commission's Rules of Procedure have been violated and not refer generally to the Regulations on the Structural Funds which mention only the Commission in general as the competent body for the relevant decisions.

6.1.3.2. Infringement of an essential procedural requirement

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[68] T-84/96, op. cit., p. II-2090, II-2091 paras 29-34.
[69] W. Cairns, op. cit., p. 114.
[70] C-200/89, *Funoc v. Commission of the European Communities*, [1990] ECR 3669 at 3691 para 12.
[71] Ibid, op. cit., p. 3692 para 13.
[72] Case T-450/93, op. cit., p. II-1191 para 32.
[73] C-200/89, op. cit., p. 3692 para 14.
[74] Case T-450/93, op. cit., p. II-1191, 1192 para 34.

Community law provides various mechanisms to ensure that certain requirements of natural justice and fairness are observed in procedural matters.[75] The infringement of such a requirement will result in the annulment of the measure. The ECJ may consider this ground of annulment on its own motion, even if it is not put forward by the applicants.[76] In the CFI's opinion this happens because individuals have a legitimate interest in relying in the Community courts (ECJ, CFI) regarding a possible non-observance of the procedure laid down by the Regulations regarding the Structural Funds, inasmuch as such an irregularity could affect the legality of the contested decisions concerning them.[77]

One essential procedural requirement often infringed has been the obligation of the Commission to consult the Member State concerned before issuing a decision regarding the ESF assistance given to that State. This obligation is established by all Regulations concerning the operations of the Structural Funds. The Member State is the sole interlocutor of the ESF and it is responsible for the facts and accounts regarding transactions financed by ESF in its territory.[78] Having regard to this central role of the Member State and to the importance of the responsibilities which it assumes in the presentation and supervision of the financing of vocational training measures, the opportunity for it to comment and present its opinion before a definitive decision regarding ESF assistance is adopted constitutes an essential procedural requirement the disregarding of which renders the contested decision void.[79]

A similar requirement also exists for individuals (natural and legal persons) by virtue of a relevant general principle, according to which any person who may be adversely affected by the adoption of a decision should be able to effectively make known his views on such evidence concerning him as the Commission has used in adopting that decision.[80] In the case of ESF assistance, it has been noted that despite the central role played by the Member States in the system established by the Regulations concerning the Structural Funds, there is a direct link between the Commission and the

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[75] W. Cairns, op. cit., p. 115.

[76] C-1/54, *France v. High Authority*, [1954] ECR 1 at 15, C-2/54, *Italy v. High Authority*, [1954] ECR 37 at 52.

[77] Joined Cases T-432/93, T-433/93, T-434/93, op. cit., p. II-525 para 63.

[78] C-291/89, op.cit., p. I-2280 para 16; C-304/89, op. cit., p. I-2312 para 20.

[79] C-291/89, op.cit., p. I-2280 para 17; C-304/89, op. cit., p. I-2312 para 21; C-199/91, op. cit., p. I-2696 para 34; C-334/91, *Innovation et Reconversion Industrielle ASBL v. Commission of the European Communities*, [1993] ECR I-2851 at I-2869 para 25; C-157/90, op. cit., p. I-3554, I-3555 para 20.

recipient of the assistance since the latter is directly implicated in the investigation leading to the decision.[81] A classic example of such a case might be a decision reducing, suspending or withdrawing ESF assistance, which significantly affects the recipients' interests by depriving them of the whole of the assistance initially granted to them, and is equivalent to a sanction.[82] It is necessary therefore for the recipients of ESF assistance to submit their opinion to the Commission before it adopts its decision.

It has been found that the possibility for a Member State and the final recipient of ESF assistance to enter into a dialogue with the Commission after the relevant decisions have been notified to them is not an acceptable solution. It would practically bar them from bringing an action under Art. 230 because of a possible expiry of the relevant time-limits (see below).[83] Also the mere presence of representatives of the national authorities, during on-the-spot checks performed by the Commission in the premises of the final recipient in order to form an opinion and produce the decision, does not guarantee that these authorities or the recipient itself are consulted before the adoption of the decision.[84] Furthermore, when discussions are actually taking place between the representatives of the Commission, the national authorities and the final recipients, they must refer to the specific project and decision and not to a comparable one.[85] Finally, any political compromises reached between the national authorities and the Commission cannot, in any event, substitute the requirement of previous consultation.[86]

Another essential procedural requirement is provided for by Articles 253 and 254 EC Treaty according to which all regulations, directives and decisions adopted by the European institutions must state the reasons on which they are based.[87] The purpose of this obligation is to enable the Court to review the legality of the decision and to provide the person concerned with sufficient information to make it possible to ascertain whether

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[80] T-450/93, op. cit., p. II-1194 para 42; C-32/95, *Commission of the European Communities v. Lisrestal-Organização Gestão de Restaurantes Colectivos Lda and Others,* [1996] ECR I-5373 at I-5396 para 21.

[81] C-32/95, op. cit., p. I-5396, I-5397 paras 24 and 28.

[82] Ibid, p. I-5398 paras 33-34.

[83] C-304/89, op. cit., p. I-2313 para 23.

[84] See for instance C-334/91, op. cit., p. I-2869 paras 21-23; Joined Cases T-432/93, T-433/93, T-434/93, op. cit., p. II-527, II 528 paras 68-71, where there was no substantive consultation between representatives of the Commission, national authorities and final recipients of ESF assistance even though they met and discussed the case within the framework of on-the-spot checks.

[85] Joined Cases T-432/93, T-433/93, T-434/93, op. cit., p. II-530 para 74.

[86] Ibid, p. II-530 para 75.

[87] Usually these reasons are stated in the preamble of the act in question. However, the preamble is not judicially reviewable since it merely supports the operative part of the act and produces no legal effects

the decision is well founded or whether it is vitiated by a defect which may permit its legality to be contested. The extent of that obligation depends on the nature of the measure in question and on the context in which it was adopted.[88] It has been found that in the context of an initial application for ESF assistance, a statement of reasons in summary form satisfies the requirements of Art. 253 EC Treaty because such a summary is an unavoidable consequence of computer processing of several thousand applications for assistance on which the Commission must adjudicate within a short period of time.[89] A more detailed statement of reasons in support of each individual application would compromise the rational and efficient allocation of financial assistance from the ESF.[90] This is justified by the fact that a decision accepting or rejecting an application merely entails the grant or refusal of the assistance applied for.[91]

However, with regard to decisions reducing, withdrawing or suspending ESF assistance, it has been accepted that these decisions entail more serious consequences for the recipients:[92] According to the Regulations on ESF the recipients initially receive only an advance from the assistance approved, so they are obliged to advance considerable sums from their own capital in order to cover the total expenditure of the operation. The recipients legitimately expect to receive the balance from the ESF, provided that they use the assistance in accordance with the conditions set out in the decision of approval. Consequently, a decision reducing, suspending or withdrawing ESF assistance must clearly state the reasons which justify such action.[93] It must be noted that the issue of whether these reasons are correct or not, does not concern the adequacy of the statement of reasons but the substance of the case.[94]

Examples of decisions which fulfil the above analyzed requirement are: a decision reducing ESF assistance because the period of practical vocational training had to be the same as that of theoretical vocational training;[95] a decision reducing ESF assistance after

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itself. See T-138/89, *Nederlandse Bankiersvereniging and Nederlandse Verenining van Banken v. Commission of the European Communities*, [1992] ECR II-2181 at 2191, para 31.

[88] C-32/86, *Società industrie siderurgiche meccaniche e affini SpA (Sisma) v. Commission of European Communities*, [1987] ECR 1654 at 1670, para 8.

[89] C-213/87, *Gemeente Amsterdam and Stichting Vrouwenvakschool voor Informatica Amsterdam (VIA) v. Commission of the European Communities*, [1990] ECR I-221 at I-222.

[90] Ibid, p. I-222.

[91] C-181/90, op. cit, p. I-3569 para 15; C-181/90, op. cit., p. I-3586 para 15.

[92] C-181/90, op. cit, p. I-3569 para 16; C-181/90, op. cit., p. I-3586 para 16.

[93] C-181/90, op. cit, p. I-3569 paras 17-18; C-181/90, op. cit., p. I-3586 paras 17-18; T-450/93, op. cit., p. II-1197 para 52; T-85/94, op. cit., p. II-57 para 33.

[94] T-84/96, op. cit., p. II-2094, para 49.

[95] C-181/90, op. cit., p. I-3569, I-3570, paras 19-20.

a relevant suggestion of the Member State only if that decision itself states the reasons for the reduction, or if it refers to a measure of the competent national authorities clearly stating the reasons;[96] a decision accompanied by a memorandum detailing reductions in respect of specific headings of expenditure because this expenditure was not provided for in the initial application, or because this expenditure was not duly evidenced by the necessary supporting documents;[97] and a decision devoting several pages to a detailed account of the factual and legal considerations forming the basis of the justification in law of the reduction, especially of the itemization of reduction in each heading and of the method of calculation applied in these reductions.[98]

Decisions which have been found not to fulfil the requirement of the statement of reasons are: a decision reducing ESF assistance, allocating the reduction between the members of the group of beneficiaries in proportion to their share under the items concerned and not in accordance with the precise amount of the irregular expenditure, and not notifying the beneficiaries about this itemization and the method of calculation;[99] and a decision based on inspection reports which did not identify with respect to each of the beneficiaries the items to which the reduction related.[100]

6.1.3.3. Infringement of the Treaty or any rule of law relating to its application

The term "any rule of law relating to the Treaty's application" does not only include legislative measures adopted by the Community institutions but also the so called general principles of Community law. These can be defined as unwritten legal rules adopted by the ECJ and deriving from the common legal traditions of the Member States. Their use in the legal system of the European Union is to supplement and clarify written European legislation. Some of the most important general principles of Community law are the principle of proportionality, the principle of legal certainty, and the principle of the protection of legitimate expectations.

Some general principles have been invoked in cases regarding the management of ESF assistance. For instance, the ECJ has ruled that it is not disproportionate for the

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[96] T-85/94, op. cit., p. II-58 para 36.
[97] T-81/95, *Interhotel v. Commission of the European Communities*, [1997] ECR II-1265 at II-1293 paras 74-76.
[98] T-84/96, op. cit., p. II-2094, paras 48-49.
[99] C-181/90, op. cit., p. I-3570 paras 22-23; C-181/90, op. cit., p. I-3587 paras 20-21.
[100] T-450/93, op. cit., p. II-1197, para 52.

Commission to substantially reduce the ESF assistance granted to a project of vocational training after considering the recipients' private interests, if during the implementation of the project there are substantive modifications to the original contents on which the approving decision of the Commission was based.[101] It has also been found that the protection of legitimate expectations is not violated when the Commission reduces ESF assistance initially granted to a programme, when it discovers irregularities in the programmes' implementation, which prove that the programme was not implemented according to the approving decisions.[102] The CFI also stated that since in the case of annulment of a Commission act it is justifiable for the Commission to re-examine the entire case file in order to produce a new act, this being a very time consuming procedure, there is no violation of the principle of legal certainty because a delay in the process of complying with a judgment is not liable in itself to affect the validity of the measure finally adopted.[103]

However, it has been ruled that when the Commission reduces the ESF assistance granted to a programme based on provisions of the initial approving decision which were not notified to the recipients of the assistance, it violates the principle of legitimate expectations.[104]

In general it has been noted that the rationale behind the use of the principles of legal certainty and legitimate expectations is that foreseeability as to the payment of assistance is necessary to enable the recipients to commit themselves to expenditure, being free of the risk of ultimately having to bear the burden of it themselves.[105]

In the case of withdrawal of unlawfully granted assistance there could be a conflict between the principle of legality of financial management of Community resources and the principle of legal certainty of the recipients. In other words, a conflict between the public interest in the management of Community funds and the private interest of the recipients thereof.[106] Usually in such a conflict the public interest prevails over the private interest.[107]

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[101] C-200/89, op. cit., p. I-3694 paras 25-26.
[102] T-73/95, *Estabelecimentos Isidoro M. Oliveira SA v. Commission of the European Communities*, [1997] ECR II-381 at II-395, II-396 paras 34-35.
[103] Ibid, p. II-398, II-399 paras 43-47.
[104] T-81/95, op. cit., p. II-1286-II-1288, paras 49-57.
[105] A. Evans, op. cit., p. 302.
[106] Ibid, p. 303.
[107] Joined Cases T-551/93, T-231/94, T-232/94, T-233/94, T-234/94, *Industrias Pesqueras Campos SA, Transacciones Maritimas SA, Recursos Marinos SA, Makuspesa SA v. Commission of the European Communities*, [1996] ECR II-247 at II-278 para 76.

A final point involves the initial decision granting or refusing assistance. The Commission is usually considered to have considerable discretion since it must evaluate economic circumstances, assess complex facts and accounts or determine which of the several Union objectives are better served by the application in question.[108] However this discretion is not unlimited and the Commission assessment and decision may be overturned if there is an "erreur manifeste d' appréciation" (clear error of assessment).[109] Such an error exists when, for instance, although the project's description fits the policies adopted to meet the Union' priorities the Commission rejects the relevant application.[110]

6.1.3.4. Misuse of Powers

The basic concept of this final ground of annulment is that if an institution is found to have used its competences to achieve an end other than the one for which the competence was granted, or to have evaded a procedure specifically prescribed by the Treaties for enacting the measure in question,[111] the resulting act is void. So far, with regard to ESF assistance, there no cases have been brought on this ground. This is understandable, given the difficulty in establishing such a case. A possible misuse of power in the area of ESF assistance could be a decision of the Commission to reduce, withdraw or suspend the assistance granted, or to reject an initial application for ESF assistance, simply because the Commission wishes to put pressure on the Member State concerned to fulfil another EC Law obligation.

6.1.4. Time Limits

According to Art. 230(5) EC Treaty all proceedings for the annulment of a measure must be instituted within two months of its publication, or of its notification to the applicant (or, in the absence thereof, of the day on which it first came to the applicant's attention). Furthermore, it has been ruled that failing publication or notification, it is for a party having knowledge of a decision concerning it to request the

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[108] A. Evans, op. cit., p. 303.
[109] Ibid, p. 304.
[110] C-213/87, op. cit., p. I-221.
[111] C-84/94, *United Kingdom v. Council of the European Communities ("Working time Directive")*, [1996] ECR I-5755 at 5814, para 69.

whole text thereof within a reasonable period, but that the period for bringing an action can begin to run only from the moment when the third party concerned acquired precise knowledge of the content of the decision in question and of the reasons of it adoption, in such a way as to enable it to exercise its right of action.[112]

In the case of ESF assistance, given that the usual method of communication between the Commission, the competent national authorities and the recipients of the assistance is mail correspondence, there have been cases where the starting date of the period during which a decision could be challenged was not easily established. Usually the Commission informs the national authorities of its decision and the reasons justifying it, and then the national authorities inform the beneficiaries. The information provided to the beneficiaries contains an abstract of the decisions and a general statement of the justifying reasons. The beneficiaries must request, as stated the whole text of the decision and the reasons within a reasonable period of time. This period of time starts when the beneficiaries first discover that the decision exists. It has been found that any direct or indirect reference to such a decision in a letter from the Commission to the beneficiaries constitutes a method of bringing the decision's existence to the beneficiaries' attention.[113] It has also been found that 2 years is an unreasonably long period for the beneficiaries to wait before requesting the whole text of the decision.[114] The beneficiaries, however, may challenge the decision based only on the notification of its existence. Since the notification does not state either the date nor the content of the decision, the beneficiaries cannot be criticized for not providing in support of their application more extensive particulars about the decision.[115] Once the beneficiaries have requested the whole text of and reasons for a decision, the national authorities and Commission cannot merely send a brief summary. Only when the beneficiaries receive the full text and reasons, does the period in which the decision may be challenged commence.[116] A final issue concerns the aforementioned possibility of a dialogue between the Commission, the national authorities and the beneficiaries after the adoption of the decision. This

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[112] C-236/86, *Dillinger Hüttenwerke AG v. Commission of the European Communities*, 1988 [ECR] 3761 at 3784 para 14; T-465/93, *Consorzio Gruppo di Azione locale "Murgia Messapica" v. Commission of the European Communities*, [1994] ECR II-361 at 374 para 69.

[113] T-151/95, op. cit., p. II-1556, II-1557 paras 46-48.

[114] T-468/93, *Frinil-Frio Naval e Industrial SA v. Commission of the European Communities*, [1994] ECR II-33 at II-45 paras 32-34.

[115] C-157/90 op. cit., p. I-3553 para 14.

[116] Joined Cases T-432/93, T-433/93, T-434/93, op. cit., p. II-521 paras 50-51; C-143/95P, *Commission of the European Communities v. Socurte-Sociedade de Curtumes a Sul do Tejo, Lda and Others,* [1997] ECR I-1 at I-21, I-22 para 31-32.

possibility has been excluded by the ECJ because if the Commission insists on its original decision and issues another one, after the dialogue, merely confirming the first decision, the beneficiaries would not be able to challenge the second decision since they did not challenge the first within the appropriate time limits.[117]

6.2. Actions for failure to act

With special regard to the management of ESF resources, there are three main problems. First, there is the problem of reviewing omissions to adopt non-reviewable acts. The second problem concerns the *locus standi* of non-privileged applicants. The third issue concerns the procedural problems involved in bringing an action for failure to act. The relevant provisions are included in Art. 232(1) EC Treaty:

> *"Should the European Parliament, the Council or the Commission, in infringement of this Treaty, fail to act, the Member States and the other institutions of the Community may bring an action before the Court of Justice to have the infringement established."*

The main issues are the same as those analyzed above regarding actions against acts: What are reviewable omissions? Who may bring an action against an omission and on what grounds? What are the relevant time limits? Therefore reference will be made in this section only to the issues which require a different approach.

With regard to reviewable omissions, it has been noted that because of the unity principle, failures to act within the scope of Art. 232(1) are failures to adopt only a reviewable act.[118] However the ECJ has allowed the Parliament to challenge the failure to adopt an act which was not reviewable.[119] Within the field of ESF, reviewable acts have been defined above. Given the complexity of the system of managing ESF funds, it would be very dangerous to allow anyone to challenge omissions to adopt non-reviewable acts. This could lead to confusion, since both the Commission and the national authorities are responsible for several acts regarding the Funds management. It is true that the omissions of national authorities can be challenged only before national courts. However the natural and legal persons involved in these cases, especially if not

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[117] C-304/89, op. cit., p. I-2313 para 24.
[118] P. Craig-G. De Burca, op. cit., p. 491, J. Steiner,-L. Woods, op. cit., p. 482, P.J.G. Kapteyn, P. Verloren van Themaat, op. cit., p. 468.
[119] C-302/87, *European Parliament v. Council of the European Communities ("Comitology")*, [1988] ECR 5615 at 5641 para 16. The act in question was the draft budget of the European Communities.

accustomed to such complex mechanisms, might not be able to determine who has competence to issue an act and whether he/she has failed to do so. This problem is highlighted in the case of projects implemented under operational programmes.

As in Art. 230 natural and legal persons are non privileged applicants since they can only challenge failures to act in connection with measures addressed to them. They cannot challenge failures to adopt recommendations or opinions. The ECJ has ruled that it is possible for a non privileged applicant to challenge a failure regarding an act not addressed to him as long as this applicant is directly and individually concerned.[120] The test of direct and individual concern is the same as that for Art. 230 EC Treaty.

A final, important, issue involves the procedural requirements concerning the judicial review of omissions. According to Art. 232(2) EC Treaty an omission only exists where an institution that has been called upon to act fails to do so within two months. In that case the omission can be challenged within two months of the expiry of the first two-month period. This procedural requirement has been used by the ECJ and the CFI as a barrier, in order to prevent applicants challenging non existing Community decisions regarding the management of ESF assistance. More specifically it has been ruled that when the applicants cannot establish the material existence of a Commission decision, or when they challenge the act of a national authority before the ECJ (both actions would be inadmissible according to the analysis in the previous section), they cannot assume that their action is also an action for failure to act, because the "previous application" requirement and the time limits set in Art. 232 have not been complied with.[121] The ECJ has also found that it is impossible to annul an act adopted after the two-month period within which it should have been adopted originally, precisely because of that delay in adoption.[122] If such an annulment were allowed then it would be impossible, at that stage (after the period of two months) to adopt any valid decision about the issue concerned.[123] The complexity of the procedures for managing ESF assistance at European and national level justifies delay in the adoption of acts about this issue and two months is not normally sufficient, especially when the act to be adopted involves detailed examination and analysis of the projects and the relevant financial provisions.

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[120] C-107/91, *Empresa Nacional de Urânio SA (ENU) v. Commission of the European Communities*, [1993] ECR I-599 at I-630 para 17.
[121] C-130/91, op. cit, p. I-73 paras 11-12; T-271/94, op. cit., p. II-766 paras 53-55.
[122] T-81/95, op. cit., p. II-1261 para 67.
[123] Ibid, p. II-1261 para 67.

6.3. Enforcement Actions

These actions, although indirectly connected with judicial review, may be activated within the framework of the management of ESF resources. Art. 226 EC Treaty provides for a procedure designed to ensure that all Member States fulfil their obligations under the Treaty:

> *"If the Commission considers that a Member State has failed to fulfil an obligation under this Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.*
> *If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice."*

This provision is regarded as central to the Commission's role as "guardian of the Treaties". It actually supplements Art. 211 EC Treaty according to which the Commission must ensure, *inter alia*, that the provisions of the Treaty and the measures taken by the institution pursuant thereto are applied.[124]

With regard to the management of ESF assistance, this provision has become increasingly important, given the decentralization of this management to national authorities of the Member States. The Commission monitors the management of this assistance by national authorities and aims to verify its legality, regularity and financial soundness. It may issue reasoned opinions concerning this management.[125] These opinions must contain a coherent statement of the reasons which led the Commission to believe that the State in question failed to fulfil its obligations under Community law.[126] The national authorities must comply with them. If they do not, the Commission may bring an action before the ECJ. According to Art. 228, if this action is successful, the Member State must comply with the ECJ's judgement. If it does not the Commission may once more issue a reasoned opinion and if the State continues not to comply, the case may again be brought before the ECJ, which may impose a penalty payment on the State.

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[124] J. Hanlon, European Community Law, Sweet & Maxwell, 1998, p. 99.
[125] The Commission has a discretion to act under Art 169 [226] and it is not obliged to issue a reasoned opinion despite the wording of the Treaty. See C-247/87, *Star Fruit Company SA v. Commission of the European Communities*, [1989] ECR 291 at 301 para 11. Also the acts of the Commission under Art. 169 [226] have no legally binding effect. See C-48/65, *Alfons Lütticke GmbH and Others v. Commission of the European Communities*, [1966] ECR 19 at 27.
[126] C-7/61, *Commission of the European Communities v. Italy*, [1961] ECR 317 at 327.

An interesting question arises when the Commission decides not to take action against a Member State under Art. 226 EC Treaty with regard to the management of structural assistance: does this also constitute a "silent decision" not to reduce or suspend Community financial assistance according to the relevant provisions of the Regulations on the Structural Funds?[127] The Court of First Instance found that these two procedures are independent and that not taking action under Art. 226 cannot automatically entail a decision not to reduce or suspend structural assistance.[128] Such a decision must be adopted by the Commission *expressis verbis* and the fact the Commission has not taken action under Art. 226 does not prevent it from doing so at any time.[129] This reasoning was also upheld by the ECJ which observed that reducing or suspending structural assistance does not depend on previous actions under Art. 226, although such actions might be taken into account.[130]

Enforcement procedures may also be initiated by Member States against other Member States. This is provided for in Art. 227 EC Treaty, according to which the Member State must first bring the matter before the Commission, which shall deliver a reasoned opinion on the issue in question. After that opinion and if the Member States do not change their opinion the case may be brought before the ECJ. If the Commission does not deliver its reasoned opinion within three months the Member States may bring the case before the ECJ without it.

With regard to the management of ESF assistance the provision of Art. 227 can be useful because most programmes financed by the ESF must have a transnational nature, involving authorities from numerous Member States. Therefore any problems arising between the cooperating Member States, during the implementation of such programmes, can be resolved using Art. 227.

The Commission may initiate the Art. 226 procedure for a violation of any provision of Community law, primary or secondary. Given that the management of ESF assistance is regulated by Regulations and Decisions, this is important because the Treaty dispositions of the ESF now make direct reference to secondary Community legislation

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[127] J. Scott, op. cit., p. 636.
[128] T-461/93, *An Taisce-The National Trust for Ireland and WWF UK (World Wide Fund for Nature) v. Commission of the European Communities*, [1994] ECR II-733 at II-749, para 35.
[129] Ibid, p. II-749, II-750, paras 35-36.
[130] C-325/94 P, *An Taisce-The National Trust for Ireland and WWF UK (World Wide Fund for Nature) v. Commission of the European Communities*, [1996] ECR I-3727, at I-3738, para 23.

and do not include detailed provisions on this issue (see Chapter 1). This is also true for Art. 227 procedures.

Furthermore, any violation of Community law by local authorities of the Member States is regarded as an act of the State concerned, so the defendant in a possible Art. 226 action before the ECJ would be the government of that State.[131] No action can be brought against the local authorities themselves.[132] This situation is quite satisfactory. Decentralization of management to the local authorities does not lead to decentralization of responsibility for this management, at least at Community level. This responsibility lies with the governments of the Member States. It is of course possible for these governments to bring actions before the national courts against the local authorities of these States for the violation of Community law.

There was a relevant specific provision in the second Greek CSF, according to which the Commission could initiate Art. 226 proceedings if it considered that the Greek State had violated one of its obligations under Community law with regard to the CSF.[133]

6.4. Preliminary Rulings

The primary function of the preliminary rulings delivered by the ECJ according to Art. 234 is to contribute to the development of Community law by providing a mechanism for analyzing important concepts and issues such as the concept of direct effect or the issue of the relationship between the national and Community legal systems.[134]

Nevertheless, Art. 234 is also used as a supplementary mechanism for reviewing the legality of Community measures. The ECJ has jurisdiction to examine the validity of acts of Community institutions within the framework of the Preliminary Rulings procedure. This is regarded as an alternative to the direct actions procedure of Art. 230. The reasons for this include: a) the short period of two months within which a direct action can be brought, b) the fact that non priviledged applicants do not develop any

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[131] C-95/97, op. cit., p. I-1792 para 7.
[132] E. Besila Vika-D. Papagiannis, op. cit., p. 97.
[133] European Commission, Greece-Community Support Framework for the development and structural adjustment of the regions whose development is lagging behind (Objective 1) 1994-1999, COM(94) 1716, 13 July 1994, p. 145.
[134] For further details see P. Craig-G. De Burca, op. cit., p. 406-452, J. Steiner,-L. Woods, op. cit., p. 414-440, W. Cairns, op. cit., p. 125-134, P.J.G. Kapteyn, P. Verloren van Themaat, op. cit., p. 499-525, J. Hanlon, op. cit., 124-137.

interest in the review of Community action until this affects their activities, which might happen a long time after the adoption of the act in question and c) the possible lack of *locus standi*.[135] It has been argued, however, that there are several reasons why the Art. 234 procedure is less satisfactory than the Art. 230 procedure in order to review Community acts.[136] First, the national courts have no experience in the subject. Secondly, the Council and Commission cannot participate in the proceedings under Art. 234. Thirdly, the ECJ's analysis of the issue and its ruling is limited by the questions asked by the national courts, so the ECJ cannot study the problems in depth. Fourthly, there are extra delays and costs in proceedings before a national court, especially if an Art. 234 reference is involved. The final argument is that the national courts cannot review the legality of Community acts and declare them invalid.[137] However, the details of the relevant debate are beyond the scope of this thesis.[138]

Community acts concerning the management of ESF assistance are not always communicated immediately to the persons concerned. The result is that when they learn about these acts, they cannot challenge them before the Community courts. The solution to this problem, as indicated by the CFI itself, is Art. 234:[139] The applicants will challenge (before the national courts) the acts of national authorities, based on the Community act(s) in question. The national courts may refer to the ECJ a question concerning the validity of these Community acts, under Art. 234. Thus the acts in question will be reviewed eventually. The drawback of this mechanism, however, is that national courts are not always obliged to make a preliminary reference to the ECJ. If they do not, the Community act in question may never be reviewed by the ECJ.

6.5. Actions for damages

It is potentially very useful for the final beneficiaries to be able to bring such actions against the Commission within the framework of the management of ESF resources. It provides an opportunity to claim money, which the Commission, unlawfully, may have not paid. The relevant disposition is Art. 288 EC Treaty according to which

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[135] C. Harding, The Impact of Article 177 of the EEC Treaty on the Review of Community Action, (1981) 1 YBEL 93-113 at 96.
[136] Opinion of Advocate General Jacobs in C-358/89, op. cit., p. I-2524, I-2525, paras 71-74.
[137] See C-314/85, *Foto Frost v. Hauptzollamt Lübeck-Ost*, [1987] ECR 4199 at 4230-4232 paras 14-20.
[138] For more details and an analysis of the relevant case law, see A. Arnull, op. cit., p. 41-44.

> *"The contractual liability of the Community shall be governed by the law applicable to the contract in question.*
> *In the case of non-contractual liability, the Community shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties."*

With regard to ESF assistance, there are no contracts between the Commission and the national authorities on the management of this assistance. Everything is regulated by Commission decisions. The relevant contracts between the national authorities and the final recipients are governed by national law. Community legislation on public procurement is also applicable. Actions based on these contracts will be examined in the following Chapter.

From the above remarks, it is concluded that the actions for damages, within the framework of the management of ESF assistance, focus on the Community's non-contractual liability. The reviewable acts in such a case can be legislative or administrative. The legislative acts include the Regulations on the Structural Funds and the relevant implementing Decisions. So far no action has been brought against these legislative instruments. The reviewable administrative acts which may give rise to action for damages are the Commission decisions adopted within the framework of the implementation of the various programmes financed by the Structural Funds.[140] Such decisions usually refer to the approval of financial assistance or to the withdrawal, reduction or suspension of the assistance initially granted. In order for such a decision to incur liability for the Community under Art. 288(2), the ECJ has established certain criteria: the conduct of the relevant Community institution (in this case the Commission) must be illegal, the applicant must have suffered some damage and this damage must be caused directly by the illegal conduct of the institutions.[141] Usually the damage is an economic loss (loss actually incurred plus any loss of earnings)[142] but it may include

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[139] T-271/94, op. cit., p. II-766 para 53.

[140] Administrative acts, which can lead to an action for damages, are defined in general as "acts by which the administration applies general rules in individual cases or otherwise exercises its powers in an individual manner". See M. van der Woude, Liability for administrative acts under Art 215(2) in T. Heukels and A. McDonnell (eds), The Action for Damages in Community Law, Kluwer Law International, 1997, p. 112.

[141] C-200/89, op. cit., p. I-3695 para 30.

[142] Joined Cases C-5/66, C-6/66, C-7/66 and C-13/66 to 24/66, *Firm E. Kampffmeyer and Others v. Commission of the European Communities*, [1967] ECR 245 at 266.

immaterial loss.[143] The illegality or fault of the relevant Community institution usually consists of the breach of a duty owed to the applicant under Community law.[144] Finally, the causal link between the damage and the conduct of the institution in question has to be direct and well established.[145] These elements are very important in an action for damages against the Commission, within the framework of the management of ESF assistance. So far, however, such actions have been rare.

A final point concerning these actions for damages, especially with regard to disputes about the management of ESF assistance, is that the applicants often confuse such actions with actions for annulment. When they bring an action for annulment, they include a request for the Court to order the Commission to pay amounts equivalent to the damage they have suffered, these amounts usually being the remaining sums of ESF assistance. The ECJ has ruled repeatedly that itself and the CFI, when reviewing the legality of an act under Art. 230, may only annul the contested act and cannot order the pay ment of damages.[146] The Commission would have to pay the requested amounts according to Art. 233 EC Treaty which obliges the institutions to comply with the judgement of the Community courts. However, if the applicant's claim were based on Art. 288, the ECJ and CFI would have jurisdiction to order the Commission to pay compensation for the damages caused by its illegal acts.

6.6. Judicial Review of Financial Control

As analyzed above, the financial control at Community level of the management of ESF resources given to Greece has four levels. All the proceedings of that control involve the adoption of certain acts by the controlling authorities. In order to be reviewed judicially, these acts must have legally binding effects. In the case of financial control at Community level such acts are more or less non-existent. As seen in Chapters 3 and 4, acts issued by authorities like the Financial Controller of the Commission, the ECA and the Budgetary Control Committee of the Parliament are usually reports presenting the findings of financial controls performed by these bodies, which do not have legally binding effects. Of course they may cause the adoption of other legally

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[143] W. Cairns, op. cit., p. 121.
[144] C-145/83, *Stanley George Adams v. Commission of the European Communities*, [1985] ECR 3539 at 3590 para 44.
[145] W. Cairns, op. cit., p. 122.

binding acts based upon their findings e.g. the Commission may reduce, withdraw or suspend ESF assistance based on an audit report by its Financial Controller. In such a case however the report is not the reviewable act.

It is interesting, however, to consider whether there could be any other institution competent to judicially review acts adopted according to audit reports, a body more specialized than the ECJ or the CFI in issues of financial control. This institution would also be competent to review financial control acts if these were reviewable.

The idea of having a "Court of Budgetary Discipline" in the European Union was suggested for the first time by the European Parliament.[147] There have been several similar suggestions since then, which can be summarised as follows:[148]

One suggestion was that to give jurisdiction to impose sanctions at judicial level in cases of financial mismanagement either to a new Court of Budgetary Discipline or to the ECJ. The first option would require a drastic amendment of the Treaties regarding the competences of the European institutions, the membership of this new body etc. The second option would require a substantive amendment of the competences and operating procedures of the ECJ. It is not possible for the Court, given its current structure and operating rules, to start investigating such actions on its own initiative.[149]

Another suggestion was to give jurisdiction to impose sanctions at administrative level either to the ECA or to the European institution to which the employee in question belongs. The first option would permit the ECA to impose administrative/disciplinary sanctions, which would be possible since the ECA would have at its disposal all the necessary information. The second option could have the advantage that the institution in question would be able to precisely identify the violation and would be assisted in its work by the ECA.

It is submitted that the most satisfactory solution is to increase the ECA's authority. This institution is responsible for external audit in the European Union. Its nature is not clear: Is it administrative or judicial? There is no provision in the Treaties concerning the nature of any of the European institutions. This nature is determined either by an equating the European institutions with apparently similar national

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[146] C-199/91, op. cit., p. I-2693 para 17; T-468/93, op. cit., p. II-46; Joined Cases T-432/93, T-433/93, T-434/93, op. cit., p. II-522 para 54.
[147] European Parliament, Doc A4-0102/95-Bourlanges.
[148] N. A. Milionis, The European Court of Auditors, A.N. Sakkoulas Publishers, 1998, pp. 68-72.

institutions, or by interpretating the Treaties' dispositions concerning these institutions. The first method has been characterized as "deeply misconceived".[150] The Community order has a unique, "*sui generis*" nature and its features have their own function.[151] So, any attempt to try to understand a Community institution, using the model of a national institution might be misleading. However, this does not mean that such an assessment must be completely excluded. After all, when the representatives of the Member States established the various institutions, they used as models, at least at a very basic level, the respective national institutions of their countries.

Given that in some Members States (Italy, Greece, Portugal) the state's audit is performed by lawyers, others (United Kingdom, Ireland) employ accountants, it has been difficult to compare the ECA to the national audit institutions of the Member States.[152]

The ECA is generally considered to have a rather misleading name.[153] It is believed not to have the traditional powers of a Court meaning it cannot declare the law and pronounce judgments.[154] Its tasks have been called "supervisory" and it is not considered to have a judicial role.[155] It has been suggested that the ECA's functions are more administrative than judicial in nature.[156] According to another opinion, the ECA cannot impose any legal or administrative sanctions upon audited bodies or individuals.[157] This clearly shows that the auditing activities of the ECA are considered to lack any judicial nature and that the institution is not judicial.[158] The ECA itself has admitted that it has no judicial powers and that its pronouncements have no "*res judicata*" value.[159] The Court has no jurisdiction even to enforce its controls or to investigate suspicions of irregularity arising from its examination.[160] It cannot invoke legal sanctions against national officials who obstruct its work.[161] It is however

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[149] The ECJ had sich competence from 1968 to 1973. See Art. 50 of Financial Regulation applicable to the general budget of the European Communities of 30 July 1968, OJ 1968, L 199/1. The Financial Regulation of 25 April 1973 (OJ 1973, L 116/1) abolished it.
[150] A. Dashwood, op. cit., p. 127.
[151] Ibid, p. 127
[152] Sir N. Price, op. cit., p. 240.
[153] I. Harden, F. White, K. Donnelly, op. cit., p. 601.
[154] Ibid, p. 602 & D. Strasser, The Finances....., op. cit., 270.
[155] J. Shaw, op. cit., p. 132.
[156] A. Charlesworth, H. Cullen, European Community Law, Pitman Publishing, 1994, p. 32.
[157] T. M. James, op. cit., p. 478.
[158] P. N. Stagkos, E.R. Sahpekidou, op. cit., p. 112.
[159] European Court of Auditors, Auditing the finances.....,op. cit., p. 30.
[160] Kl.-D. Borchardt, The ABC of Community Law, Office for Official Publications of the European Communities, 1994, p. 30.
[161] I. Harden, F. White, K. Donnelly, op. cit., p. 626. One of the most characteristic examples was the examination of whether the VAT own resources were collected in 1985 and 1986. Several Member

noteworthy that under the Parliament's 1973 proposal, for a new audit institution, this would be able to take disciplinary action regarding infringements of financial regulations by Commission's officials.[162] This suggestion has clearly not been followed up.

From the Treaties' dispositions concerning the ECA it is noteworthy that the qualifications required by members of the ECA resemble those required by members of the ECJ.[163] These are independence and suitability for office. Also, the Privileges and the Immunities of the Judges of the ECJ apply to the members of the ECA. It is therefore clear that the Member States wish for the members of the Union's audit institution to be as impartial and independent as the judges of the ECJ.

With regard to the ECA's methods and competences, these have been adjusted to the auditing nature of the tasks and the quantity of the audit required, in order to examine the finances of the European Union, as accurately as possible. The fact that the audited institutions, organizations, bodies and individuals have the right to reply to the ECA's remarks and findings, explaining their point of view, must not be overlooked. This "contradictory procedure" guarantees that the auditee will be heard by the ECA. This procedural framework strongly resembles the proceedings of a court of law. Of course the ECA is not equivalent to the ECJ, since, as noted, it does not deliver any kind of judgments and has no competence to interpret Community law as a judicial institution. Even the Financial Regulation, the context of which is exactly within the ECA's competence, is not interpreted originally by the ECA but by the ECJ, according to the procedure of preliminary rulings described in Art. 234 EC Treaty.

Taking into account all the similarities and differences between the ECA and the ECJ, as described in the Treaties, it can be said that the audit institution of the European Union is neither judicial nor administrative. The President of the ECA said in January 1989, during a public hearing organized by the Commission:

> "The Court....is not an administrative or a legislative body...., it does not play the role of the public prosecutor..."[164]

States refused to accept the examinations planned by the ECA (reviewing statistical data, examining documentation, carrying out compliance tests). The Court could only point this out in its Annual Reports and inform the discharge authorities that it had been unable to fulfil its responsibilities regarding the VAT own resources. It could do nothing more and the situation has remained unchanged so far. Annual Report of the Court of Auditors for the Financial Year 1985, OJ 1986, C 321/32 & Annual Report of the Court of Auditors for the Financial Year 1986, OJ 1987, C 336/39.

[162] H. Aigner, op. cit., p. 27.

[163] Art. 223 EC Treaty.

[164] D. Strasser, The Finances....., op. cit., p. 297.

The ECA is simply seen as the institution competent for external audit, without any further clarification of its role or position in the institutional framework of the European Union. This is why, so far, its only real strength is the influence or moral effect it can bring to bear upon the Union's financial management.[165] Nevertheless, the fact that the ECA cannot directly impose sanctions does not mean that its observations are not taken into account by other institutions, national or European.[166] It has been noted that financial management authorities, European or national, very often voluntarily take the necessary corrective actions when the ECA submits its observations (either by drafts or in its official reports) concerning their management.[167]

This is however the "Achilles' heel" of this system of audit. The whole idea of an effective audit in the European Union seems to be based on the "good will" of the various institutions and organizations managing its finances. That conception is nevertheless completely incompatible with the need for an effective audit within the Union. If the auditor cannot impose the measures required by sound financial management upon the auditees, the whole system is by definition defective. Naturally, the Court is not going to dictate the policies to be followed (a political task) but it can and should prescribe, from a financial and legal point of view, sound ways to achieve the goals set.

One way has been to granting the Court the right to take action before the ECJ in order to protect its prerogatives (audit rights) vis à vis the other European institutions and the Member States. This solution was divided into two proposals (one concerning the institutions and one concerning the Member States) discussed at the Intergovernmental Conference of May 1997 in Brussels. It had already been pointed out that the Court should be able to take legal action against any other institution's behaviour, which hindered its ability to audit the accounts.[168] So the relevant proposal was brought forward by the Dutch Presidency, which observed that the ECA, although a European institution, could not bring an action before the ECJ in order to protect its prerogatives. An amendment of Art. 230(3) was deemed necessary in order to add the ECA to the institutions mentioned therein. This proposal has been accepted and the necessary amendments to the Treaties have been made. The second proposal, introduced

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[165] T. M. James, op. cit., p. 478.
[166] European Court of Auditors, op. cit., p. 30.
[167] Ibid, p. 30.
[168] D. O' Keeffe, op. cit., p. 192.

by the UK delegation, included an amendment of Art. 226 (see above). From this disposition it is clear that in order to protect the ECA's prerogatives, an appeal must be brought before the ECJ by the Commission. The proposal's aim was to make the ECA responsible for the protection of its own prerogatives by giving it the right to bring an action before the ECJ. This proposal was substantially connected with the provisions of Art. 248(3) concerning the cooperation between the ECA and the Member States during audit (on the spot audits, forwarding of necessary documentation, participation of national audit institutions in the audit procedure). It had however been rejected by the delegations of the southern countries of the Union and was therefore not adopted.

But even the right to take action before the ECJ is not the best way to make the ECA as effective as possible in the European Union. It is suggested that the ECA should be granted judicial authority, like the respective institutions in Italy, Greece, France, Belgium, Luxembourg, Spain and Portugal. Its jurisdiction should include all those issues that a Court of Budgetary Discipline would cover:[169] As far as persons are concerned (*ratione personae*), the ECA's jurisdiction should cover Community authorizing officers, Community accounting officers, Community financial controllers, as well as all beneficiaries. As for the substance (*ratione materiae*), the ECA's jurisdiction should cover the refund of all sums wrongfully paid and the imposition of fines. The ECA might also have jurisdiction in cases involving fraud against the European Union, but only with regard to the financial aspect (refund of the resources misused) and not the criminal aspect. Also a preliminary rulings procedure, similar to that of Art 234 EC Treaty, might be introduced. Whenever a national court adjudicates a case regarding the financial aspects of the financial control of the management of Community resources, it could make a preliminary reference to the ECA, under conditions similar to those of Art. 234. Naturally, the preliminary rulings of the ECA would be limited to issues concerning its jurisdiction.

Of course, there will be a problem concerning the ECA's staff involved in this judicial procedure. The audit is conducted by ECA employees, who will most probably be party to the dispute. Therefore, it will be difficult for the members of the ECA to judge this dispute impartially, since the ECA's staff performs the audit under their guidance. The solution to that problem could be a complete restructuring of the Court.

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[169] N. A. Milionis, op. cit, p. 71-72.

The restructuring of the Union's institutions should not be regarded as a "sacred cow" or a "taboo issue". These institutions exist in order to create and implement the policies of the European Union. Therefore, their organization and structure must correspond to the conditions and requirements of the political, economic and legal environment in which they operate. With regard to the ECA, the economic, political and legal parameters which existed at the time of its establishment have changed. The European Communities are now part of the European Union, which has developed several new and complex policies, some of them regarding employment. The means to implement these policies have also changed. The ESF, for instance, has become a very important instrument for implementing structural policies and its structure and operation have been revised repeatedly. The resources that finance the operations of the Union have increased significantly. The finances of the Union developed from rather modest beginnings into being able to support an amalgam of different policies involving appropriations that were unthinkable twenty years ago. The financial instruments available to the Union expanded gradually leading to the "Europeanisation" of public policy[170] in all Member States, since these all include in their budgetary calculations the resources given to them by the Union. In addition, there are non-member states, which nevertheless receive financial assistance provided through the Union's budget. The transactions involved in all these proceedings must be controlled by the ECA. The ECA however was designed to operate in conditions involving far fewer transactions taking place in much less complicated schemes. The restructuring suggested here will enable the ECA to perform its tasks much more effectively and in the best interest of the European Union.

The ECA will be divided in two sections: a judicial section and an auditing section. The members of the ECA will be the "judges" and they would not get involved in the daily auditing procedures. The staff of the auditing section will perform these audits. This section will be supervised and coordinated by a new ECA official. In most of the Member States whose supreme audit institution is judicial, there is such an official.[171] The main duty of this new ECA official will be to represent the European Union's

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[170] B. Laffan, The Finances of the European Union, MacMillan Press, 1997, p. 2.

[171] In France this official is the Procureur Général, in Italy, Portugal, and Spain the Attorney General, and in Greece he is called Commissioner General of the State. The duties of these officials are more or less identical: to serve the public interest by bringing actions against those who caused financial loss to the State and to express their opinion during the trial. In Belgium and Luxembourg, however, despite

general interest, according to Art. 246(4) EC Treaty. As soon as the staff of the ECA (or any other Community auditing body) produce a report, it would be sent to this official, who, based on its findings and recommendations, would decide whether to bring an action before the ECA's judicial section. Such actions would be against those causing, deliberately or by negligence, financial losses to the Union (these could be Community Authorities, national, regional and local authorities, or any natural and legal person in receipt of financial assistance from the Union). He/She would also provide reasoned submissions in order to assist the ECA in reaching a decision. He/She would also cooperate with the other mechanisms of financial control in the Union, especially the Financial Controller of the Commission and the Anti Fraud Office. Of course, given the immense number of cases that must be examined, this official should have several assistants (at least ten).

Furthermore, the ECA will continue to produce its reports and opinions. These will be produced by the members of the ECA ("judges") as well as members of staff. It is not uncommon for a judicial body in the European Union to issue opinions. The ECJ has such competence under Art. 300(6) EC Treaty and Articles 107-109 of its Rules of Procedure.

So, the ECA, under these circumstances can operate as a judicial institution, having all the guarantees of impartiality and independence necessary for this task.

An argument to support the idea of granting the ECA judicial authority may be based on Art. 230(1) and 232(1) EC Treaty. According to these dispositions, acts (or failures to act) of the ECA regarding audit activities are not subject to review by the ECJ. For some, this is an indication that the ECA has no decision-making or legislative powers such as the institutions mentioned in these dispositions.[172] But as mentioned above, even the Court does not consider itself to be a legislative body. Its acts, concerning audit, are legally binding since according to Articles Art. 246 and 248(2) the ECA carries out the audit and determines whether a transaction is legal, regular and within the framework of the sound financial management principles. So, in the European Union's legal order the characterization of a transaction by the ECA as legal and regular etc, is binding on the other institutions and the Member States. Otherwise the Statement of Assurance of Art. 248(2), regarding the reliability of the accounts and the legality and

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the existence of a judicial audit institution, there is no such officer. For more details see National Audit Office, State Audit in the European Union, London 1996, pp. 20, 61, 90, 121-122, 132, 158, 168,172.

[172] D. O' Keeffe, op. cit., p. 191-192.

regularity of the underlying transactions, would be meaningless. Also, the ECJ's case-law provides another argument on this point. The ECJ has accepted the ECA's power to examine the legality of expenditure with reference to the budget and the secondary legislation on which the expenditure is based, while the ECJ is reviewing the legality of this secondary legislation.[173] There is therefore a clear distinction between the ECA's and the ECJ's object of review. So, since the ECA's acts are not subject to judicial review by the ECJ, but they form a parallel review of certain other acts (transactions), it could be possible to accept the upgrading of the ECA to a judicial level. Considering the importance of the ECA's acts to the function of the European Union, such an upgrading would reinforce the Union's audit system by providing it with a judicial institution.

Such a proposal, however, demands two very important conditions in order to be realized. First, it is necessary to increase the number of staff (auditors). Only with more personnel will the ECA be able to meet the requirements of such a judicial function. Second, in order to have a new judicial institution in the European Union, the European integration must reach a very advanced level. The idea of having a financial court in the Union can be practically realized only under conditions of financial harmonization of the Member States, namely the establishment of a common financial management system, especially with regard to resources given by the Union to the Member States.[174] Otherwise, such an institution will not be successful as a judicial audit institution. The ECA is correctly assumed to be a "specialized court".[175] In order to grant it judicial authority the Member States must be determined to accept the jurisdiction of a "supra-national" court to audit their management with regard to the Union's resources. Their reactions to the aforementioned proposals regarding the ECA during the last Intergovernmental Conference indicate the lack of this determination.

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[173] C-294/83, *Parti ecologiste "Les Verts" v European Parliament*, [1986] ECR 1339 at 1367 para 28.
[174] Such a system might also substantively assist the promotion of social cohesion and integration in the European Union. See F. Abraham, Economic federalism and European Union, in J. Pacolet (ed.), Social Protection and the European Economic and Monetary Union, Avebury Publications, 1996, pp. 89-108 & W. Moesen, Fiscal federalism and the EMU, in J. Pacolet (ed.), Social Protection and the European Economic and Monetary Union, Avebury Publications, 1996, pp. 159-169.
[175] A. Charlesworth, H. Cullen, op. cit., p. 32.

Chapter Seven: Judicial Review at National Level of the Financial Management of resources of the European Social Fund in Greece

As mentioned in Chapter 5, the Greek Court of Audit is competent to review the financial management of the resources of the Greek State, including those given by the European Union.

The judicial review of the financial management of all the resources available to the Greek State has two aspects. The first involves the control of the actions of the Authorizing and Accounting Officers and the reporting activities before the Greek Parliament while the second involves the adjudication of disputes regarding either the financial management itself or the control thereof.[1] Since the financial control and the adjudication are both performed by the Greek Court of Audit, there is an academic dispute concerning its institutional nature.

7.1. The institutional nature of the Greek Court of Audit

According to the most commonly accepted opinion, derived from Greek administrative law, the Greek Court of Audit has a dual institutional nature: it is an administrative and judicial body.[2] The case law of the Supreme Special Court[3] seems to accept this.[4] The opinion is based upon Art. 98(2) of the Greek Constitution, according to which the provisions of Art 93 paras 2 and 3 of the Greek Constitution (regarding the publicity of the sitting of courts and the reasoning of judgements) are not applicable in the auditing competences of the Court of Audit.[5] Therefore, since the auditing acts of the Greek Court of Audit (see Chapter 5), do not fulfil the above mentioned conditions of

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[1] K. Rizos, Audit of Public Expenditure and Accounts by the Court of Audit, National Press Office, 1999, p. 7.

[2] A. G. Raikos, Constitutional Law-Vol. III, A. N. Sakkoulas Publications, 1991, p. 94, E. Spiliotopoulos, op. cit., p. 278 and 555, M. Stasinopoulos, Lessons of Public Finance Law, Athens 1966, p. 15, M. Stasinipoulos, Lessons of Administrative Law, Athens 1957, p. 207, N. Themelis, The Court of Audit-150 years since its establishment, National Press Office, 1983, p. 59-60, D. Korsos, Public Finance Law-Vol I, A. N. Sakkoulas Publications, 1980, p. 42, N. Brontakis, op. cit., p. 41 and 122, P. Dagtoglou, Administrative Procedural Law, A. N. Sakkoulas Publications, 1994, p. 205-206.

[3] According to Art. 100 of the Greek Constitution, a Supreme Special Court is established. It has jurisdiction, *inter alia*, to settle conflicts and controversies regarding the judgements of courts, the constitutionality and interpretation of laws and rules of international law etc.

[4] Supreme Special Court 16/1979 (not published), Supreme Special Court 35/1995 (not published).

[5] G. Daskalakis, The institutional nature of the Court of Audit, Efimeris Ellinikis kai Allodapis Nomologias, 1944, p. 122.

publicity and reasoning, they are regarded as administrative acts.[6] Consequently, since the Greek Court of Audit adopts administrative acts along with its judgements, it is both an administrative and a judicial institution.

However, according to another opinion, derived from Greek public finance law, the Court of Audit is purely judicial.[7] This opinion is based on Art. 98(3) of the Greek Constitution according to which all the acts, auditing and judicial, of the Court of Audit are not subject to the judicial review of the Council of State, unlike those of all other administrative institutions. Consequently the Court of Audit cannot be an administrative institution. It has been observed that its auditing competences are of a judicial nature.[8] The procedural differentiation established in Art. 98(2) of the Constitution is justified by the particular nature of the auditing procedure and the object of control, which is the financial management of resources.[9] The Court of Audit adopts acts, during the financial control, according to a specific procedure, in which the inquisitorial system is preferred over the adversarial system, because these acts serve a specific purpose: the establishment of the regularity and legality of the audited transactions.[10] The case law of the Council of State seems to accept that the Court of Audit is only a judicial institution, based on the fact that the constitutional provisions on the Court of Audit are included in the Constitution's Chapter on the Judiciary, giving this Court all the guarantees suitable for a judicial institution.[11] However the Council of State distinguishes between the judicial and auditing competences of the Court of Audit by characterizing the auditing competences as administrative.[12]

The case law of the Court of Audit itself does not question its judicial nature, however there are controversies regarding the nature of its acts. More specifically, when the Court of Audit resolves a dispute regarding the approval of a payment order it adopts acts which have sometimes been considered administrative[13] and sometimes judicial.[14]

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[6] M. Stasinopoulos, Lessons of Public Finance Law, Athens 1966, p. 17.
[7] L. Theoharopoulos, The judicial nature of the Greek Court of Audit, in Minutes of the Conference "Historical Development of the institution of the Court of Audit in Greece and France", National Press Office, 1993, p. 125 at 126-130.
[8] K. Rizos, Legal nature of the acts of the Greek Court of Audit, in Minutes of the Conference "Historical Development of the institution of the Court of Audit in Greece and France", National Press Office, 1993, p. 145 at 148-149.
[9] L. Theoharopoulos, op. cit., p. 129.
[10] K. Rizos, Legal nature...., op. cit., p. 148.
[11] Council of State 2909/1986 (not published).
[12] Ibid.
[13] Court of Audit 195/1993 (not published).
[14] Court of Audit 139/1996 (not published).

The core of this problem concerning the Court's institutional nature is mainly political. The Court of Audit must be independent, regardless of its status, in order to deliver reliable auditing results.[15] However, accepting that the Court of Audit is an administrative body would place this auditing body under the auditee, which is the Greek Government and the Greek Public Administration. This would be unreasonable and would severely limit the effectiveness of the audit.[16] The Greek Court of Audit is not affiliated to the Parliament, like its counterparts in the Anglo-Saxon countries (United Kingdom, United States of America etc), because in the Greek parliamentary system partisanship is so strong that it is difficult to distinguish between parliamentary and governmental authority.[17] Therefore any institutional affiliation to the Parliament would weaken its independence. Its auditing acts include a verifying procedure regarding the legality of a transaction as well as the imposing of sanctions such as the disapproval of a payment order or the imputation of missing sums. Sanctions are imposed under certain procedural guarantees similar to those under which a judgement is delivered: the sanctions are imposed by a judicial body, the auditee has a right to be heard, and the actual persons who performed the audit may not impose the sanctions.[18] These acts, although not judgements, cannot be characterized as administrative. They can be characterized as quasi judicial acts. So the Greek Court of Audit is a judicial institution delivering judgements and adopting auditing acts of a judicial nature.

7.2. Jurisdiction of the Greek Court of Audit

According to Art. 98(1) of the Greek Constitution the Court of Audit has jurisdiction to provide legal remedies in disputes concerning the audit of accounts in general. It also has jurisdiction in cases concerning the liability of civil servants and local government, for any loss suffered by the State or local government organizations and legal persons governed by public law, through malicious intent or negligence.

This provision has enabled the Court of Audit to rule on significant aspects related to the audit of accounts. It has ruled that Art. 98(1) of the Constitution directly establishes its jurisdiction to grant legal remedies in disputes concerning this audit in

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[15] I. Sarmas, op. cit., p. 33.
[16] Ibid, p. 33.
[17] Ibid, p. 34.
[18] Ibid, p. 35 note 2.

general. Thus the Court may proceed to examine such cases even if there is no other legislative act confirming its jurisdiction over such disputes.[19]

It has also been ruled that the concept "audit of accounts" in the Constitution must be interpreted broadly.[20] Therefore relevant terms such as public financial management, accounting officer, public deficit, and imputation for the loss of public money can be used to establish the concept of audit of accounts in each case.[21] An account is regarded as not only the account presented by the competent accounting officer, but also any presentation of revenue and expenditure relating to public financial management.[22] The audit of accounts is not only that performed by the competent body according to a specific procedure, but any act of a public authority performed in order to verify the legality and regularity of financial management.[23] Consequently any disputes arising from such acts fall within the jurisdiction of the Court of Audit.

Another point resolved by the case law of the Court of Audit involves the financial management of public resources by legal persons governed by private law. The provisions of Art. 98(1) of the Constitution refer to legal persons governed by public law. It is common practice for all Greek governments to establish legal persons governed by private law and to grant them authority to manage public resources, thus avoiding the audit performed by the Greek Court of Audit. This method is used especially with regard to the resources given to Greece by the European Union. The Court of Audit in a memorable judgement in 1995[24] adopted a reasoning which expanded its auditing and judicial authority over legal persons governed by private law which manage public resources. It ruled that the management of public money is controlled according to the Constitution by a judicial body. "Public money" does not only include resources managed by public authorities or legal persons governed by public law. It also includes resources managed by legal persons governed by private law, as ordered by the State, and financed by the State's budget in order to fulfil a public objective.[25] Also, according to this reasoning, the term "Accounting Officer" refers to all persons who manage public money or public materials, regardless of whether they are employed by public or private law

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[19] Court of Audit, 1566/1987, in I. Sarmas op. cit., p. 172-174 at 173.
[20] Court of Audit, 2146/1995, in I. Sarmas, op. cit., p. 187-201 at 189-190.
[21] Ibid, p. 189-190.
[22] Ibid, p. 190.
[23] Ibid, p. 190.
[24] Court of Audit, 1039/1995, in I. Sarmas, op. cit., p. 175-186.
[25] Ibid, p. 176.

bodies.[26] These persons, as Accounting Officers, must submit accounts according to the Public Accounting Code and the P.D. 774/1980. The audit of these accounts and any disputes regarding this audit fall within the jurisdiction of the Court of Audit.[27] Consequently the Court of Audit may control transactions performed by legal persons governed by private law, as long as these transactions involve public resources.

This development in the Court of Audit's case law, however, has not prevented the Greek government from establishing legal persons governed by private law in order to manage Community resources given to Greece. The fact that the Court of Audit can control the management of these legal persons safeguards the lawfulness and soundness of the financial management of these resources.[28] This reasoning, however, has a flaw. It covers only *ex post* financial control (based on submitted accounts). Consequently, during *ex ante* and ongoing financial control the auditors of the Court of Audit approve the relevant warrants for payment. They claim that, since the money will be managed by a legal person governed by private law, they cannot control the legitimacy of the warrant and they must simply approve it. There have nevertheless been exceptions.[29] The solution could be provided by the case law of the ECJ, which has ruled that no distinction should be drawn between cases where aid is granted directly by the State and cases where aid is granted by public or private bodies established or appointed by the State to administer

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[26] Ibid, p. 177.

[27] Ibid, p. 177.

[28] In Austria, France, Germany, Italy, the Netherlands, Portugal, Spain and the United Kingdom the supreme national audit institutions may control the transaction of bodies governed by private law if these bodies manage public funds. In Ireland the national supreme audit institution may control private law bodies only if these receive more than 50% of their gross receipts from the State. In Belgium, Denmark, Sweden and Luxembourg the national supreme audit institution cannot control bodies governed by private law regardless of whether they manage public funds. Finally in Finland the national supreme audit institution cannot control private law bodies managing public funds in general but it may control all transactions involving resources given by the European Union, including of course those of bodies governed by private law. For more details see National Audit Office, State Audit in the European Union, London, 1996.

[29] A recent example was the case of a company called PEKAN-ASTRON, governed by private law, which was supposed to manage ESF resources within the framework of the Community Initiative EMPLOYMENT- Strand HORIZON. The competent auditor of the Greek Court of Audit ruled that having private companies managing Community resources, thus avoiding the audit of the Court of Audit, is unconstitutional, giving two reasons. First, since the Constitution grants the Court of Audit the competence to control the management of all public resources, it is unconstitutional to deprive the Court from this competence by allowing private companies to manage such resources without any control from the Court. Second, any accounting disputes that may arise from the management of these resources will not be adjudicated by the Court of Audit but by the civil courts since these disputes will be based on managing acts of a legal person governed by private law. However, the Constitution specifically states that only the Court of Audit has jurisdiction over disputes regarding public money. For more details see Act 28/1998 and Report 3/1998 of the Commissioner of the Court of Audit at the Greek Manpower Employment Organization.

the aid.[30] This ruling referred to the determination of whether an aid constitutes a state aid under Art. 87 EC Treaty. Assistance given by the Structural Funds and distributed by the Member States can constitute state aid under Art. 87.[31] Consequently the ESF assistance managed and distributed in Greece by private bodies, established for this purpose by the State, is state aid under Community law, therefore it is included in the public resources the management of which must be controlled by the Court of Audit.

A similar problem has also arisen from the privatization procedures initiated in Greece the last five years. Many public law bodies have been privatized (they mainly became sociétés anonymes) and the relevant legislative dispositions stipulated that since their status has changed, they cannot be controlled by the Greek Court of Audit.[32] One such body, of particular interest to this thesis, since it receives ESF funding, is the Organization of School Buildings, which is responsible for the building infrastructure of education and vocational training schemes. Recently however the Council of State (supreme administrative court in Greece) delivered an opinion (Opinion 19/1999) which condemned this whole system. According to the opinion, the constitutional provisions regarding the audit performed by the Greek Court of Audit are always applicable in cases of management of public funds. Therefore they are applicable in the case of a body previously governed by public law, which, after privatisation, continues to manage public and Community resources. This opinion, together with the aforementioned judgement of the Court of Audit, seeks to establish a more solid system of financial control, closing all the legislative "loopholes" which allowed Community resources to be managed without any financial control.

The Court of Audit, relying on Art. 98(1) of the Constitution, has set some limits to its jurisdiction. It has ruled that disputes about imputations based on contracts governed by private law do not fall within its jurisdiction.[33] It also has no jurisdiction

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[30] Joined Cases C-67, C-68 and C-70/85, *Kwekerij Gebroeders Van der Kooy and others v. Commission of the European Communities*, [1988] ECR 219 at 272, para 35; C-78/76, *Firma Steinike und Weinlig v. Germany*, [1977] ECR 595 at 611, para. 21.

[31] Controlling state aids is important in order to measure achievement of social and economic cohesion through evaluating the impact of the aid given to less-favoured areas. See Rose M. D'Sa, European Community Law on State Aid, Sweet & Maxwell Publications, 1998, p. 2. The Commission regards the Community structural assistance, incorporated in the national budgetary expenditure, as a form of awarding state aid which is transparent and easy to assess. See European Commission, Fifth Survey on State Aid in the European Union in the Manufacturing and certain other Sectors, COM (97)170, final, para. 37.

[32] There is a similar situation in Sweden. There the national audit institution may control such bodies only if the relevant legislative provisions and the bodies' rules of procedure allow it. See National Audit Office, State Audit ..., op. cit., p. 183.

[33] Court of Audit, 1875/1992, in I. Sarmas, op. cit., p. 202-204.

over disputes concerning measures adopted according to imputing acts, i.e. a warrant for detention issued because of mismanagement of public funds.[34] Furthermore, disputes based on administrative contracts[35] or regarding the legality of an imputation based on an administrative contract, are not resolved by the Court of Audit but by the administrative courts.[36]

This latter judgement, however, regarding imputations based on administrative contracts, seems incorrect. It is true that according to Law 1406/1983[37] all disputes concerning administrative contracts fall within the jurisdiction of the administrative courts. The imputation of sums, however, even if it is based on an administrative contract, creates a dispute regarding the accounts of this contract. The Constitution stipulates that all disputes regarding the audit of accounts (the imputation of sums results from an audit of the relevant accounts) fall within the jurisdiction of the Court of Audit. It would be more correct to accept that disputes regarding the administrative contract itself fall within the jurisdiction of the administrative courts while the disputes regarding any imputations based on administrative contracts fall within the jurisdiction of the Court of Audit. With regard to administrative contracts involving ESF resources, such a scheme would be preferable because it would allow judges specialized in the audit of accounts to rule on the relevant disputes, thus providing more guarantees about the correctness of their judgments. The judges of administrative courts, despite their indisputable qualifications, have neither the knowledge nor the expertise to rule on a dispute about imputations or any other acts regarding the audit of accounts.

As noted above, the Court of Audit also has jurisdiction over disputes regarding the liability of civil servants for any loss incurred by the State, local government organizations or legal persons governed by public law. There are detailed provisions about this in Art. 46 of P.D. 774/1980. Such disputes are raised by the General

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[34] Court of Audit, 1241/1987, in I. Sarmas, op. cit., p. 209-210.

[35] According to Greek administrative law, administrative contracts are those contracts meeting the following criteria: a) at least one of the contracting parties is the State, a local government organization or a legal person governed by public law, b) the object of the contract concerns an activity which serves the public interest and c) the contract provides the contracting public body with special privileges with regard to the implementation of the contract. See E. Spiliotopoulos, op. cit., p. 188-189, P. D. Dagtoglou, Administrative Law, op. cit., p. 329. These criteria are also accepted by the Greek courts. See Council of State 3709/1987, Council of State 4617/1988, Council of State 342/1989, Council of State 3317/1991, Court of Cassassion (Areios Pagos) 1333/1987. For more details about the administrative contracts in Greek administrative law see S. Flogaitis, Administrative Contract, A. N. Sakkoulas Publications, 1991.

[36] Court of Audit, 1600/1991, in I. Sarmas, op. cit., p. 213-215.

[37] Journal of Government of the Hellenic Republic 1983, No A 182, p. 2641.

Commissioner of the State,[38] either on its own initiative or at the request of the Minister of Finance. The Court of Audit has ruled that its jurisdiction over such disputes is exclusive.[39] It has also, correctly, distinguished between the liability of the civil servants towards the State, local government organizations and legal persons governed by public law, and the contractual or non-contractual liability of the State towards citizens.[40] Any dispute about the contractual or non-contractual liability of the State towards citizens falls exclusively within the jurisdiction of the administrative courts. It is possible, however, that a dispute about the contractual or non-contractual liability of the State will lead to a dispute about the liability of the civil servant involved towards the State. The State might seek to recover its loss if its liability towards a citizen is due to malicious intent or negligence of the civil servant involved in the case. In that case, the dispute concerning State liability towards the citizen will be resolved by the administrative courts, while that concerning the liability of the civil servant towards the State will be resolved by the Court of Audit.

It is likely that these provisions concerning the liability of persons managing structural financial assistance provided by the European Union, will be used during the programming period 2000-2006. According to the draft Bill currently being prepared by the Greek government in order to create the managerial and controlling framework for the third CSF, there will be penalties for those Greek public services that violate national and Community rules regarding the management of structural assistance,[41] usually the return of the money paid out by the European Commission or the Greek State. The State will pay this money from its budget and the relevant amount will then be imputed to the the managing authority of the particular operation. The relevant dispute will be resolved by the Court of Audit.

7.3. Other Provisions regarding Judicial Review at national level

The P.D. 1225/1981 contains detailed provisions regarding the procedure before the Court of Audit during its adjudication of disputes. A detailed analysis of all those is beyond the scope of this thesis. It should be noted, however, that the provisions of P.D.

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[38] This official is similar to an Advocate-General in the ECJ, and is a member of the Court of Audit. His duty is to serve the public interest.
[39] Court of Audit, 1292/1981, in I. Sarmas, op. cit., p. 243-245.
[40] Court of Audit, 1790/1996, in I. Sarmas, op. cit., p. 239-242.

1225/1981 apply to all judicial disputes before the Court of Audit, involving national and European resources.

The first issue concerns standing to bring an action before the Court of Audit. Under Art. 8 of the P.D. 1225/1981 the State and any natural or legal persons concerned by the reviewable act have such standing. This indicates the vagueness of some of the most crucial provisions of Greek legislation regarding the judicial review of the management and financial control of resources given by the European Union to Greece. The State is always entitled to bring an action regarding an act adopted during the audit of accounts, regardless of whether this act is an imputation or a credit. The natural and legal persons affected by the act have the same right. The vagueness of Art. 8 of the P.D. 1225/1981 can be very confusing with regard to audits regarding resources given by the Structural Funds to Greece, especially since the system for the management of ESF resources given to Greece and concerning employment is complicated, involving several natural and legal persons as well as the State. All these may claim to be affected by auditing acts and could therefore initiate a long and complicated judicial procedure.

The judicial protection provided through such a system might seem to be available to all interested parties, but the duration of the relevant procedures eliminates the effectiveness of such protection. It would be preferable if the legislative dispositions of P.D. 1225/1981 pricesely stipulated the parties entitled to bring an action. With regard to trials about the management and financial control of ESF resources given to Greece, a new disposition seems necessary. This disposition would be drawn up after careful study of the system of management of Community resources. The natural and legal persons involved would be given the right to challenge only those acts directly affecting their interests or rights, not any act adopted during the financial control. Since legal persons governed by public law in particular usually claim, when challenging an act to be serving the public interest, they should be obliged to specifically establish how the public interest is being served.

Another interesting point is the scope of the Court of Audit's authority. According to Art. 49 of the P.D. 1225/1981 the Court of Audit cannot only annul (totally or partially), the disputed act, but can also amend it. This is a very important provision. The Court of Audit is empowered to actually replace the decision of the public authority, which gave rise to the dispute. Given that the Court of Audit issues some of

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[41] See To Vima. 23.7.2000, p. D3.

the acts regarding the audit of accounts, it is logical to grant it such power. The problem is evident when the disputed act is issued by another public authority, i.e. the Ministry of Finance. The solution is given by Art. 51(3) of P.D. 1225/1981, according to which, as soon as an act is challenged before the Court of Audit, the jurisdiction of the public authority which issued the challenged act is eliminated. These two provisions demonstrate the confidence accorded to the Court of Audit with regard to the trial of disputes regarding the audit of accounts. The Court is practically empowered to issue new acts by virtue of its power to amend disputed acts.

The legislation regarding the judicial review performed by the Court of Audit includes no specific provisions regarding the grounds of review or the reviewable acts. This lack leads to the conclusion that the Court of Audit may examine any possible ground. The most commonly used ground is the violation of the legislation concerning the disputed act. Grounds such as lack of competence, the violation of procedural requirements or the misuse of power are also used. The Court of Audit in these cases operates like a court of first instance and the judgments are delivered by its Chambers (Art. 2(2) of the P.D. 1225/1981). These judgments may be challenged before the Plenary Session of the Court of Audit (Art. 2(2) of the P.D. 1225/1981) which operates like a court of appeal. The Plenary Session may only use certain grounds to review the judgments of the Chambers. These grounds, stipulated in Art. 115 of the P.D. 1225/1981, are a) the illegal composition of the Chamber of the Court, b) the violation of an essential procedural requirement, and c) the mistaken interpretation and implementation of the legislation applicable to the case.

Given the lack of any specific provision stipulating the nature of reviewable acts, it can be said that the only solution is to accept that any act relating to the management of resources, national or European, and the relevant financial control, can be judicially reviewed. More specifically, such acts include imputations, decisions and acts concerning the management of resources (authorizations, payments, etc.), as well as omissions on behalf of the competent authorities.

7.4. Reflections on the reform of the Greek Court of Auditors

This reform must be analysed within the framework of a much wider reform of the whole financial management system of the Greek State. Several measures have been

proposed.[42] One is the reinforcement of parliamentary financial control by establishing an *ad hoc* Parliamentary Committee, to control the implementation of the budget by comparing its figures to those of the financial statement and the general balance sheet, which in turn would need to be submitted much earlier in order to allow an in-depth examination. Another measure would be to present, in the budget, the various programmes financed by it not only in financial terms (how much they will cost) but also in substantive terms (i.e. a description of the specific actions undertaken within these programmes), thus allowing a more substantive evaluation. The reinforcement of the Ministry of Finance's controlling competences by allowing a more substantive evaluation of the expenses (efficiency and effectiveness) has also been proposed.

With regard to the Greek Court of Audit, given the weaknesses mentioned above, especially with regard to the control of the management of European resources, some proposals have been made.[43] Abolition of the *ex ante* financial control has been suggested, thus making the authorizing and accounting officers more responsible while the Court of Audit would focus on *ex post* financial control. Also, with regard to the *ex post* financial control, it has been proposed not to control all cases but only a large sample, thus obliging the authorizing and accounting officers to be more careful since there will be a reasonable possibility of their being audited more thoroughly. Finally it has been suggested that the Greek Court of Audit should seek the assistance of auditors from the private sector by delegating its auditing competences to them, thus reducing the cost of the audit and increasing the potential to audit more cases.

The issue of *ex ante* financial control is very delicate. Its history proves that. In 1984, despite all constitutional provisions about the Greek Court of Audit exercising such control,[44] Law 1489/1984[45] was enacted, according to Art. 34 of which the *ex ante* financial control was only to be internal, i.e. performed only by the Ministry of Finance. This situation was maintained, despite the intense objections of the Court of Audit,[46]

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[42] See G. Drisis, 20 measures for safeguarding public money, Oikonomikos Tachydromos, issue 43 (2320), 22.10.1998, pp.60-61

[43] See G.K. Bitros, The controls of public expenses, To Vima, 28.3.1999, p. A31.

[44] For details about the anticonstitutionality of the abolition of the *ex ante* external financial control see N. Themelis, The Court of Audit...., op. cit., p. 64-68, N. Themelis, The *ex ante* financial control and Art. 98 of the Constitution, To Syntagma, 1987, p. 248-268 at 258-268, K. Trakas, The increase of public expenditure: a main problem of the economy, RPAL, 1987, p. 13-36 (24-25), A. Gerontas-A. Psaltis, Public Finance Law Vol. 1, A. N. Sakkoulas Publications, 1998, p. 176.

[45] Journal of Government of the Hellenic Republic 1984, No A 170, p. 2069.

[46] See Minutes of the Plenary Session of the Greek Court of Audit of 08.10.1984 in I. Sarma, op. cit., p. 62-65, Minutes of the Plenary Session of the Greek Court of Audit of 21.12.1988 in I. Sarma, op. cit., p. 66-81.

until 1989, when Art. 22(3) of Law 1868/1989[47] repealed Art. 34 of Law 1489/1984, thus restoring the Court of Audit's competence to perform *ex ante* financial controls. This provision was confirmed at first by Law 2145/1993,[48] according to Art. 13 of which the *ex ante* financial control was performed by the Court of Audit as well as the Ministry of Finance, and more recently by Art. 3 of Law 2479/1997.[49] Law 2145/1993 also contained another important provision, by establishing, in Art. 15, the *ex ante* financial control by the Court of Audit of public procurement contracts (public supplies, public services, public works) involving expenses above one billion drachmas. This provision was confirmed by Art. 8 of Law 2741/1999[50] with a minor amendment: the *ex ante* financial control is applicable to public supplies and services contracts involving expenses above 500,000,000 drachmas while for public works contract the limit has been maintained at one billion drachmas.[51] If these *ex ante* controls do not take place, the contract is void. The importance of these provisions is demonstrated by the fact that practically all structural operations in Greece (including those financed by the ESF about employment) are realized through such contracts, which must be audited *ex ante* and *ex post*. The abolition of the *ex ante* financial control will deprive the Greek auditing mechanism of one level of control, which is crucial for the prevention of any mismanagement of funds. Furthermore, it is not certain that the authorizing and accounting officers will consider themselves more responsible if they also have the competence to control *ex ante* their own transactions. It is contrary to any concept of objective audit to have the same person as the auditor and the auditee.

Such an abolition of the *ex ante* financial control would not be compatible with the financial control requirements of the European Union. From the provisions regarding the Union's financial control scheme and those regarding cooperation with the corresponding schemes of the Member States, it can be concluded that the Member States are required to create or maintain controlling mechanisms and operations equivalent to those of the Union. It would be mistaken to argue, using as an example the

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[47] Journal of Government of the Hellenic Republic 1989, No A 230, p. 4675.
[48] Journal of Government of the Hellenic Republic 1993, No A 88, p. 103.
[49] Journal of Government of the Hellenic Republic 1995, No A 67, p. 1245.
[50] Journal of Government of the Hellenic Republic 1999, No A 199, p. 4069.
[51] These provisions about public procurement contacts repeal Art. 19 of P.D. 774/80 which set the limit for the ex ante control of such contracts at one billion drachmas. All these provisions must be seen as a Greek measure implementing Commission Notice C(88)2510 to the Member States, OJ 1989, C 22/3, according to which the national authorities are bound by Art. 10 EC Treaty to monitor compliance with public procurement legislation (national and Community rules) in the case of projects and programmes financed by the Structural Funds.

Commission's reform, that the Commission has proposed the abolition of *ex ante* financial controls. The financial control performed within the Commssion is internal. Furthermore, the Commission does not aim to abolish internal audit, it will simply create a new body for this and will replace the Financial Controller. The financial control and audit performed by the Greek Court of Audit (and any similar body including the ECA) are external controlling and auditing operations. So any comparison to the reform of the Commission would be incorrect. In general, the ESF (and all other Structural Funds) would be very reluctant to give resources to Greece if the State could not guarantee the legal, regular and sound financial management of these resources. The *ex ante* financial control performed by the Greek Court of Audit is a major component of this guarantee.

With regard to the other suggestions, it can be noted that the use of sampling for *ex post* financial controls might reduce the volume of cases to be audited, thus allowing a more thorough control of the cases actually audited. Nevertheless, this type of audit allows a large number of uncontrolled cases. Especially with regard to auditing the management of European resources, the sampling controls would have to be coordinated with the sampling controls of the European auditing bodies in order to avoid auditing the same case twice. Such coordination is very difficult under the current circumstances in Greece. Finally, the use of private auditors could be an acceptable solution if the Greek Court of Audit had all the personnel provided for by its statute and still could not perform its duties. At present it would be more reasonable to increase the personnel of the Greek Court of Audit up to the standards set by its statute and use the private sector as a source of expertise for complicated cases, requiring a more in depth analysis.

It has been noted[52] that in Greece the real problem is not illegal expenditure itself but expenditure which, despite its legality, wastes public resources, especially in the case of financing programmes and projects that eventually fail. All these programmes, although their approval and implementation is legal, involve an irrational use of resources since the aims for which they are implemented are not achieved. This is the issue of sound financial management and its controllability. This issue has already been discussed above with regard to the relevant competence of the Union's controlling mechanisms. It has already been noted that in Greece, the Court of Audit has no jurisdiction to verify the soundness of the financial management of the various operations, including those financed by the Structural Funds. However, the method used by the Court of Audit in

order to examine the legality and regularity of expenditure includes the concept of the "functionality" of expenses. More specifically,[53] the Greek Court of Audit examines whether the resources spent serve an actual purpose; the "function of the expense". Furthermore, when examining the supporting documents of a transaction, the Court of Audit seeks those documents proving the realization of the expenditure, e.g. that the products have been received and paid for (in the case of public supplies). It is therefore able to assess the substance of the transaction, not only its legal framework. In its attempt to expand its control beyond the narrow limits of legality control, the Court of Audit has reached an interesting conclusion: the distinction between the legality of expenditure and the eligibility of expenditure. It noted that the mere fact that some expenses are eligible according to some (national or Community) legislative provisions does not mean that they are also legal, because the relevant provisions must also state the exact conditions of payment of such expenses.[54] In principle, that is correct. However, it must be born in mind that the eligibility of the expenditure is one of the most important conditions for its legality. If the eligibility conditions stated in the relevant (national or Community) legislative act are met,[55] then the payment must be made, unless there has been a violation of other legislative provisions (national or European) applicable in that particular case.[56]

Nevertheless, the Greek Court of Audit, unlike its European counterpart, cannot examine whether there were any alternative means or methods of action, whether the means used were employed in the most appropriate manner or the success rate of the operation. It is suggested that, in light of the increasing volume and importance of the operations financed by European resources, mainly through the Structural Funds, the Greek Court of Audit should be authorised to perform "value for money" audits. Its

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[52] See the remarks of M. Dekleris in Minutes of the Convention "Historical Development of the institution of the Court of Audit in Greece and France", Athens 1993, p. 79.

[53] See the remarks of A. Gkonis in Minutes of the Convention "Historical Development of the institution of the Court of Audit in Greece and France", Athens 1993, p. 80-81.

[54] Court of Audit, 220/1999, not published.

[55] For the structural operations of the programming period 2000-2006 the eligibility criteria are stated in Commission Regulation 2000/1685/EC, on detailed rules for the implementation of Regulation 99/1260/EC as regards eligibility of expenditure of operations co-fainaced by the Structural Funds, OJ 2000, L 193/39.

[56] See for instance Court of Audit, 127/1999, not published. That case involved expenditure for a project financed under the Operational Programme "Combating Exclusion from the Labour Market" of the second Greek CSF. The expenditure in question was the payment of trainers involved in that project. The Court, after considering the relevant Community and national legislation, concluded that the expenditure was eligible but could not be paid because the trainers were not hired according to the procedure stipulated by Greek legislation (Community legislation contains no provision on that issue).

cooperation with the ECA has so far equipped the Greek Court of Audit with the relevant knowledge. It is also certain that the ECA will provide its Greek counterpart with any further assistance required in terms of training and guidance. In light of the current procedure of revision of the Greek Constitution and of the operations to be financed under the third CSF, starting in 2001, an amendment of the constitutional provisions concerning the Court of Audit in that direction seems both necessary and timely.

Chapter Eight: Impact of the Employment Policies financed by the European Social Fund in Greece

In order to establish the effectiveness of these policies, it is necessary to identify their aims. Their main objective, of course, is to combat unemployment in all its forms. However this objective is described in a very complicated manner within the various legislative texts, at national and Community level. Furthermore all these goals are incorporated in the European Union budget, since this is the legislative text "authorising" the expenditure from the ESF, although they are expressed in rather vague terms. The result of this situation is that the audit of economy and efficiency cannot draw the necessary attention to misuse of resources, while effectiveness in achieving policy aims cannot be judged.[1] The less precisely that the auditee is defining the objectives, the more difficult it is for the auditor to distinguish between questioning the merits of policy objectives (which falls beyond the limits of audit) and assessing whether value for money has been achieved in the pursuit of those objectives.[2]

There are two reasons for this vagueness in defining policy objectives. One is that those with political responsibility for policy matters do not accept any criticism for their actions,[3] even if this criticism is made by an institution established exactly for that purpose. The other is more complex since it concerns the so called "abuse of budgetary powers".[4] Sometimes, the vague terms used in order to describe a Community policy aim to include in the budget the financing of activities that are doubtfully within the Communities' own competence. There are procedural, political and legal causes for this.[5]

The procedural cause concerns the distinction between compulsory and non-compulsory expenditure (see Chapter 3). In their competitive attempt to become more influential than each other, both the Council and Parliament tend to include in the budget several items of expenditure as compulsory or non compulsory, according to their aims but sometimes exceeding the limits of Community competence. The political cause is that within the Council, several Member States find it difficult to oppose certain political

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[1] T. M. James, The Court of Auditors of the European Communities and the external audit bodies of the Member States in Honorary Volume for the 150 years of the Greek Court of Audit, Athens 1984, p. 469-486 at 476.

[2] I. Harden, F. White, K. Donnelly, The Court of Auditors and Financial Control and Accountability in the European Community, EurPL, Vol. 1, pp. 599-632 at 615.

[3] I. Harden, F. White, K. Donnelly, op. cit., p. 615.

[4] For this abuse see A. Dashwood, The limits of European Community powers, ELRev,Vol. 21, 1996, p.113-128 at 126-128.

[5] Ibid, p. 126.

choices that are perhaps beyond the Communities' or the Union's competence, but have a laudable context. The legal cause concerns the doctrine of "actions ponctuelles",[6] according to which expenditure on such actions does not require legislative authorisation because "it falls within the scope of the inherent powers which are incidental to the Commission's executive role".[7]

All these create an environment that does not tolerate preciseness in the political goals' setting, which has so far negatively affected the extent to which the programmes in question lent themselves to evaluation (their "evaluability"). Thus any attempt to assess the effectiveness of the measures financed by instruments like the ESF is very difficult.

8.1. Unemployment in Greece

Before assessing the implementation of the programmes, it is necessary to examine briefly the development of unemployment in Greece. This development is the measure of reference that will be used to determine whether all these employment policies have been effective or not: their overall impact on unemployment as the net effect of the structural operations.[8] It must be noted that a simple examination of the payments made to the national authorities under the various schemes cannot reflect the actual state of implementation of the programmes since not all these payments correspond to payments made to the final beneficiaries.[9] Therefore reference will also be made to qualitative and, where possible, quantitative analysis of the impact of the implemented measures.

Unemployment in Greece has developed dramatically during the last 35 years. More specifically figures are as follows:[10]

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[6] More specifically the "actions ponctuelles" doctrine is based on the distinction between budget lines which authorize expenditure for measures forming part of a Community Policy but which cannot be precisely described and specified in the budget, and appropriations destined for clearly defined and specific measures. In the case of the former, another legal basis besides inclusion in the budget is necessary while in the latter case inclusion in the budget is sufficient. See P.J.G. Kapteyn, P. Verloren van Themaat, Introduction to the Law of the European Communities, 3rd edition edited by L. Gormley, Kluwer Law International, 1998, p. 372

[7] A. Dashwood, op. cit., p. 127.

[8] European Court of Auditors, Annual Report for the Financial Year 1998, OJ 1999, C 349, para. 3.97.

[9] Ibid, para. 3.8.

[10] European Commission, European Economy Supplement A: Economic trends No 1/2-April 2000, Spring 2000 forecasts for 2000-2001, p. 70, Eurostat, Yearbook 1998/1999: A statistical eye on Europe 1987-1997, Office for official publications of the European Communities, 1999, p. 142, Eurostat,

Year	Unemployment in Greece as % of the labour force	Unemployment in EU as % of the labour force
1964-1973	4.2	2.4
1974-1985	3.8	6.4
1986-1990	6.6	8.9
1991	7.0	8.2
1992	7.9	9.2
1993	8.6	10.7
1994	8.9	11.1
1995	9.2	10.7
1996	9.6	10.8
1997	9.8	10.7
1998	10.7	9.9
1999	11.7	9.4

There was an increase of about 300% from 1980 (2.7%) to 1998 (10.7%).[11] With regard to 2000 and 2001, Eurostat's estimates and forecasts for the unemployment rate in Greece are 10.0% and 9.6% respectively.[12] The following table provides a comparison of the unemployment rate of men and women in Greece from 1990-1998:[13]

Year	Unemployment rate of men	Unemployment rate of women
1990	3.9%	10.8%
1991	4.4%	11.8%
1992	5.0%	13.0%
1993	5.7%	13.6%
1994	6.0%	13.7%
1995	6.2%	14.1%
1996	6.1%	15.2%

Eurostatistics: Data for short-term economic analysis, issue 2000/5, p. 45, Eurostat, Regional Unemployment ranged from 2.1% to 28.7%, News Release No 87/2000, 25 July 2000.

[11] See M. G. Drettakis, Unemployment and inflation in Greece-EU 1981-1998, Oikonomikos Tachydromos, 19.8.1999, p. 22-23 at 22.

[12] European Commission, European Economy Supplement A..., op. cit., p. 70.

[13] Eurostat, Yearbook 1998/1999..., op. cit., p. 142-143, Eurostat, Eurostatistics..., op. cit., p. 57-58.

1997	6.2%	14.9%
1998	7.0%	16.5%

Evidently, women are much more vulnerable to unemployment than men. In 1999 the unemployment rate of women increased to 17.9%.[14] Another vulnerable group consists of young people aged less than 25 years. The relevant figures for the period 1996-1998 in Greece are revealing:[15]

Year	**Unemployment rate for people under 25**	**Unemployment rate for men under 25**	**Unemployment rate for women under 25**
1996	31.0%	21.5%	41.0%
1997	30.8%	22.0%	40.4%
1998	29.8%	21.5%	39.4%

It can be seen that again young women suffer much more from unemployment than young men, but the fact is that young people in general face a very difficult situation with regard to their employment prospects. In 1999 the relevant unemployment rate increased to 31.7%.[16] Another category of people, heavily tormented by unemployment includes the long-term unemployed, i.e. those who are unemployed for over 12 months. The relevant figures for the period 1990-1997 in Greece are:[17]

Year	**Long-term unemployed as % of all unemployed**	**Long-term unemployed men as % of all unemployed men**	**Long-term unemployed women as % of all unemployed women**
1990	49.5	39.5	55.6
1991	47.1	37.2	53.8
1992	49.7	38.2	57.2
1993	50.2	41.0	56.8
1994	50.5	41.3	57.2
1995	51.2	42.3	57.8

[14] Eurostat, Regional Unemployment ranged from 2.1% to 28.7%, News Release No 87/2000, 25 July 2000.
[15] Eurostat, Yearbook 1998/1999..., op. cit., p. 143, Eurostat, Eurostatistics..., op. cit., p. 58-59.
[16] Eurostat, Regional Unemployment ranged from 2.1% to 28.7%, News Release No 87/2000, 25 July 2000.
[17] Eurostat, Yearbook 1998/1999..., op. cit., p. 146-147.

1996	56.7	47.3	62.5
1997	55.7	45.8	62.2

More than half of the unemployed in Greece are long-term unemployed[18] and once again unemployed women form the majority.

All these figures are a good indication than the various measures adopted in order to combat unemployment, including those evaluated below, have not yet produced any substantive results with regard to reducing unemployment. However, the real impact of these measures will be calculated more precisely, once they have been implemented completely, in December 2001.

8.2. Effectiveness of the Employment Policies implemented in Greece and financed by the European Social Fund

These policies focused mainly on the issue of vocational training. This is the crucial factor that contributed to the development of a vocational training system in Greece, even if this system does not operate very effectively.[19] Therefore the effectiveness of these policies will be examined mainly through the effectiveness of the operational programmes which focus on vocational training. Another object of assessment will be the effectiveness of the Community initiative EMPLOYMENT. It has not been possible to find any information on the evaluation of the implementation of the Community initiative ADAPT. The Ministry of Labour and Social Security has decided that there will be only one report on the implementation of this initiative, which will be published after the completion of the relevant programmes' implementation in December 2001.

8.2.1. Effectiveness of the First Community Support Framework (1989-1993)

The original Community budget for this Community Support Framework (CSF) was 7.193 mil. ECU (see Chapter 2). The actual payments made to Greece reached the

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[18] It has been also found that in Greece and in Italy more than half of the long-term unemployed are young people aged less than 25 years. See Eurostat, Young jobless fare better than older jobless, News Release No 79/98, 8 October 1998.

[19] P. K. Ioakeimidis, European Union and Greek State: The consequences of the participation in the integrating process, Themelio Publications, 1998, p. 103.

sum of 9.191 mil. ECU,[20] which increase was caused by several supplementary budgets submitted during the implementation of the various measures. The difficulties encountered by the assessors of the effectiveness of all the CSFs for Objective 1 during the period 1989-1993 (including the Greek CSF) included:[21] a) the initial programming was carried out hastily and without any prior appraisal of the programmes; b) the absence of quantified objectives and result indicators; c) certain measures were not completed at the end of the programming period in question; d) the heterogeneous nature of the projects because the allocation of appropriations was not linked closely to regional or local needs; e) it was difficult to identify the effects of each individual measure because several measures were aimed at the same region or area; f) it was difficult to measure the indirect effect of the programmes, in particular as regards employment, because no system for the observation of such results was established before the start or even after the completion of the programmes. With regard to the achievement of additionality, the ECA recently presented its findings for the programming period 1989-1993 and for Greece the figures concerning the development of annual average expenditure for structural operations under Objective 1 were the following (in million ECUs):[22]

Type of Expenditure	**Calculation**	**Overall Expenditure**	**Expenditure on human resources**
Public (National + EC)	1	6,730	1,706
Structural Funds (CSF)	2	1,649	404
National counterpart	3	1,134	226
CSF contribution	4=2+3	2,783	630
Public contribution net of Structural Funds contribution	5=1-2	5,081	1,302
Structural Funds/Public (%)	6=2/1	24.5	23.68

[20] M. Sarri, The Impact of the Structural Funds in Greece during the period 1989-1999, Development-Bulletin of the Industrial and Commercial Chamber of Athens, October 1997, p. 80-86 at 81.
[21] European Court of Auditors, Special Report 15/1998 on the assessment of Structural Fund intervention for the 1989-1993 and 1994-1999 periods, OJ 1998, C 347/1 at 9-10.
[22] European Court of Auditors, Special Report No 6/1999 concerning the principle of additionality, OJ 2000, C-68/1 at 8-9.

The effectiveness of the first Greek CSF is difficult to establish in terms of the impact on the development of human resources, because of the nature of the results achieved. In quantitative terms, from 1989-1993 about 460,000 people participated in vocational training actions, while the number of pupils completing secondary technical education increased by 22%.[23] A network between technical and vocational education institutes was created in order to improve the link between education and the labour market.[24] With regard to the labour market itself, about 130,000 jobs were supported of which 50,000 were new.[25] The rate of implementation of the various structural measures at the end of 1993 was 95%.[26] However, it has been noted that it is not possible to evaluate precisely the impact of the first Greek CSF because the various actions (especially those of vocational training) did not have a specific target (e.g. to be a part of active employment policies) and vocational training became an end in itself instead of an instrument to promote employment.[27] The resources given to Greece by the ESF were used to finance allowances and other benefits, which are purely passive measures of combating unemployment.[28] The lack of an organized system of vocational training at the beginning of the programming period 1989-1993 resulted in ESF resources being spent (especially by local government authorities) on projects and interventions of questionable effectiveness.[29] The outcome of all these, in combination with the general macroeconomic situation in Greece (lack of employment-generating growth, decline in industrial employment, contraction in agricultural employment, expansion of number of job-seekers arising from the increased participation of women) was the increase of unemployment from 7.7% in 1989 to 9.8% in 1993.[30]

8.2.2. Effectiveness of the Second Community Support Framework (1994-1999)

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[23] M. Sarri, op. cit., p. 83.
[24] Ibid, p. 83.
[25] Ibid, p. 81, Oikonomikos Tachydromos, 10.12.1998, p. 22, EE, issue 11, 1999, p. 28.
[26] European Commission, General Report on the Activities of the European Communities 1993, Office for official publications of the European Communities, 1993, p. 142.
[27] See the interview of the Secretary General of the Greek Ministry of Labour, responsible for the management of Community and other resources, in EE, issue 7, 1998, pp. 26-28, at 26-27.
[28] Ibid, p. 27, Oikonomikos Tachydromos, 10.12.1998, p. 22, EE, issue 11, 1999, p. 29.
[29] European Commission, 5th Annual Report on the Implementation of the Reform of the Structural Funds, COM (1995)30 final, p. 18-23.
[30] European Commission, The European Social Fund, an overview of the programming period 1994-1999, March 1998, available on line at http://www.europa.eu.int/comm/dg05/esf/en/public/overview, on 15.10.1998.

8.2.2.1. Findings of evaluation at a general level

By the end of 1998, a high level of implementation of structural measures regarding Objective 1 (the only structural Objective under which Greece is receiving money from the ESF) was noticeable in Spain, Portugal, Ireland, Greece and Germany.[31] Greece was third in the list of the Member States achieving commitment rates well above the Community average, following Portugal and Ireland. However, there were delays in the payment of the assistance.[32] More specifically, Greece's rate of commitment appropriations was 82.1% (EURO 11,630.5 million out of EURO 14,152.9 million) and the rate of payment appropriations was 61.5% (EURO 8,712.5 million out of EURO 14,152.9 million).[33] These high rates are due to the fact that the implementing agencies created for the major projects became operational in 1998 and thus the rapid and effective implementation of the programmes was ensured.[34] During 1998 two other major developments occurred. It was decided, first to increase the assistance rate for certain programmes in order to reduce the effect of the Greek drachma's devaluation in April 1998 and second, to transfer appropriations within the programmes and between some programmes.[35] This reallocation of funds aimed to improve the overall efficiency of the interventions. Therefore, the appropriations were transferred from the slower spending programmes or sub-programmes to the faster spending ones, while other qualitative criteria (e.g. the new priorities of the various EU policies especially in the area of employment) were taken into consideration.[36] The transferred appropriations involved an amount of about ECU 400 million, i.e. about 3% of the overall Structural Funds

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[31] European Commission, 10th Annual Report on the Structural Funds, available on line at www.inforegio.cec.eu.int/wbdoc/docoffic/official/rastru98/rastru_en.htm on 8.12.1999, p. 33.
[32] Ibid, p. 31 and 33.
[33] European Court of Auditors, Annual Report for the Financial Year 1998, op. cit., table 3.3.
[34] Ibid, p. 60. However, the situation was different during the first two years (1994-1996) of the programming period. The low rate of utilization of Community assistance, throughout the Union, was attributed to the delay in adopting the CSFs (they were adopted in July 1994). Other reasons were the slowness of the relevant Community and national procedures to ensure compliance with Community rules, the integration of national budgetary procedures with the management of Community appropriations relating to the implementation of multiannual programmes, the Commission's difficulties in managing the plethora of forms of interventions financed by the Structural Funds and in coordinating its departments and in building up an effective partnership culture with the Member States, the complexity of the financial channels at all levels (Community, national, banking) because of which it was taking a long time for Community funds to reach the final beneficiaries, etc. For more details see European Court of Auditors, Special Report 16/1998 on the implementation of appropriations for structural operations for the programming period 1994-1999, OJ 1998, C 347/48 at 54-60.
[35] European Commission, 10th Annual Report on the Structural Funds, op. cit., p. 61.
[36] European Commission, Evaluation Review 1998, December 1998, Doc no XIX/D/12018/EN, p. 16. For a detailed analysis of the Greek government's reasoning regarding this transfer see also Oikonomikos Tachydromos, 28.8.1997, p. 46-47.

appropriations given to Greece.[37] The cause of these transfers, not only in Greece but also at a European Union level, has been attributed partially to the lack of rigour in the budgetary estimates and forecasts.[38] The Commission draws up these estimates and forecasts by applying percentages to the remaining commitment appropriations of the year, using the theoretical and historical trend in payments.[39] The initial entries of appropriations in the budget bear little relation to reality and since no amending letters or supplementary budgets have been drawn up taking into account the real trend in aid measures, the situation is rectified by making use of transfers.[40]

Another interesting conclusion is the macroeconomic impact of the CSF in Greece for the programming period 1994-1999. It has been estimated that throughout this programming period the additional Greek Gross Domestic Product caused by the implementation of the relevant CSF was 4.8%,[41] i.e. 0.8% per year. This impact reflects both the short-term effects of demand and the medium to long-term effects of supply on the country's economic system.[42] The average annual growth rate for the Greek economy during the period 1994-1999 is estimated at 3%,[43] therefore more than one quarter (0,8% out of 3%) of this growth may be attributed to the implementation of the CSF. The increase in the volume of employment during the programming period 1994-1999 was calculated at 2,9%.[44] It has been found that the investment in "hard infrastructure" (e.g. public works concerning transport and facilities) covered by the Greek CSF contributes more to the growth of the Gross Domestic Product than to the development of human resources.[45]

The additionality achieved through the second Greek CSF is also very interesting. According to the ECA, the following figures were achieved (in million ECUs):[46]

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[37] European Commission, Evaluation Review 1998, op. cit., p. 16 and 107.
[38] European Court of Auditors, Special Report 16/1998, op. cit., p. 53.
[39] Ibid, p. 53.
[40] Ibid, p. 53.
[41] European Commission, Evaluation Review 1998, op. cit., p. 106.
[42] For the various economic models that can be used in order to evaluate the impact of the CSFs on the Gross Domestic Product of the Member States see European Court of Auditors, Special Report 15/1998..., op. cit., p. 17-18, 28, 32-34 and European Court of Auditors, Annual Report for the Financial Year 1998, op. cit., paras 3.63-3.67.
[43] Based upon economic data from the executive summaries of reports titled "Greek Economy", prepared by the Greek Foundation for Economic and Industrial Research and available online at www.iobe.gr on 10.2.2000. See also European Commission, European Economy, Supplement A-Economic Trends No 10/11, October-November 1999, p. 31.
[44] European Court of Auditors, Annual Report for the Financial Year 1998, op. cit., table 3.5.
[45] European Court of Auditors, Special Report 15/1998..., op. cit., p. 18.
[46] European Court of Auditors, Special Report 6/1999..., op. cit., p. 8-9.

Type of Expenditure	Calculation	Overall Expenditure	Expenditure on human resources
Public (National + EC)	1	7,644	2,120
Structural Funds (CSF)	2	2,330	574
National counterpart	3	1,183	191
CSF contribution	4=2+3	3,513	765
Public contribution net of Structural Funds contribution	5=1-2	4,658	1,546
Structural Funds/Public (%)	6=2/1	33.34	27.07

These figures, compared to the corresponding figures regarding the programming period 1989-1993, reveal that although Greece increased the overall expenditure on structural operations, it relied heavily on the assistance provided by the Structural Funds.

With regard to the implementation of programmes about human resources, Greece is considered to be one of the slowest Member States.[47] More specifically at the end of 1998, with regard to the ESF, the Greek rates of commitments were 62% (EURO 1,633.8 million out of EURO 2,634.1 million) and the corresponding rates of payments were 47.7% (EURO 1,257 million out of EURO 2,634.1 million).[48] Therefore, an important portion of the reallocated funds involved operational programmes in that area. More specifically, appropriations were transferred from the Operational Programmes "Education and Basic-Initial Training" and "Combatting Exclusion from the Labour Market" to the Operational Programme "Continuing Training". These additional appropriations are now used in order to finance partially active policies and measures incorporated in the Greek National Action Plans for Employment, focusing on the promotion of equal opportunities, support for the unemployed with qualifications, support for small and medium sized enterprises and the introduction of the Territorial Employment Pacts.[49] The implementation of the Operational Programme "Combatting Exclusion from the Labour Market" has been delayed because of its innovative nature

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[47] European Commission, 10th Annual Report on the Structural Funds, op. cit., p. 61.
[48] European Court of Auditors, Annual Report for the Financial Year 1998, op. cit. table 3.3.

and the lack of appropriate management structures or agencies to implement it, hence the reduction in its funding.[50] In an overall evaluation of both programming periods (1989-1993 and 1994-1999), which took place in 1997 it was estimated that the result of both CSFs in Greece would be a total employment increase and decline in unemployment, especially in urban areas.[51] Such estimates, however, are based on data obtained from traders on which no cross-checks or verifications have been carried out to confirm their accuracy.[52] For instance, it has been found that despite the various measures to combat it, unemployment is rapidly increasing in the Greece's urban areas ranging from a relatively low rate of 7.1% in Southern Aegean to a very high rate of 16.7% in Western Macedonia.[53]

Furthermore, the Greek vocational training system was largely created by the implementation of the various employment policies of the European Union.[54] It has been estimated that,unless this financial support continues, this system will be unable to operate properly.[55] Furthermore, in an attempt to provide some solutions to the substantive problems of the system it has been noted[56] that the remaining interventions of the ESF concerning it (until 2006) must be made more cost-effective, and should be used to implement coherent qualification levels and occupational profiles. These interventions should ensure a certain coherence between the various providers of training (public institutions of vocational training, the training schemes of the Greek Manpower Employment Organization and private vocational training institutions). All these require for a basic restructuring focusing on the following: modernization the training objectives and methods, a closer link with the social partners, the establishment of proper quality control mechanisms and the renewal of training provisions for the private services

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[49] European Commission, 10th Annual Report on the Structural Funds, op. cit., p. 61.
[50] Ibid, p. 61.
[51] European Court of Auditors, Special Report 15/1998..., op. cit., p. 29.
[52] European Court of Auditors, Annual Report for the Financial Year 1998, op. cit., para. 3.94.
[53] Eurostat, Big contrasts in EU urban unemployment, News Release No 91/98, 26 November 1998.
[54] During the school year 1995/1996 only 53.3% of the pupils at the upper secondary level in Greece were in general education while 46.7% of these pupils were in vocational training, which is an impressive figure for a newly established vocational training system. See Eurostat, Vocational Training in Europe: Better inclusion prospects for young people, News Release No 60/2000, 26 May 2000.
[55] P. K. Ioakeimidis, op. cit., p. 107.
[56] European Centre for the Development of Vocational Training, Recent developments in vocational education and training in Greece, November 1997, available on line at www.cedefop.gr/vet_devel/el_en.html on 7.10.1998.

sector.[57] Such measures will make the vocational training system more attractive for potential participants (employers and pupils/employees) and thus more effective.[58]

The financial management of the relevant resources given by the ESF to Greece through the second CSF has been hampered by the fact that the Ministry of Labour, when transfering resources to the Greek Manpower Employment Organisation, does not specify the amounts to be used for each training measure. Similarly the Greek Manpower Employment Organization does not manage these resources on a measure by measure basis.[59] Furhermore, the Minstry regards the Greek Manpower Employment Organisation as the final benefiary but does not audit the accounts of this Organization with regard to the ESF resources. These accounts are audited by the Greek Court of Audit. The last accounts closed and submitted by the Greek Manpower Employment Organization concerned the financial year 1992. The last *ex post* audit of such accounts by the Court of Audit was perfomed more than ten years ago.[60] An example of the consequences of this situation was seen when the Minstry of Finance made three payments on 29.11.1994 (the first involved 8,626,763.84 ECU, the second 1,869,431.94 ECU and the third 239,894.20 ECU) for some training programmes to the Ministry of Health, the Ministry of Agriculture, the Ministry of Merchant Marine, the Greek Manpower Employment Organization etc. These payments were made without the necessary warrants from the Ministry of Labour and Social Security (see Chapter 4), thus violating the relevant procedures of the Greek Public Accounting Code. The warrants were issued for the first payment on 31.7.1995, for the second on 29.9.1995 and for the third on 12.9.1996, after an inexcusable delay.[61]

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[57] Ibid.

[58] It is indicative that only 16.4% of the Greek enterprises provide vocational training to their employees and only 13% of the employees participate in such courses. This latter figure is dramatically reduced with regard to employees aged 30 and over, as only 0.4% of such employees receive vocational training. See Eurostat, Vocational Training: Key to finding and keeping a job, News Release No 68/97, 6 October 1997, Eurostat, 6.3 million employees aged 30 and over receive training, News Release No 63/97, 9 September 1997.

[59] European Court of Auditors, Doc. 54/16.1.1998 including Letter of Audit No 1/1998 on the audit of the European Social Fund operations in Greece of October 1997, addressed to the Greek Court of Audit, p. 5.

[60] Ibid, p. 10.

[61] Ibid, p. 3.

8.2.2.2. Effectiveness of the Operational Programme «Education and Basic-Initial Vocational Training»[62]

This Operational Programme has an overall budget of 1,881,698,180 ECU. It is divided into four sub-programmes, each containing several measures. For this thesis the most important is the second sub-programme, «Initial Vocational Education and Training». The other three focus on the general aspects of education, universities, the administrative reform in this area and the relevant technical assistance. The basic targets of the Operational Programme are to give all young persons aged 15-20 access to education and vocational training, to create more flexible structures of vocational training in order to attract more students, and to improve the quality of the existing educational structures (classrooms, libraries, laboratories, etc). With regard to vocational training, the second sub-programme's aims include the creation of 30 new Institutes of vocational training, the creation of 9,000 additional training positions, the consolidation of existing apprenticeship schemes, the creation of post-high school and postgraduate vocational training programmes, the improvement of the vocational training provided in areas like Mercantile Marine, Agriculture, Tourism, etc. The training structures are to be improved through the modernization of the existing teaching facilities including the renovation of existing buildings or the contruction of new buildings where necessary, the introduction and use of information technology facilities, the supplement of the libraries with new texts and materials, etc. The budget for this sub-programme is 541,523,050 ECU.

It has been found that this Operational programme has a high percentage of synergy with the employment policies introduced by the European Union. Thus measures aimed at the mutual recognition of vocational qualifications or seeking to create training positions in areas of high demand in the labour market are deemed completely compatible with the European employment policies. This Operational Programme is also compatible with actions undertaken by the European Centre for the Development of Vocational Training (collection and distribution of information regarding the practices of vocational training), the SOCRATES programme, the LEONARDO programme, the Community Initiative EMPLOYMENT (especially its strands HORIZON (disabled persons), YOUTHSTART (young persons) and NOW (women)).

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[62] See Ministry of National Economy-Ministry of Education and Religion, Intermediate Evaluation Report of the Operational Programme "Education and Basic-Initial Vocational Training", April 1998.

With regard to the implementation of all the relevant projects, all measures regarding vocational training have been approved and are being implemented. According to the initial programming of expenditure, the second sub-programme was to receive 28.78% of the budget of the Operational Programme but during the actual implementation this percentage was increased to 31.37% (thus increasing the resources availble for this sub-programme to 602,142,692 ECU). It is noteworthy that the implementation of the measures under the second sub-programme has been better that the implementation of the measures of the other sub-programmes. Under the second sub-programme, most of the implemented measures committed all the programmed appropriations of the budget and required some additional funding. This was attributed to the experience of the implementing bodies (Ministry of Labour and Social Security, Greek Manpower Employment Organization, Ministry of Agriculture, etc) in managing projects financed by the ESF. Only those measures managed by the Ministry of Education diverged negatively from the estimated commitments, by not absorbing all the available resources. This was attributed to the Ministry of Education's lack of experience in managing projects financed by the Structural Funds. Overall, the second sub-programme had until 1998, an absorption rate of 34.3% which is much more satisfactory than the other sub-programmes, none of which exceeds 20%. More specifically the measures implemented under the second programme had the following absorption rate until 1998:

Measure	Amounts in ECU	Absorption Rate
Operation of Institutes of Vocational Training	65,639,273	26.76%
Vocational Training schemes of the Ministries of Labour and Social Security, Merchantile Marine, Agriculture, Tourism	128,270,254	42.96%
Structure-Equipment for Vocational Training	12,699,504	21.80%

Nevertheless, the whole Operational Programme had, in 1998, an absorption rate of 23.5%, which was considered very low, given that 1998 was the fourth year of the programme's implementation. The projects realized are those of small budgets including those concerning the supplies of equipment (mostly information technology equipment),

the construction of schools and the renovation of building infrastructure, as well as the training of the trainers.

8.2.2.3. Effectiveness of the Operational Programme «Continuing Vocational Training and Promotion of Employment»[63]

This Operational Programme has a total budget of 1,285,188,000 ECU. The Community contribution is 58.8% (56.87% from the ESF and 1.95% from ERDF) of this amount. The main objectives of the Programme include the improvement of the effectiveness of vocational training through its connection to the needs of the labour market and the development and establishment of a permanent system of continuing vocational training with a long-term perspective. The Operational Programme contains three sub-programmes. The first refers to the development of the structures of continuing vocational training (training centres, centres of promoting employment, regional observatories of the labour market, etc), and it has been allocated 5.2% of the total budget of the Operational Programme. The second sub-programme focuses on the continuing vocational training of people already employed or self-employed, in all types of enterprises (small: up to 50 employees, medium: up to 300 employees, big: more than 300 employees). The financed actions include the verification of specific training needs, the provision of training especially in areas relevant to the «know-how» of the covered enterprises, the development of enterprising initiatives and the establishment of cooperation networks at European level. This sub-programme has been allocated 52.5% of the Operational Programme's budget. The target groups of the third sub-programme include young unemployed persons, women, unemployed people aged over 25, unemployed people in areas with serious unemployment crisis, and people who lost their jobs because of the restructuring of enterprises. Eligible actions include vocational training schemes, financed placements, measures aiming to support families at work, vocational guidance, etc. The sub-programme has been allocated 42.3% of the Operational Programme's budget.

All these measures have been found to be compatible with the European employment policies especially with the objectives set up by the European Council in

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[63] See in Ministry of Labour and Social Security, Intermediate Evaluation Report of the Operational Programme "Continuing Vocational Training and Promotion of Employment", 1998.

Essen,[64] according to which there must be an improvement of employment opportunities for the labour force by promoting investment in vocational training and of measures to help groups which are hard hit by unemployment, like young people, long-term unemployed, women and older employees.

The effectiveness of the operations was assessed in 1998. With regard to the first sub-programme, the quantitive aims included the establishment of the following: 10 Specialized Centres of Training, 8 Local Centres of Training in areas with high unemployment, 60 Centre of Promotion of Employment and 13 Observatories of the labour market. Several studies were also to be prepared, focusing on the creation of original programmes of training, on local and regional labour markets, on the training needs of workers, etc. Until 1997, none of the above had been realized. Only in 1998 was the creation of some Centres of Promotion of Employment initiated by preparing the action plan for the establishment of such Centres. Following the establishment of the National Action Plans for Employment the implementation rhythms were increased, and now 23 Centres of Promotion of E,mployment have been established with another 29 Centres expected by the end of 2000.

The quantitative objective of the second sub-programme was to provide training for 240,000 employed or self-employed persons. Nevertheless, the various actions of the sub-programme had no specific quantitative objectives (i.e. how many farmers would be trained, how many workers in the private or the public sector would receive training, etc). These actions therefore seem to have been prepared according to the number of potential beneficiaries and not to the real training needs of the labour market and the participating enterprises. It must also be noted that the problem of the Vocational Training Centres (see Chapter 5) considerably delayed the implementation of this sub-programme. The measure focusing on the provision of training for self-employed people or people employed by small enterprises, had achieved an effectiveness rate of 50% (total objective 95,250 persons) by 1998. It must be noted, however, that 77% of those trained were farmers, which means that those working in small enterprises (especially in the services sector) received no training. With regard to medium sized enterprises, the effectiveness rate was 116%, mainly because of the participation of several enterprises from the private sector (total objective 34,000 persons). Finally, with regard to large enterprises, the effectiveness rate was 70%, with participating enterprises mainly from

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[64] European Council, Essen 10 December 1994, Presidency Conclusions, Doc/94/4.

the public sector (total objective 89,000 persons). The effectiveness rate of measures focusing on persons working in enterprises facing restructuring was only 28% (total objective 22,000 persons), because it was difficult to identify the eligible enterprises.

The third sub-programme aimed to provide training for 104,000 persons, including 15,000 unemployed young persons, 15,000 unemployed women, 35,000 unemployed person aged over 25, 25,000 unemployed persons living in areas with high unemployment and 14,000 employed persons who were in danger of losing their jobs because of problems in the enterprises where they worked. It was also aimed to subsidize and create 75,000 new jobs. These objectives were found to overlap. For example the objective concerning young persons included both men and women, while there was a separate measure focusing on women. Also the "targeting" was found to be inadequate. For example, the sub-programme aimed to train only to 15,000 young persons, while this group, according to the unemployment rates mentioned above, faces the problem of unemployment more than any other. The effectiveness rate of the measures regarding young persons was 133% (20,200 received training and 30,000 were subsidized in order to be employed), thus proving the inadequacy of the "targeting", which did not consider the real needs of the target-group. The measures concerning women were not very successful; by 1998 only 1,000 had received training and 8,250 job placements had been subsidized. The measures focusing on the long-term unemployed, aged over 25, had in 1998, an effectiveness rate of 83% with regard to the provision of training and 132% with regard to subsidizing job placements. Finally, the measures focusing on people living in areas with high unemployment had an effectiveness rate of 25% with regard to the provision of training and 78% with regard to subsidizing job placements. The measures concerning employed people threatened by unemployment because of the restructuring of enterprises (mainly vocational guidance), were not implemented until 1998, because it was difficult to identify the eligible enterprises and the beneficiaries (as in the second sub-programme).

8.2.2.4. Effectiveness of the Operational Programme «Combatting Exclusion from the Labour Market»[65]

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[65] See Ministry of Labour and Social Security, Intermediate Evaluation Report of the Operational Programme "Combatting Exclusion from the Labour Market", March 1999.

As mentioned above, this Operational Programme developed serious delays during its implementation, mainly because of the lack the necessary infrastucture. Therefore it was revised in 1998. Its initial budget of 314.666.666 ECU was reduced to 240.421.283 ECU because the initial ESF contribution of 236 million ECU was reduced by 66 million. The contents of the Operational Programme were also revised and the initial five sub-programmes were increased to six through the division of the initial sub-programme 1 to two new sub-programmes (1 and 4). The budgetary allocation to each sub-programme was revised as follows (in ECU):

Initial Structure	**Initial Budget Allocation**	**Revised Structure**	**Revised Budget Allocation**
Sub-programme 1	93,499,740	Sub-programme 1	68,044,005
Sub-programme 2	108,899,894	Sub-programme 2	51,506,435
Sub-programme 3	82,200,585	Sub-programme 3	48,552,499
Sub-Programme 4	20,266,568	Sub-programme 4	35,703,063
Sub-Programme 5	9,799,879	Sub-programme 5	29,431,606
		Sub-programme 6	7,183,675
Total	314,666,666	**Total**	240,421,283

Out of the six sub-programmes (after the 1998 revision), four have specific target groups while two are of a more horizontal nature. It is estimated that after the Programme's completion 53,521 persons will have benefited directly from it (with regard to training and supporting measures). 50% of these are estimated to be included in the labour market. Another element of the 1998 revision of this Programme is that the four sub-programmes aiming at specific target groups had similar structure in terms of measures financed. Three types of measures are implemented under all sub-programmes: those aimed at vocational training, those aiming to promote employment and those providing supporting services (guidance, counselling, assistance for housing, transport, etc.).

Sub-programme 1 focuses on disabled people, including people with kinetic and mobility problems, sensory problems, and people with learning difficulties. The total number of beneficiaries of this sub-programme is estimated at 9,187 persons. By 1998, 42.8% of these were covered by the measures implemeted. With regard to the sub-programme's financial implementation, it must be noted that since the evaluation refers to the period before the 1998 revision, it also includes the measures financed under the

section which is now included in Sub-programme 4. This Sub-programme focuses on people with mental health problems. It is estimated to have 7,908 beneficiaries and by 1998 38.95% were covered. The financial implementation of both sub-programmes was 38,758,778 ECU which represents 37.4% of their combined budget of 103,747,069 (after the 1998 revision).

Sub-programme 2 focuses on immigrants from various places including Pontic Greeks from the former Soviet Union, immigrants from Nothern Epirus in Albania, political refugees, repatriated Greeks from Western Europe, fellow-Greeks and immigrants who were living in countries other than those already mentioned. The number of beneficiaries is estimated at 12,426 persons. By 1998, 56.1% were covered by the measures implemented. The financial implementation of this sub-programme for the period 1994-1998 was 23,959,007 ECU, which represents 46.5% of its budget.

Sub-programme 3 focuses on prisoners, those released from prisons, juvinile delinquents, former drug addicts, people who live in isolated places, people who live in single parent families, Gipsies and Pomaks. The number of beneficiaries is estimated at 24,000 persons. By 1998, 22.7% were covered by the measures implemented. The financial implementation of this sub-programme for the period 1994-1998 was 19,961,681 ECU, which represents 41.1% of its budget.

As mentioned above, sub-programmes 5 and 6 have a horizontal nature. They do not focus on specific target groups. Their objective is to prepare the infrastructure necessary for the implementation of the other sub-programmes. More specifically, sub-programme 5 contains measures focusing on the education and training of the trainers and the personnel that will be involved in the implementation of the other sub-programmes, on innovatory projects, on activities regarding information and raising public awareness, on building infrastucture and equipment. However, none of these measures had been implemented by 1998. The implementation of the other sub-programmes necessitated the use of the existing infrastucture, which was inadequate, leading to delays in the overall implementation of the Operational Programme. This was the main motive for the 1998 revision. At the time of the evaluation only 20,3% of the sub-programme's budget was committed but no payment had been made.

Sub-programme 6 also has a supplementary nature. It provides for measures focusing on preparative actions such as the establishment of management mechanisms and structures, the performance of evaluation reviews of the operations financed,

conducting studies regarding the extent of exclusion of the labour market at national and regional level in order to improve the objectives of the operations, organising seminars for those involved in the implementation of the Operational Programme, etc. During the period 1994-1998, the financial implemantation of this programme was 1,294,847 ECU, which represents 18% of its budget.

In total, the Operational Programme «Combatting Exclusion from the Labour Market» had a financial implementation rate of 34.9% for the period 1994-1998 which means that out of 240,421,285 ECU, only 83,974,313 have been absorbed. With regard to its substantive effectiveness, out of 53,521 estimated beneficiaries, only 40.4% (21,643 persons) had been covered during this period.

8.2.3. Effectiveness of the Community Initiative EMPLOYMENT[66]

As mentioned above (see Chapter 2), the overall amount given to Greece by the ESF for the implementation of the EMPLOYMENT Initiative, was 70.175.000 ECU. This figure represented 67.49% of the overall amount allocated to the implementation of this Initiative in Greece, which was 103,963,000 ECU. The allocations to the four strands of the EMPLOYMENT Initiative were as follows (in ECU):[67]

Strand	National (private and pubic) Contribution	EU Contribution	Total
EMPLOYMENT-NOW	9,133,000	18,968.000	28,101,000
EMPLOYMENT-HORIZON	9,446,000	19,619,000	29,065,000
EMPLOYMENT-YOUTHSTART	8,120,000	16,865,000	24,985,000
EMPLOYMENT-INTEGRA	7,089,000	14,723,000	21,812,000
TOTAL	33,788,000	70,175,000	103,963,000

[66] See Ministry of Labour and Social Security, Mid Term Evaluation Report of the Community Initiative "EMPLOYMENT", Athens, June 1998, Ministry of Labour and Social Security, Fourth Intermediate Evaluation Report of the Community Initiative "EMPLOYMENT", Athens, December 1998, Ministry of Labour and Social Security, Fifth Intermediate Evaluation Report of the Community Initiative "EMPLOYMENT", Athens, June 1999.

[67] This information was available on line at the following sites on 1.6.1999: www.europa.eu.int/comm/dg05/esf/en/public/sr_now/now1.htm#top for EMPLOYMENT-NOW, www.europa.eu.int/comm/dg05/esf/en/public/sr_hor/hor1.htm#top for EMPLOYMENT-HORIZON, www.europa.eu.int/comm/dg05/esf/en/public/sr_youth/youth1.htm#top for EMPLOYMENT-YOUTHSTART, www.europa.eu.int/comm/dg05/esf/en/public/sr_integ/integ1.htm#top for EMPLOYMENT-INTEGRA.

During the first cycle (1994-1996), 107 projects were approved and 103 were implemented, thus achieving an implementation rate of 96.3%. During the second cycle (1997-1999), 177 projects were approved and are currently being implemented, and their implementation period has been extended until December 2001. The actions implemented per strand of the EMPLOYMENT Initiative are as follows:

Strand	Total of actions per Strand	Types of Action	% on the total of actions per Strand
NOW	222	Vocational training, guidance, and employment systems	32.9%
		Vocational training	21.2%
		Employment	24.3%
		Information dissemination and awareness	21.6%
HORIZON	427	Vocational training, guidance, and employment systems	26.5%
		Vocational training	19%
		Employment	24.8%
		Information dissemination and awareness	29.7%
YOUTHSTART	389	Vocational training, guidance, and employment systems	31.4%
		Vocational training	20.6%
		Employment	20.3%
		Information dissemination and awareness	27.8%
INTEGRA (Immigrants)	117	Vocational training, guidance, and employment systems	22.2%
		Vocational training	16.2%
		Employment	25.6%
		Information dissemination and awareness	35.9%
INTEGRA (Other groups)	102	Vocational training, guidance, and employment systems	21.6%
		Vocational training	21.6%
		Employment	29.4%
		Information dissemination and awareness	27.5%

The actions concerning the establishment of vocational training, guidance, and employment systems include: the creation of structures of access to the labour market, the development of entrepreneurship, the creation of databases for jobs, training to the use of new technologies, the development of training tools, researching support needs, the creation of structures for social inclusion, the establishment of information services regarding the demand and offer of jobs, support schemes to small and medium sized enterprises, studies of labour markets, techniques for seeking employment, etc. The actions concerning the provision of vocational training include: the promotion of self-employment and entrepreneurship, the improvement of existing enterprises, the restructuring of work (by introducing schemes of job-sharing, part-time work, tele-work, work at home), the development of knowledge on human resources management, the provision of training in areas like environmental protection, the needs of the local societies, arts, cultural heritage, use of new technologies, provision of on-the-job training, etc. The actions concerning the promotion of employment (*stricto sensu*) include: financed job placements, financial/credit and technical support for the creation of new (especially small and medium sized) enterprises thus promoting enterpreneurship, local initiatives of employment leading to the creation of new jobs, etc. Finally the actions concerning information dissemination and raising awareness about the relevant problems include: an appeal to social partners and public opinion to support the other actions, creation of new information centres and support for existing ones, conduction of seminars, preparation of information materials (manuals, booklets, etc), information about the problems of the target-groups of the actions, the consolidation of HANDYNET (electronic network providing information mainly for disabled people but also for other disadvantaged groups), use of the Media, etc.

It is obvious from the above descriptions that there are perspectives of substantive synergy between these actions and the measures and programrmes implemented under the Greek CSFs and the National Action Plans for Employment.

The geographical distribution of the projects was as follows: Eastern Macedonia/Thrace: 8.4%, Central Macedonia: 20.7%, Western Macedonia: 3.9%, Epirus: 11,7%, Thessaly: 5.6%, Western Greece: 6.7%, Continental Greece: 5%, Attica: 5.6%, Peloponese: 20.7%, Ionian Islands: 1.1%, Nothern Aegean: 1.7%, Southern Aegean: 3.4%, Crete: 5.6%.

The results of the actions have been assessed with regard to the products created and the people who benefited. Concerning the products the following table is indicative:

Products	**First Cycle**	**Second Cycle**
Structures	0%	22%
Databases	5%	6%
Dissemination-Promotion	28%	29%
Methodology	19%	5%
Training Material	12%	13%
Training	32%	13%
Studies-Reports	0%	8%
Other	4%	4%

While during the first cycle the focus was on vocational training, information activities and the methodology of implementation, during the second cycle the projects focused mainly on the creation of structures and on information activities, while the training activities were considerably limited.

Regarding the beneficiaries, the following table contains the relevant information:

Strand	**Beneficiaries from Vocational Training actions**	**Beneficiaries from Actions for Promoting Employment**
NOW	208	331
HORIZON	163	480
YOUTHSTART	197	214
INTEGRA	149	230
TOTAL	717	1,255

Finally, it is interesting to note the specializations acquired by the beneficiaries from the vocational training schemes as well as their subsequent professional activity: 18.55% were employed in the provision of social services and services in general, 11.76% in tourism, 10.4% in agriculture and relevant activities, 4.97% in retail commerce, 4.52% in cultural activities, 4.52% in information technology activities, 4.07% in construction activities, 3.61% in hotels and restaurants, 3.61% in business support activities(legal,

accounting, etc), 3.16% in wholesale commerce, 3.16% in communication activities (press, radio, television), 2.71% in environmental protection, 2.26% in publishing activities, etc.

8.2.4. Effectiveness of other measures financed by the ESF

As analyzed in Chapter 2, there have also been other measures in Greece financed by the ESF, for example the Integrated Mediterranean Programmes. The importance of the assistance granted through these Programmes is undisputed, however it was not used effectively. The financial assistance of the IMPs was granted, in several occasions, for public works that were never completed while it is estimated that 30% of this assistance was spent on very small projects, which had no structural effect but were simply used for partisan purposes.[68] The result of this management was that at the end of implementation period of the IMPs, several areas of Greece were seriously lagging behind in development, compared with other Southern-European territories in other Mediterranean Member States.

The Greek National Action Plans for Employment have been evaluated by the European Commission.[69] They focused on the employability pillar. They were criticized by the Commission for lacking a sufficiently structured employment strategy and being fragmentary. However, it was acknowledged that they demonstrated potential to tackle serious problems such as youth unemployment and long-term unemployment, although it was necessary to add a timetable for the measures regarding long-term unemployment. The vocational training schemes have been consolidated through certification of training centres and linking training with labour market needs, but a more comprehensive strategy and quantified targets are necessary. The social partners are expected to play a more active role in the effort to promote employment. The measures concerning the promotion of entrepreneurship and adaptability were satisfactory. With regard to equal opportunities, the application of priority criteria for women's participation in training and employment schemes (gender mainstreaming) is a very positive measure. A similar approach has been followed in many cases for other groups (disabled, immigrants, minorities, etc). Most measures included in the plans are financed or co-financed by the

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[68] See Oikonomikos Tachydromos, 10.12.1998, p. 21, EE, issue 11, 1999, p. 27 for more details.
[69] See for instance, European Commission, Joint Employment Report 1999, COM (1999)442 final, and EE, issue 10, 1998, p. 51.

ESF. 80% of the ESF financial support is allocated to measures under the employability pillar. Nevertheless, most of the resources given according to the Greek Plans were found to focus on curing the various unemployment problems and not on preventing them. Greece has committed itself to comply with the prevention target by 2002, when all the relevant schemes will be fully operational and the monitoring of flows into and out of unemployment possible. Moreover, the description of the measures included in the Greek Plans was such that it was impossible to estimate the overall exact cost of their implementation.

The Greek Ministry of Labour and Social Security has also examined the effectiveness of the Greek National Action Plans for Employment. The two main programmes "Young People in Active Life" and "Back to Work" (see Chapter 2) aimed to create 60.000 jobs by April 1999. By the end of 1998, they had only created about 25,000 jobs and they had been active since April 1998. The participation of women in employment programmes was increased from 45% to 60% and in training programmes from 40% to 50%. The participation of small and medium sized enterprises in employment programmes increased to 70% but their participation in training programmes is very low. Furthermore, the participation of disabled persons in employment programmes was increased from 1% to 5% while the aim was and still is 7% for the year 2003.[70]

A general remark has been that the contents of these Plans do not always correspond always to the Community Guidelines but often incorporate national priorities regarding employment.[71] This is justifiable, since promoting employment is a competence of the Member States. Nevertheless, due to fear of political censure by the European Institutions, the Member States have tried, slowly but steadily, to adjust their National Action Plans for Employment to the guidelines of the Union. It is still too soon to seek empirical verification of the intention expressed in these Plans in order to establish their effectiveness.

In 1990, the ECA examined the implementation of the exceptional assistance given to Greece in the social field from 1984 until 1991.[72] As mentioned in Chapter 2,

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[70] For all these see To Vima, 16.5.1999, p. D16.

[71] See G. Raveaud, Dynamics of the Welfare State Regimes and Employability, Paper presented during the annual conference of the European Institute of Social Security "Confidence and Changes: Managing Social Protection Systems in the New Millennium", Göteborg 6-10 September 2000.

[72] European Court of Auditors, Special Report 5/1990 on the implementation of Council Reg. 84/815/EEC on exceptional financial support in favour of Greece in the social field, OJ 1990, C 331/1.

this assistance aimed to cover 55% of the costs of building, fitting out and equipping vocational training centres as well as centres for the rehabilitation of the mentally and physically ill and handicapped, with a view to helping them return to gainful employment. Two programmes were implemented, one for the vocational training centres and one for the rehabilitation centres.

The programme for the vocational training centres was practically a forecast of the distribution of the aid between the beneficiary bodies with overall indications regarding the work expected to be carried out by these centres. There was no indication of the substance of the projects to be implemented and no information regarding any national contributions. The programme for the rehabilitation centres was even more vague, consisting mainly of guidelines to be adopted concerning the policies that those centres should promote. There was no individualized forecast by centre or beneficiary nor was there any precise indication of the nature of the operations to be financed. These programmes were considered to show a high level of improvisation and they lacked a valid reference framework indicating the envisaged projects.[73]

The ECA's controls revealed that there was no adequate technical preparation for the implementation of the projects. There were serious delays because of these omissions, and because the forecasts were drawn up in drachmas as the then unstable exchange rate between ECU and drachma caused additional logistical burdens. Ensuring the eligibility of the expenditure was another problem since there were no structured accounts broken down by operation. In fact some of the operations financed had led to the improvement of the remuneration of the staff employed in vocational training centres or rehabilitation centres, without any new expertise being provided nor any significant changes being made to the services (training and treatment) provided by these centres. The courses of some vocational training centres were not planned in line with the needs of the labour market. The work carried out in the rehabilitation centres, instead of aiming to reduce the role of internment in the provision of care to the mentally ill and to increase new treatment methods involving integration in the social environment, resulted in a form of consolidation of former treatment methods.[74]

At the end of the original programming period (1984-1988) only 70% of the available assistance was committed and only 23% was actually paid.[75] This resulted in

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[73] Ibid, p. 3.
[74] Ibid, p. 4.
[75] Ibid, p. 2.

extending the programming period for three years (until 31.12.1991) and providing technical assistance through Council Reg. 88/4130/EEC. With regard to financial management, a monitoring committee was established in June 1989, which submitted reports to the Commission. These however only referred to the vocational training centres, not to the rehabilitation centres. A monitoring system, based on a mechanism collecting and circulating information on the progress of the projects was also supposed to be established, but was not. In an overall assessment of the scheme granting to Greece exceptional financial support in the social field, the ECA, based on the finding of its inspections, concluded that it was a "disappointing experience".[76]

Finally, it is interesting to examine the opinion of the actual beneficiaries regarding all these measures financed by the ESF in Greece regarding employment and especially those focusing on vacational training. Recently, the Sociology Department of the University of Crete and the National Institute of Labour of the Greek General Confederation of Workers published a study titled "Demand of continuing training and motives of interested persons in Greece",[77] according to which the number of people that participated in vocational training schemes from 1995-1998 was 120,000, i.e. 27% of all unemployed in Greece. 29.05% of the participants were trained in information technology, 23.1% were trained in business administration and insurance, 13.34% were trained as office emlpoyees and in hotel management, 10.32% were trained in agriculture and protection of the environment, 7.81% were trained as artisans, 5.40% were trained in foreign languages and child care, 4.24% were trained in media, 3.95% were trained in handicraft and building restoration, 2.79% were trained in paramedical issues. The beneficiaries participated in these schemes for the following reasons:

Reason	**Yes**	**No**
Interest in the contents of training	48.8%	51.2%
To acquire knowledge	38.9%	61.1%
To have more qualifications during job search	61.1%	38.1%
The scheme was subsidized-Interest in money	40.2%	59.8%
The scheme was offering knowledge of personal interest	18%	82%
Nothing else to do	9.7%	90.3%

[76] Ibid, p. 6.
[77] See Apogevmatini tis Kyriakis, 20.8.2000, p.68-69.

According to the participants' in the schemes, their effectiveness was as follows:

Types of Effectiveness	Very much-Enough	Little	Barely-None
Support to find a job	49.3%	20.5%	30.2%
Correspondence to the needs of labour market	50.1%	23.7%	26.2%
Provide knowledge required by labour market	55.3%	22.5%	22.2%
Long duration in relation to the content	24.7%	19.7%	55.6%
Use of suffiently prepared trainers	73.4%	11.1%	15.6%
Supporting structure suitable for the scheme	62.4%	17.6%	20%
Duration was necessary	64.6%	17.2%	18.2%
Implementation compatible with original tender	74.2%	17.2%	18.2%

These findings clearly show that the vocational training schemes in Greece must be strategically re-orientated. The contents of training must correspond not only to those sectors of the economy and the labour market that are currently being developped (i.e. business management, protection of environment) but also to those already developed (i.e. meadia, information technology, tourism). An ecquilibrium will thereby be achieved, meeting the needs of the labour market in terms of specialization and expertise.

Conclusion

It was estimated at the beginning of the programming period 1989-1993 that the measures financed by the Structural Funds would have a positive impact on the Greek economy only if Greece was in a position to absorb the resources given by these Funds.[1] This thesis has examined in detail the legislative and institutional framework of the financial control of these resources especially those given by the ESF concerning the promotion of employment. The examination revealed some serious problems regarding the existing mechanisms of financial control, at national and European level. These problems caused considerable delays in the absorption of the Community resources, thus resulting in a non-satisfactory rate of effectiveness of the programmes implemented so far, especially those aiming to tackle unemployment. The extension of the programming period 1994-1999 until 2001, only for Greece, demonstrates that the current system of financial management and control, at national and European level, is in need of reform. The proposals put forward throughout this thesis aim to create a control scheme that will safeguard the sound financial management of the ESF resources given to Greece. The importance of having such an effective scheme can be demonstrated by some considerations regarding the next programming period i.e. 2000-2006.

It is unquestionable that new important initiatives regarding social policy will be required in Greece during the next ten years. A new aim has been identified following Greece's success in joining the Economic and Monetary Union: the achievement of substantive convergence in economic and social terms. This aim is to equalise the living standard of the average Greek with that of the average European. The main instrument to achieve this is the growth of the Gross Domestic Product. In 2000, this growth is 3.9% while estimates for 2001 include a figure of 4%. The aim is to stabilize this growth at an average annual rate of 5%. This rate, according to the Greek Ministry of National Economy, will allow Greece to achieve substantive convergence with the other Member States of the European Union in 2010.[2]

It is true, that the growth of the Gross Domestic Product is one of the most useful indicators regarding the promotion of employment. More specifically, according

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[1] B. Manesiotis, Public Sector: Implications from the accession in the EEC and Perspectives, Center of Research of the Greek Society-Academy of Athens, 1993, p. 76-77.
[2] For more details see To Vima, 18.6.2000, p. A10.

to A. Okun, an American professor of economics, there is a relationship between the increase of the Gross Domestic Product and the reduction of employment: whenever the Gross Domestic Product increases by 2%, unemployment is reduced by 1%.[3] This relationship, known in economics as "Okun's Law", refers to the American economy. For the Greek economy, which is less flexible with regard to structural change and labour market, the ratio is more probably 2.5%-3% increase of the Gross Domestic Product in order to reduce unemployment by 1%.[4] According to the aforementioned estimates, the GDP growth will be 5% per year, and the most recent percentage of unemployment in Greece is 11.7%. Therefore, it will take four to five years for Greece to have an more acceptable unemployment rate of 6%, assuming that no extraordinary conditions occur during this period.

A factor that might affect these developments is the enlargement to include countries from Central and Eastern Europe. It has been found that, although this procedure will not affect the labour market of the Member States on average, the labour markets of the Member States bordering countries from Central and Eastern Europe (including Greece) will be significantly affected. The migration of manpower from those countries will negatively affect sectors of the labour market, e.g. trade sectors (such as clothing and footwear) and the constructing sector, concentrating on blue-collar workers in manufacturing industries and on unskilled labour in services, since immigrants from Eastern and Central Europe will compete for jobs with the workers in these sectors. Conversely, workers from the current Member States can seek employment in Central and Eastern Europe countries in other sectors and industries such as communication equipment, measuring instruments, computers, motor vehicles.[5]

Another effect of enlargement is that the resources given to countries like Greece through the Structural Funds have been reduced, compared to the original estimates, because a major part of this financial assistance has been redirected towards the candidate countries. In order to make this reduction more acceptable both in political and economic terms, it was decided, during the meeting of the European Council in Berlin (March 1999), that a special financial allowance will be given to Greece, Ireland, Portugal and Spain in order to maintain, for the 2000-2006 period, the overall average

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[3] Th. P. Lianos, Unemployment and Okun's Law, To Vima, 9.4.2000, p. D7.
[4] Ibid, p. D7.
[5] For a more detailed analysis of this issue see European Integration Consorium, The impact of Eastern Enlargement on Employment and Labour Markets in the EU Member States, Berlin-Milan 2000.

level of per capita aid reached in 1999.[6] The allowance for Greece is 450 million EURO.[7] Furthermore, the Commission, based on the new Objective 1, under the 1999 Regulations on the Structural Funds, has determined which regions will be covered by this Objective.[8] According to the Commission all the NUTS II regions of Greece will be covered by Objective 1. This means that the whole of Greece will again be eligible for assistance by the Structural Funds. For that reason however, Greece will receive no transitional support under Art. 6 of Regulation 99/1260/EC. According to the Commission's indicative allocation of appropriations for Objective 1, Greece will receive 20,961 million EURO.[9]

The reduction of the structural assistance given to Greece caused severe concern ,given the task of achieving substantive economic and social convergence with the other Member States, as set for the 2000-2006 period. It is true that the national resources made available especially for social policy measures are not increasing.[10] The tax paying capacity of the Greek people has reached its limits, after the vigorous financial effort made in order to join the Economic and Monetary Union. Therefore, in order to maintain and increase the welfare state mechanisms in Greece as a means of achieving social convergence, the resources given by the Structural Funds are the obvious solution. It is crucial therefore to establish mechanisms, in a legal and institutional context, that will provide for the sound financial management of these resources.

The main instrument for promoting structural measures in Greece will be the third Community Support Framework (CSF). According to the Regional Development Plan submitted by Greece to the Commission in order for the latter to approve the CSF,[11]

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[6] It has been suggested that, in general, Community structural funding is conceived in terms of a "compensatory logic" within the framework of an intergovernmental bargain, whereby the Member States are "compensated" for the costs or risks they undertake when they adopt decisions regarding deeper and wider integration, such as the current enlargement process. This pattern of behaviour on behalf of Community institutions has been noted before when the major reforms of the Structural Funds closely followed the adoption of significant documents regarding European integration such as the Single European Act and the EU Treaty. See J. Scott, Regional Policy: An Evolutionary Perspective, in P. Graig, G. De Búrca, The Evolution of EU Law, Oxford University Press, 1999, p. 625-652 at 627-628.

[7] European Council, Presidency Conclusions, Berlin 24-25 March 1999, Doc 100/99, p. 16.

[8] Commission Decision 99/502/EC drawing up the list of regions covered by Objective 1 of the Structural Funds for the period 2000 to 2006, OJ 1999, L 194/53.

[9] Commission Decision 99/501/EC fixing an indicative allocation by Member State of the commitment appropriations for Objective 1 of the Structural Funds for the period 2000 to 2006, OJ 1999, L 194/49.

[10] See Pl. Tinios, Is there inefficiency of resources for social policy?, Epikedra issue 4, Sept-Dec 1997, available on line at http://knet/compulink.gr/taseis/epikedra/EPI04/04epi11.htm on 6.5.2000.

[11] The Commission approved in principle the CSF for Greece for the programming period 2000-2006 while the final decision will be adopted after consultation with various committees as provided for by Regulation 99/1260/EC. See Commission Doc IP/00/861, 26.7.2000.

there will be seven priority axes: human resources, communications, competitivity, agriculture-fisheries, quality of life, information society, regional development, including in total 24 operational programmes (11 substantive programmes and 13 regional programmes). The human resources axis includes two operational programmes, one regarding education and one regarding employment. The axis has an overall budget of about 4,480.2 million EURO divided as follows: 2,484.6 million EURO will be given to the operational programme on education and 1,995.6 EURO will be given to the operational programme on employment.[12] The Greek Ministry of Labour and Social Security, which will be the managing body with regard to the operational programme regarding the measures to promote employment, has set six main targets for its actions: a) linking initial and continuing vocational training, b) improving the quality of vocational training and linking it with employment, c) common planning of all projects regarding vocational training and employment, d) orientating of the projects regarding employment towards sensitive target groups like women, young persons, old persons and long-term unemployed, e) complete restructuring of the Greek Manpower Employment Organization, f) cooperating with the private sector in order to increase the number of available job positions.[13]

Nevertheless, according to the *ex ante* evaluation of this Regional Development Plan, performed by the Greek Centre of Programming and Economic Studies on behalf of the Greek Ministry of National Economy, the third CSF's contribution to the effort to combat unemployment will be limited. More specifically, while the structural measures financed under the CSF is expected to help the overall growth of the Gross Domestic Product by causing an overall increase rate of 6.37%, only 85,000 new job positions are expected to be created.[14] The Council has noticed the fact that despite the growth of the Gross Domestic Product, unemployment remains unreasonably high in Greece. Therefore, it has recommended some actions to the Greek government: a) to take decisive and coherent action to prevent young and adult unemployed from drifting into long-term unemployment, b) to examine in more detail any disincentives within the tax and benefit system which may discourage labour market participation, in particular of women, c) to improve further the quality of education and vocational training, focusing

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[12] See European Commission, Summary of the Community Support Framework Greece 2000-2006, available on line at http://www.inforegio.cec.eu.int/wbpro/prord/pro2000_en.htm on 18.9.2000.
[13] See To Vima, 23.1.2000, p. D9.
[14] See Ependytis/Oikonomia, 7-8.8.1999, p. 4.

on continuing training, d) to adopt and implement regulatory and fiscal measures designed to reduce the administrative burden for setting up new undertakings, e) to encourage the involvement of the social partners at all appropriate levels, f) to take appropriate measures to upgrade the statistical monitoring system so that policy indicators will be provided with the agreed definitions and methods.[15]

These remarks identify the problem of all measures regarding employment that have been implemented in Greece to date. They all focused on creating new jobs, in order to achieve full employment, and establishing a "safety net" (mainly through social security and welfare mechanisms aiming to provide a minimum income) for those who did not manage to find a job. The real challenge, however, is not simply to increase employment in terms of quantity but also in terms of quality. It has been noted correctly that only through the provision of knowledge, via education and vocational training, is it possible to eliminate the real cause of unemployment in Greece, which is the enormous inequality in terms of knowledge and consequently of employment perspectives.[16] Thus, the more appropriate method would be to increase every person's access to education and training and to improve the quality of the education and training provided by taking into consideration the needs of the modern labour market and the conditions of the knowledge-based economy (especially in the area of information technology). These approaches, along with the already established mechanisms aiming to increase the number of jobs available, can provide a more integrated solution to the problem of unemployment in Greece. The resources necessary in order to realize these schemes are given to Greece by the ESF. It is Greece's duty to make good use of them.

It is therefore obvious that the usefulness of the ESF resources given to Greece depends on the implementation of the relevant programmes. Perhaps the most important part of their implementation is their financial management and control. This has been the purpose of this thesis: to contribute to the creation of a legislative and institutional framework of financial control of the management of the resources given to Greece by the ESF, through analyzing the relevant provisions, identifying the problems and

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[15] Council Recommendation 2000/164/EC on the implementation of Member States' employment policies, OJ 2000, L 52/32 at 35-36. See also European Commission, Recommendation for a Council Recommendation on the implementation of Member States' employment policies, Brussels 6.9.2000. That document contains two additional recommendations: a) the development of a strategy and policies implementing the employment guidelines across the four pillars of the European Employment Strategy and b) the encouragement of a partnership approach involving the social partners by commiting them in employment-friendly schemes with regard to areas such as work organization.

[16] K. Tsoukalas, The future of labour, To Vima, 2.7.2000, p. B04.

suggesting solutions. All these will contribute to the creation of a culture of financial control. It has correctly been said that such a culture is necessary, espacially today, in Greece, in the European Union, and in any country:

> "It is well known that public audit is a basic principle of democracy because it is a barrier to the misuse of power which can corrupt people.... In difficult times, like the ones we live in today, safeguarding the sound financial management of public resources is a necessary condition for the taxpayers to accept the sacrifices needed for the security and the progress of a country."[17]

[17] K. Karamanlis, Speech during the celebration for the 150 years of the Greek Court of Audit, 28.9.1983.

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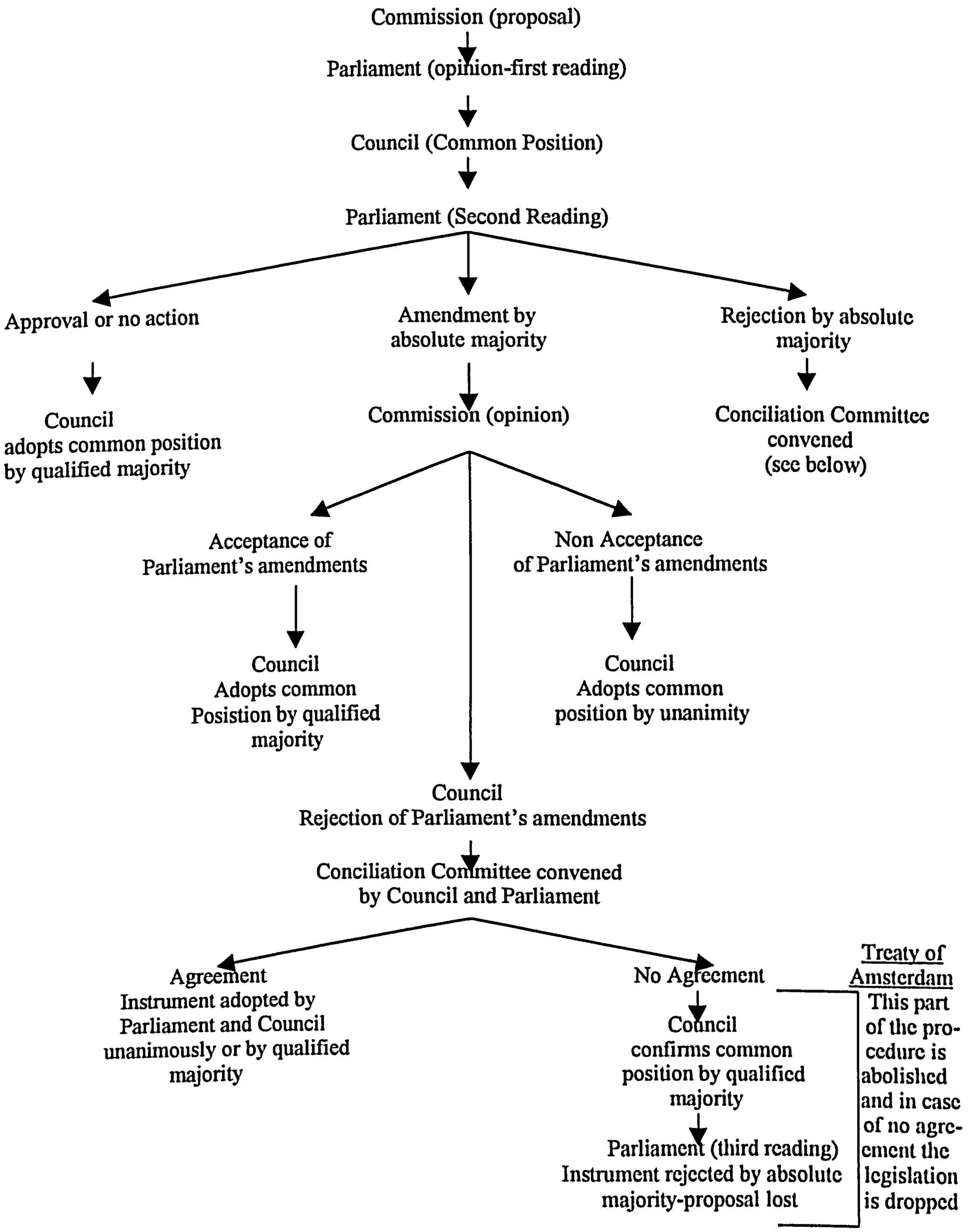
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ANNEXES

ANNEX I

The Co-decision procedure: Art. 251 (ex 189b) of the EC Treaty[1]



[1] Kl.-D. Borchardt, The ABC of Community Law, 1994, p. 49

ANNEX II

Annual breakdown of the allocations for structural operations for the period 2000-2006 as adopted by the European Council in Berlin[2]

Structural Operations (in EURO million)						
2000	2001	2002	2003	2004	2005	2006
32,045	31,455	30,865	30,265	29,595	29,595	29,170

Structural Funds (in EURO million)						
2000	2001	2002	2003	2004	2005	2006
29,430	28,840	28,250	27,670	27,080	27,080	26,660

Cohesion Fund (in EURO million)						
2000	2001	2002	2003	2004	2005	2006
2,615	2,615	2,615	2,615	2,515	2,515	2,510

[2] European Council, Presidency Conclusions, Berlin 24-25 March 1999, Doc 100/99, available on line at http://www.eu-presidency.de/ausland/englisch/01/frameset.html on 26.09.1999, pp. 10, 11 and 19.

ANNEX III

Indicative allocation by Member State of the commitment appropriations for Objectives 1, 2, 3 of the Structural Funds for the period 2000 to 2006[3]

Member State	Appropriations in EURO million			
	Objective 1	Objective 2	Objective 3	Total
Belgium	-	368	737	1,105
Denmark	-	156	365	521
Germany	19,229	2,984	4,581	26,794
Greece	20,961	-	-	20,961
Spain	37,744	2,553	2,140	42,437
France	3,254	5,437	4,540	13,231
Ireland	1,215+100*	-	-	1,315
Italy	21,935	2,145	3,744	27,824
Luxembourg	-	34	38	72
Netherlands	-	676	1,686	2,362
Austria	261	578	528	1,367
Portugal	16,124	-	-	16,124
Finland	913	459	403	1,775
Sweden	372+350**	354	720	1,796
United Kingdom	4,685+400***	3,989	4,568	13,642
Total	127,543	19,733	24,050	171,326

[3] Commission Dec. 99/501/EC fixing an indicative allocation by Member State of the commitment appropriations for Objective 1 of the Structural Funds for the period 2000 to 2006, OJ 1999, L 194/49, Commission Dec. 99/504/EC fixing an indicative allocation by Member State of the commitment appropriations for Objective 2 of the Structural Funds for the period 2000 to 2006, OJ 1999, L 194/60, Commission Dec. 99/505/EC fixing an indicative allocation by Member State of the commitment appropriations for Objective 3 of the Structural Funds for the period 2000 to 2006, OJ 1999, L 194/63.

* The additional amount is the PEACE programme relating to the peace process in Northern Ireland.

** The additional amount is a special programme for the Swedish regions.

*** The additional amount is the PEACE programme relating to the peace process in Northern Ireland.

ANNEX IV

Regional Breakdown of Structural assistance in Greece for the implementation of the third Greek Community Suport Framework (2000-2006)[4]

Regions	**ECU million**
Attica	4,846
Peloponese	1,751
Central Macedonia	3,524
Northern Aegean	568
Eastern Macedonia/Thrace	1,396
Southern Aegean	382
Thessaly	1,772
Western Macedonia	737
Western Greece	1,962
Ionian Islands	481
Crete	891
Epirus	1,293
Continental Greece	1,358
Total	20,961

[4] P. Kakouris, Where are the resources of the Third Community Framework distributed, Apogevmatini, 7.8.1999, p. 37.

ANNEX V

Main Community documents regarding the policies on the promotion of Employment

General issues about Employment

-Council Resolution concerning a social action programme, OJ 1974, C 13/1
-Council Resolution on guidelines for a Community labour market policy, OJ 1980, C 168/1
-Council Resolution on Community action to combat unemployment, OJ 1982, C 186/1
-Council Resolution on the contribution of local employment initiatives to combating unemployment, OJ 1984, C 161/1
-Council Conclusions concerning specific employment measures, OJ 1985, C 165/1
-Council Resolution on an action programme on employment growth, OJ 1986, C 340/2
-Council Resolution on the need to tackle the serious and deteriorating situation concerning unemployment in the Community, OJ 1993, C 49/3
-Council Resolution on the role of social protection systems in the fight against unemployment, OJ 1996, C 386/3
-Council Regulation 68/1612/EEC establishing a mechanism for clearing vacancies and applications for employment throughout the Community (EURES), OJ 1968, L 257/2, amended by Council Regulation 76/312/EEC, OJ 1976, L 39/2 and Council Regulation 92/2434/EEC, OJ 1992, L 245/1.
-Council Decision 98/171/EC on establishing activities concerning analysis, research and cooperation among the Member States in the field of employment and the labour market OJ 1998, L 63/26
-Council Decision 98/347/EC on measures of financial assistance for innovative and job-creating small and medium-sized enterprises (Growth and Employment Initiative) OJ 1998, L 155/43

Vocational Training

-Council Resolution concerning vocational training policies in the European Community on the 1980s, OJ 1983, C 193/2
-Council Resolution on continuing vocational training, OJ 1989, C 148/1
-Council Recommendation 93/404/EEC on access to continuing vocational training, OJ 1993, L 181/37
-Council Decision 63/266/EEC, OJ 1963, L 63/1338, laying down general principles for implementing a common vocational policy
-Council's General Guidelines for drawing up a Community action programme on vocational training, OJ 1971, C 81/5
-Council Decision 94/819/EC establishing an action programme for the implementation of a European Community vocational training policy (LEONARDO DA VINCI) OJ 1994, L 340/8
-Council Decision 87/569/EEC, concerning an action programme for the vocational training of young people and their preparation for adult and working life (PETRA) OJ 1987, L 346/31, amended by Council Decision 91/387/EEC, OJ 1991, L 214/69

-Council Decisions 86/365/EEC, OJ 1986, L 222/17 and 89/27/EEC, OJ 1989, L 13/28 concerning an action programme on cooperation between universities and industry regarding training in the field of technology (COMETT)
-Council Dec. 89/657/EEC, on an action programme to promote innovation in the field of vocational training resulting from technological change in the European Community (EUROTECNET) OJ 1989, L 393/29
-Council Decision 90/267/EEC, on an action programme for the development of continuing vocational training in the Community (FORCE) OJ 1990, L 156/1
-Council Decision 99/382/EC establishing the second phase of the Community vocational training action programme "LEONARDO DA VINCI" OJ 1999, L 146/33

Young People's Unemployment

-Commission Recommendation 77/467/EEC on vocational preparation for young people who were unemployed or threatened by unemployment, OJ 1977, C 180/18
-Council Resolution on the promotion of employment for young people, OJ 1984, C 29/1

Long Term Unemployment

-Council Resolution on action to combat long-term unemployment, OJ 1985, C 2/3
-Council Resolution on action to assist the long-term unemployed, OJ 1990, C 157/5

Women's Unemployment

-Council Resolution on action to combat unemployment amongst women, OJ 1984, C 161/4
-Council Conclusions on vocational training for women, OJ 1987, C 178/3
-Commission Recommendation 87/567/EEC on vocational training for women, OJ 1987, L 342/35
-Council Resolution on the promotion of equal opportunities for men and women through action by the European Structural Funds, OJ 1994, C 231/1
-Council Resolution on mainstreaming equal opportunities for men and women into the European Structural Funds, OJ 1996, C 386/1
-Council Decision 95/593/EC establishing a Fourth medium-term Community action programme on equal opportunities for men and women 1996-2000, OJ 1995, L 335/37

Employment of Disabled People

-Council Resolution establishing a Community action programme for the vocational rehabilitation of handicapped persons, OJ 1974, C 80/30
-Council Resolution on the social integration of the handicapped people, OJ 1981, C 347/1
-Council Recommendation 86/379/EEC on the employment of disabled people in the Community, OJ 1986, L 225/43
-Council Conclusions on the employment of disabled people in the Community, OJ 1989, C 173/1

ANNEX VI

Breakdown of ESF funding in Greece for the implementation of the second Greek Community Suport Framework (1994-1999)[5]

A. By Sectoral Operational Programmes

Sectoral Operational Programmes	ECU million
Human Resources	1,164.7
Postal and Telecommunications	37.6
Industry and Services	35
Research and Technology	30.1
Tourism and Culture	10
Regional Operational Programmes	236
Total	2,548.3

B. By Regional Operational Programmes

Regions	ECU million
Attica	37.7
Peloponese	12.6
Central Macedonia	30
Northern Aegean	12.6
Eastern Macedonia/Thrace	26.3
Southern Aegean	12.6
Thessaly	22.1
Western Macedonia	11.2
Western Greece	19.1
Ionian Islands	11.1
Crete	15.1
Epirus	10.5
Continental Greece	15.1
Total	236

C. Technical Assistance

The Technical Assistance provided to Greece by the ESF for the implementation of the second Greek Community Support Framework was 12.5 million ECU.

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[5] European Commission, The European Social Fund, an overview of the programming period 1994-1999, March 1998, Available on line at http://www.europa.eu.int/comm/dg05/esf/en/public/overview, on 15.10.1998 and European Commission, Objective 1 in Greece, available on line at http://www.europa.eu.int/comm/dg05/esf/en/member/ms/greece/greobj1.htm on 30.3.1999.

ANNEX VII

Integrated Mediterranean Programmes in Greece

A. Programmes approved

- Commission Dec. 88/400/EEC approving an integrated Mediterranean programme for information technologies in Greece (OJ 1988, L 191/25). The total contribution of the Community was 88,751,500 ECU from which ESF contributed 9,382,500 ECU.
- Commission Dec. 88/317/EEC approving an integrated Mediterranean programme for Central and Eastern Greece (OJ 1988, L 143/28). The total contribution of the Community was 315,539,890 ECU from which ESF contributed 10,263,170 ECU.
- Commission Dec. 88/401/EEC approving an integrated Mediterranean programme for Western Greece and the Peloponese (OJ 1988, L 191/32). The total contribution of the Community was 361,343,000 ECU from which ESF contributed 18,964,000 ECU.
- Commission Dec. 88/399/EEC approving an integrated Mediterranean programme for the Nothern Greece region (OJ 1988, L 191/17). The total contribution of the Community was 406,765,000 ECU from which ESF contributed 29,942,000 ECU.
- Commission Dec. 88/313/EEC approving an integrated Mediterranean programme for Attica (OJ 1988, L 140/23). The total contribution of the Community was 223,142,800 ECU from which ESF contributed 16,798,410 ECU.
- Commission Dec. 88/312/EEC approving an integrated Mediterranean programme for the Aegean Islands (OJ 1988, L 140/15). The total contribution of the Community was 193,538,500 ECU from which ESF contributed 4,091,000 ECU.

B. Annual Breakdown of EC payments to Greece through the Programmes[6]

Year	Million Drachmas
1985	911.7
1986	1357
1987	10,702.5
1988	16,336.2
1989	7,622.2
1990	19,858.6
1991	38,235.7
1992	43,457
1993	29,535.6
1994	3,030
1995	262
1996	11,578.2
Total	182,886.7

[6] A. X. Papandrikopoulos, Community Resources worth 40 trillion drachmas, Oikonomikos Tahydromos, 10.12.1998, issue 50 (2327), pp. 20-22 at 20.

ANNEX VIII

Projects implemented in Greece and financed under Art. 6 of Council Reg. 88/4255/EEC as amended by Council Reg. 93/2084/EEC[7]

Title of Project	Promoter	Contents
Specialization of engineers in the field of energy management in building and industry	Ministry of Labour and Social Security	Training qualified mechanical and chemical engineers as specialists for energy management in the building and industrial sectors.
Study and pilot test for first implementation of occupational health & safety CAT distance learning	Computer Aided Technology	Development and implementation of new methodologies in learning in the field of computer technology, including use of CAD, CAM, CIM.
Setting up mobile training units at district & local levels	T.E.E.E.	A study and pilot project to assist geo-graphical regions, which have access problems via vocational training on a mobile basis.
Implementation of training using multimedia	O.A.E.A.	Use of multimedia training for office workers, vehicle mechanics, electronic equipment technicians and unemployed people.
Application of a Systemic Methodology on the Design and Implementation of Vocational Training for persons with special needs and young persons leaving school	Univ. of Crete, Dept of Medicine	Market failure and training mismatch. The completion of training for people with special needs. The application of a systemic methodology to the design and implementation of vocational training for persons with special needs and young people leaving school.
Development and Use of Human Resources in Major Projects	Experimental Institute for Vocational Training	The use of development projects to benefit employment coupled with improvements to the operation of the labour market. The anticipation of qualification needs and support of training mechanisms with modern methods and analytical techniques. Target groups are those excluded from the labour market.
Structural Support Actions for the launching of a new employment policy: work card, employment vouchers for multiple use	Greek Manpower Employment Organization	Preparation of training materials for the use of offenders and ex-offenders. Support for the process of rehabilitation. Training of trainers and other support staff such as social workers, psycholo-gists and criminologists.
Women's Micro-Enterprise Birth and Adoption	Development Agency of Athens	Establishment of an intermediate agency involving local government and social partners to encourage large businesses to take women apprentice for a period of training and later assist them in the creation of their own micro-businesses that they will "adopt". The adoption consists of a contribution to the start up capital and in management assistance.

[7] Available on line at http://www.europa.eu.int/comm/dg05/esf/en/about/art6/art6_gr.htm on 19.11.1999.